

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser, without cost, each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2 Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may request the sales agreement

3 The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is in a duly signed written document that is signed by the purchaser.

(Added to NRS by 1969 1446)

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 7001, 2396)

**NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.**

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller triple the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties, or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D 640 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).

Seller(s):  Date: 10/24/2017

Co-trustee, the Shiraz Trust

Seller(s): \_\_\_\_\_ CO-Trustee, The Shiloh Trust  
\_\_\_\_\_ Manager, Lyons-Development LLC

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter ~~113.100-160~~ 113.100-160 inclusive ~~through~~ through four (4) and five (5).

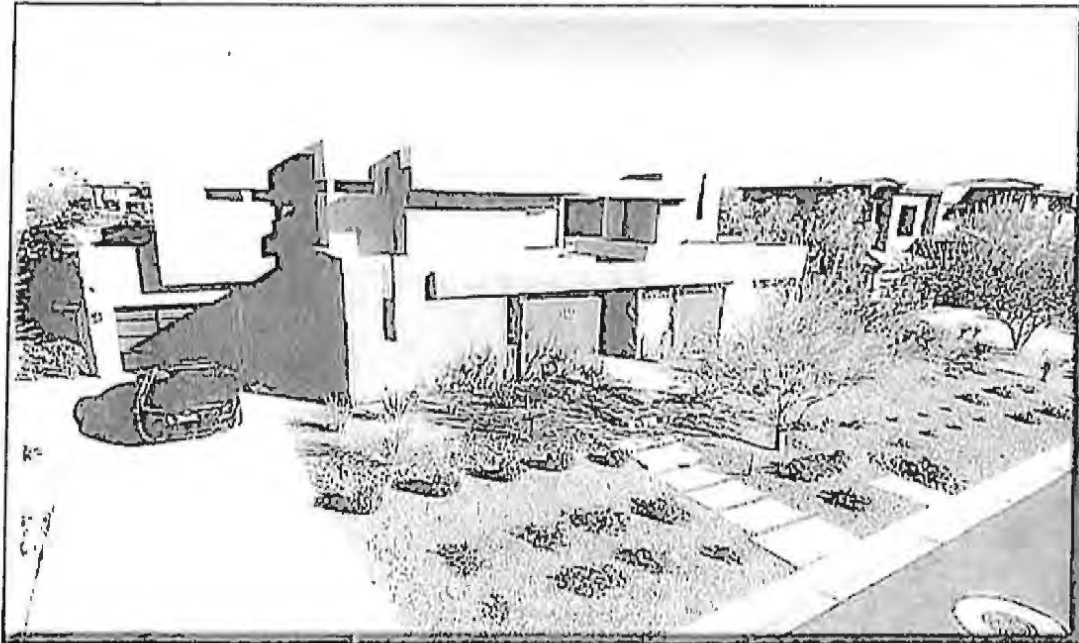
Joseph Folino  
 10/25/17 2:03PM EST  
 11/17/2016 10:00 AM EST

Date: 10/25/2017

Buyer's Nicole Folina Date: 10/25/2017

## **EXHIBIT 5**

## The Uniform Building Inspection Report™ Condensed



**Single Family Residence:**  
42 Meadowhawk Lane, Las Vegas, NV 89135

**Condensed Report Version Prepared for:**  
Joe & Nicole Solino, Client  
Ashley Oakes-Lazosky, Selling Agent  
Ivan Sher, Listing Agent

**Inspection Date:**  
10/27/2017, 9:00:00 AM

**Report Number:**  
1027170900RP

**Inspection Company:**  
Caveat Emptor LV  
Ralph Pane, Lic.# IOS.0002415.RE  
Las Vegas, NV 89148  
(702) 210-5333  
[www.caveatemptorlv.com](http://www.caveatemptorlv.com)

**"Expect What You Inspect"**  
Copyright © 2017 Caveat Emptor LV



**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

**Letter Code Definitions:**

The letter code definitions provide the Inspector's professional opinion regarding the finding significance, severity, ramifications, course of action, or path of resolution recommended. If further clarification is desired please contact your inspector.

- (+) The plus sign indicates a plus for the property.
- (A) APPEARANCE This issue is generally perceived to cosmetic in nature.
- (B) BUILDING STANDARDS This finding does not appear to conform to building standards and practices in effect at the time of construction or installation.
- (C) CAUTION Caution is advised. The finding could be, or could become, hazardous under certain circumstances.
- (D) DAMAGED and/or DAMAGING Damage is observed.
- (E) EFFICIENCY Correction of this issue will generally have a significant impact on efficiency.
- (F) FAILURE The system is not operating as intended.
- (H) HAZARD The finding should be considered hazardous.
- (M) MONITOR Monitor this finding on a regular basis. Corrections by a qualified licensed contractor, if or when necessary, are recommended.
- (N) NOTICE Discretion advised. The significance of the finding is uncertain. Further study is advised.
- (P) PREVENTIVE MAINTENANCE This is generally regarded to be a recurring maintenance issue. Preventive maintenance should be performed to restore the component(s) to proper condition.
- (R) REVIEW BY SPECIALIST The most suitable course of action for addressing this finding is to defer the issue to a licensed and qualified contractor.
- (T) TYPICAL/COMMON This finding appears to be typical and consistent with the age of the structure.
- (U) UPGRADE RECOMMENDED To perform this maintenance action would be considered to be an upgrade.

**IMPORTANT: Findings, Components & Applications Listings:**

Each section of the complete report includes a list of Findings, if any, and a list of Components and Applications noted during the inspection. Some component information contains disclosures. Some Findings information may be far-reaching. To obtain this information would require reading all narratives in the Uniform Building Inspection Report™ Reference Manual, referenced by item number. The client is given this manual.



**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

**Condensed Findings:**

The condensed version is not the entire report and should not be considered exclusive. In States requiring summary distribution the following listed items are considered by the inspector as inoperative, not operating properly or as intended, health and/or safety concerns, warranting further investigation by a specialist, or warranting continued observation by others. In all other States the summary may include all findings regardless of significance.

**Grounds Findings:**

[R] 0303: Irrigation station supply valve(s) possibly leak(s). Observed at the east side of the home. The ground around the irrigation valve box is damp. I did not see the valve leaking but the moisture should be looked into. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0303.

[R] 0313: Irrigation anti-siphon valve leakage observed. Observed at the southeast corner of the home. Active leaking was observed. Anti siphon valve should be replaced. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0313.

[R] 0323: Irrigation system electric valve control wires amiss. Observed on the east side of the home. The low voltage wire is running on the ground when it should be in conduit or buried. Wire should be correctly ran. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0323.

[R] [R] 0350: Irrigation system needs general repairs, maintenance and adjustments. This condition was observed at the front of the property. Small underground leak noticed in the front yard drip system. Leaks only when front station is in operation. Leak should be repaired. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor. (rock is pulled back at leak area)  
See Photo(s) 0350.

**Exterior / Roof Findings:**

**HVAC & Fireplace Findings:**

**Pool / Spa Findings:**

**Notes:**

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
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**Notes:**

**[R] 3770.02: Filler case leaks.**

This condition was observed in the pool equipment area. Small leak observed at the fitting at the bottom of the filler. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Pool Contractor.  
See Photo(s) 3770.02.

**[R] 3911: Gate(s) allowing direct access to pool or spa not self-closing and self latching.**

Observed on both sides of the home, the gates should be adjusted to allow the gate to close and latch properly on its own. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Pool Contractor.  
See Photo(s) 3911.

**Plumbing Findings:**

**[R] 4684: Tub drains slow.**

This condition was observed in the master bathroom tub. The drain stop may need adjusting to allow faster drainage. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Plumbing Contractor.  
See Photo(s) 4684.

**Electrical Findings:**

**[C] 5645: Electrical faceplate missing.**

Observed in the master bathroom toilet areas. Both outlets are missing the faceplate cover. A missing electrical faceplate can create a potential hazard, especially when small children are present. It is recommended that all missing electrical faceplates be installed as soon as practicable. These products are generally readily available at most major home improvement warehouses such as Lowes or The Home Depot. Caution is advised. The finding could be, or could become, hazardous under certain circumstances.  
See Photo(s) 5645

**Bathroom(s) Findings:**

**General Interior Findings:**

**[R] 7424: Door dead bolt fails to fully extend in the jamb.**

Observed at the exterior door of the gym in the basement. Deadbolt does not fully lock. Lock should be adjusted. It is recommended this finding and all associated components be reviewed and corrected as

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
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needed by a licensed and qualified Door Contractor.  
See Photo(s) 7424.

**Kitchen / Appliance Findings:**

**Structure Findings:**

**Notes:**

Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



Photo: 0.32 (1)



Photo: 0303 (1)



Photo: 0313 (1)



Photo: 0323 (1)

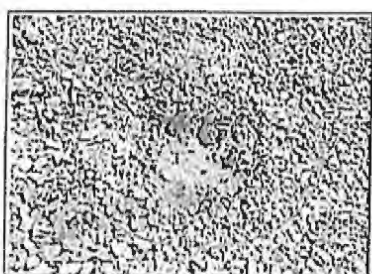


Photo: 0350 (1)



Photo: 1.05 (1)



Photo: 1.05 (2)

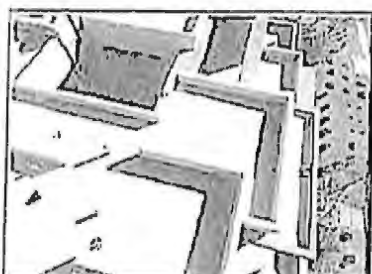


Photo: 1.05 (3)



Photo: 1.05 (4)



Photo: 1.1 (1)



Photo: 1.2 (1)



Photo: 2.02 (1)

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

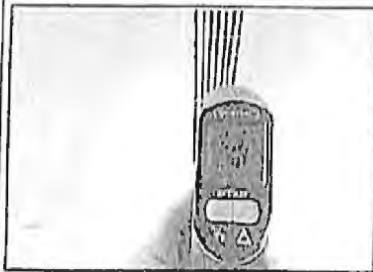


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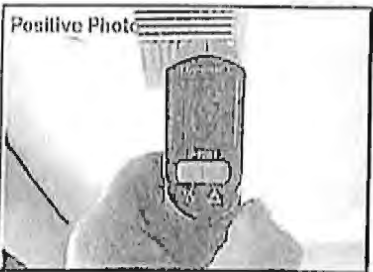


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Photo: 2.04 (2)

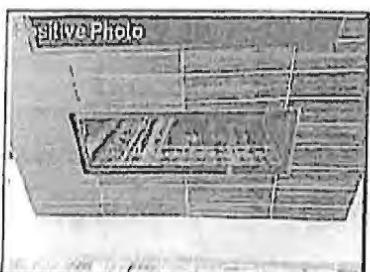


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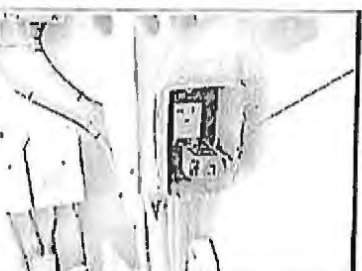


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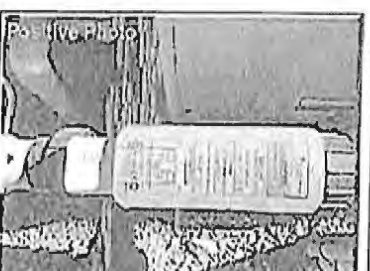


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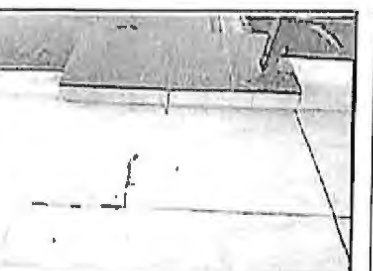


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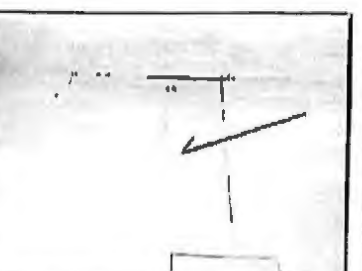


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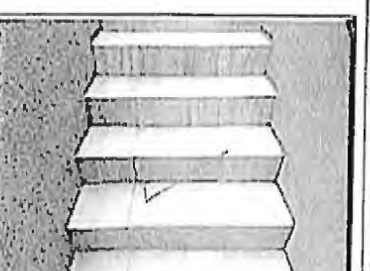


Photo: 3.162 (3)



Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



Photo: 3770.02 (1)



Photo: 3800 (1)



Photo: 3911 (1)



Photo: 4.07 (1)

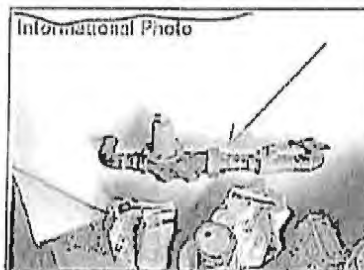


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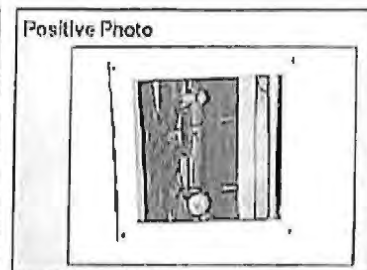


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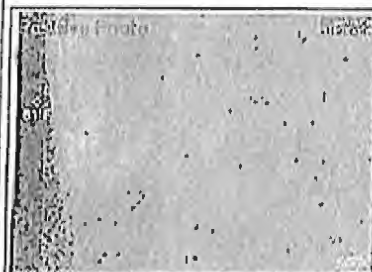


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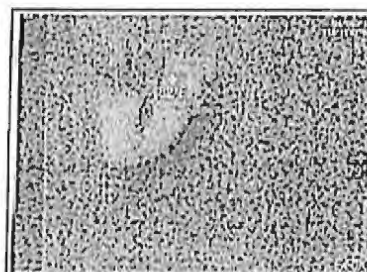


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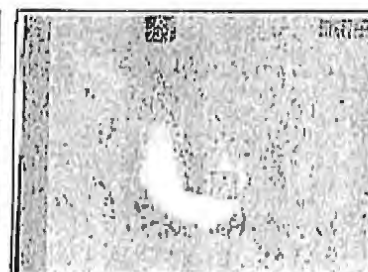


Photo: 4.18 (3)



Photo: 4.18 (4)



Photo: 4.21 (1)

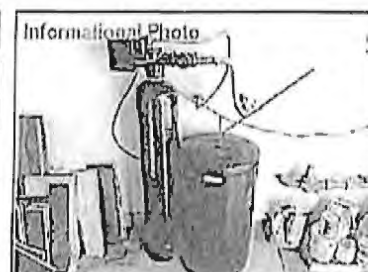


Photo: 4.95 (1)

Questions or concerns? Please call (702) 210-5333

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**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900AP

Positive Photo

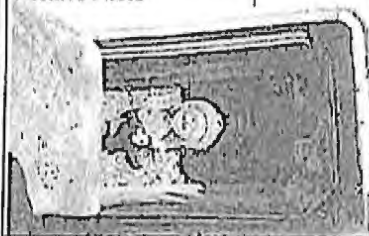


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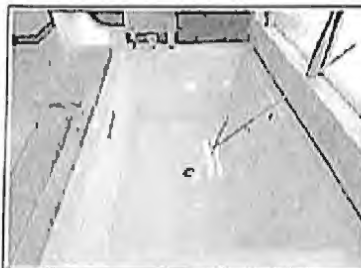


Photo: 4684 (1)

Positive Photo

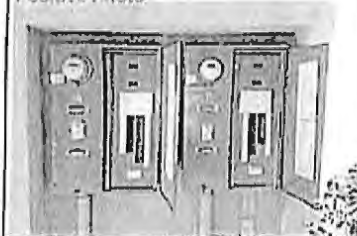


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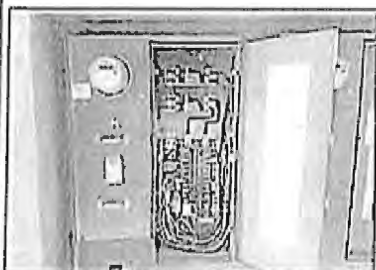


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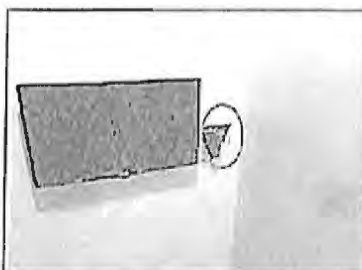


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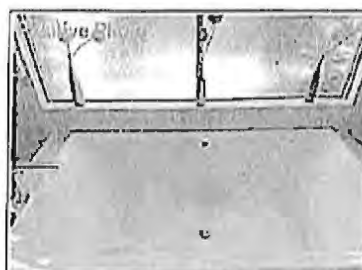


Photo: 6.15 (1)



Photo: 6.410 (1)



Photo: 7.82 (1)



Photo: 7.424 (1)



Photo: 8.04 (1)



Photo: 8.04 (2)



Photo: 8.07 (1)

Questions or concerns? Please call (702) 210-5333

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**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP



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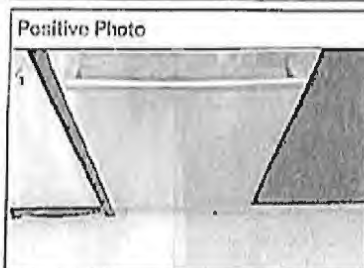


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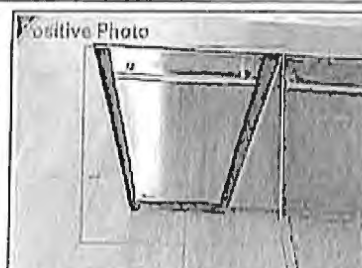


Photo: 8.31 (1)



Photo: 8.91 (1)



Photo: 8.91 (2)



Photo: 8.91 (3)

## **EXHIBIT 6**



*Vegas Homes*  
AND REAL ESTATE



REQUEST FOR REPAIR No. 1

In reference to the Residential Purchase Agreement dated 10/23/17 ("Agreement") on property known as 42 Meadowhawk Ln, Las Vegas, NV ("Property") executed by Joseph Folino Nicole Folino as Buyer(s) and seller of record as Seller(s). The Buyer hereby notifies the Seller of the following response and request for repairs:

1. BUYER'S NOTICE: (Check one)

☐ Buyer has reviewed and approves the Home Inspection Report and removes the home inspection contingency  
☒ Buyer requests that the Seller perform the following repairs before COE. All repairs (except general home maintenance) are to be done by a licensed Nevada contractor. Buyer reserves the right to approve the repairs at Walk Through Inspection as set forth in the Purchase Agreement. Buyer acknowledges that this Request for Repair does not absolve the Buyer of any obligation under the Residential Purchase Agreement.

All irrigation systems need to be repaired and replaced at the areas of leaking, etc.

(see inspection report for details)

Pool filter case leaks and needs to be repaired/replaced.

Side gate needs to be repaired properly to allow self-latching properly.

Drain stops need to be repaired/replaced since tubs drain slowly

Master bathroom electrical faceplates need to be replaced & installed properly.

Downstairs room door needs the deadbolt repaired/replaced to function properly.

Amended report by Inspector makes 2 additional items added to this request:

(See provided amended report and photos)

1. Pool decking outside the sliding door has a "lip" that is showing either shifting underneath and/or is a trip hazard. Seek further investigation from pool builder and provide buyers with "warranty" or solution.

2. Flat roof line that is right of the Office Patio is coming off in chunks and needs to be repaired (see report with inspectors suggested remedy.) Buyer inquiring on the builders warranty for continued said issues with the stucco on the flat roof lines of home.



Copies of the following reports are attached:

☒ Inspection Report

☐ \_\_\_\_\_

☐ \_\_\_\_\_

☐ \_\_\_\_\_

Designated by:

Joe Folino

Buyer Joseph Folino

10/30/17

Date

Designated by:

Nicole Folino

Buyer Nicole Folino

10/30/17


Date



2. SELLER'S RESPONSE: (Check one)

- ☒ Seller agrees to correct all of the conditions listed in Section 1 of this Request.  
☐ Seller declines Buyer's Request for Repairs.  
☐ Seller offers to repair or take the other specified corrective action as follows:

[illegible]

 10/30/2017  
Seller Co-trustee, the Shiraz Trust Date  
Manager, Lyons Development, LLC

**Seller** \_\_\_\_\_ **Date** \_\_\_\_\_

3. BUYER'S REPLY TO SELLER'S RESPONSE: (Check one)

- ☐ Buyer accepts Seller's response as noted in Section 2 of this Request, withdraws all requests for items Seller has not agreed to correct (if any) and removes the home inspection contingency.
- ☐ Buyer rejects Seller's response and rescinds the Purchase Agreement.
- ☐ Buyer rejects Seller's response as noted in Section 2 of this Request, elects to offer the Seller a new request as set forth in the attached Request for Repair No. \_\_\_\_\_, Buyer further requests a \_\_\_\_\_ calendar day extension of the Due Diligence Period.

☒ See above in section #1 of original requested repairs added issues added to request of repairs. Inspector amended report.

Joseph Folino

delapan variabel  
 1. tingkat kepuasan  
 2. persepsi kualitas  
 3. persepsi manfaat  
 4. persepsi biaya  
 5. persepsi risiko  
 6. persepsi kemudahan  
 7. persepsi keamanan  
 8. persepsi kenyamanan

Date \_\_\_\_\_

Nicole Folino

04/03/2012 12:12 PM  
 20120303121200

#### 4. SELLER'S RESPONSE TO REQUEST FOR EXTENSION OF THE DUE DILLIGENCE PERIOD

- ☐ Seller APPROVES the \_\_\_\_\_ day extension of the due diligence period:

**Seller**

Date \_\_\_\_\_

**Seller**

Date \_\_\_\_\_

## **EXHIBIT 7**

APN NO.: 164-14-414-014

RECORDING REQUESTED BY:  
EQUITY TITLE OF NEVADA

WHEN RECORDED MAIL TO:

Joseph R Folino & Nicole Folino  
42 Meadowhawk Lane  
Las Vegas NV 89135

MAIL TAX STATEMENTS TO:  
SAME AS ABOVE

Affix RPTT: \$15,300.00  
ESCROW NO.: 17840471 TGR

Inst #: 20171117-0003032

Fees: \$40.00

RPTT: \$15300.00 Ex #:

11/17/2017 03:21:08 PM

Receipt #: 3252384

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: RYUD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

### GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH THAT:

**Lyons Development, LLC, a Nevada Limited Liability Company**

for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant,  
Bargain Sell and convey to

**Joseph R Folino and Nicole M Folino, husband and wife as joint tenants**

all that real property situated in the County of Clark, State of Nevada, described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances  
thereunto belonging to in anywise appertaining.

SUBJECT TO:

1. General and special taxes for the current fiscal year.
2. Covenants, conditions, restrictions, rights of way easements and reservations of record.

SELLER:

Lyons Development, LLC

Todd Swanson, Trustee  
Todd Swanson, Resource Trustee for  
the Shiraz Trust

STATE OF Colorado )  
COUNTY OF Denver ) SS:  
On November 11, 2017  
personally appeared before me, a Notary Public  
Todd Swanson

who acknowledged that he/she/they executed the  
above instrument.

Karen Coffey  
Notary Public

My commission expires: 3/29/18

KAREN COFFEY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20004012163  
MY COMMISSION EXPIRES 03-29-18



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot Fourteen (14) as shown on the FINAL MAP OF SUMMERLIN VILLAGE 18 THE RIDGES  
PARCEL "F" FALCON RIDGE as shown by map thereof on file in Book 126 of Plats, Page  
64, in the Office of the County Recorder, Clark County, Nevada.

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a. 164-14-414-014  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property: \$ 3,000,000.00  
b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
c. Transfer Tax Value \$ 3,000,000.00  
d. Real Property Transfer Tax Due: \$ 15,300.00

4. If Exemption Claimed

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature \_\_\_\_\_ Capacity agent  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name: Lyons Development, LLC  
Address: 10120 W Flamingo Road Ste. 4333  
City: Las Vegas  
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: Joseph R Folino and Nicole Folino  
Address: 42 Meadowhawk Lane  
City: Las Vegas  
State: NV Zip: 89135

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

Print Name: Equity Title of Nevada Escrow No.: 17840471-084-TGR  
Address: 2475 Village View Dr., Suite 250  
City, State, Zip: Henderson, NV 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

## **EXHIBIT 8**



Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

INVOICE

INVOICE NO  
232809

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

| ACCOUNT NO | INVOICE DATE | TERMS  | DUE DATE  |  |  | PAGE |
|------------|--------------|--------|-----------|--|--|------|
| UPONOR     | 5/23/2017    | Net 30 | 6/22/2017 |  |  | 1    |

ORDER 13382, PO

RESOLUTION RMA # 747000

TECH FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM.

CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER WITH NO FURTHER LEAKS.

RAKEMAN HAD TO REMOVE TOE KICKS ON BUILT IN CABINETS IN CLOSET, CUT OUT WET DRYWALL, CARPET PAD AND PLACE EQUIPMENT TO DRY OUT CLOSET.

AFTER EVERYTHING IS DRY RAKMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THE RESET ALL CARPET.

| ITEM NO      | QUANTITY | DESCRIPTION  | UNIT PRICE | EXTENDED  |
|--------------|----------|--------------|------------|-----------|
| BID ACCEPTED | 1        | BID ACCEPTED | 2496.00    | 2,496.00* |

Your Business is Appreciated!

\* means item is non-taxable



INVOICE

INVOICE NO  
232809

Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

| ACCOUNT NO | INVOICE DATE | TERMS  | DUE DATE  |  |  | PAGE |
|------------|--------------|--------|-----------|--|--|------|
| UPONOR     | 5/23/2017    | Net 30 | 6/22/2017 |  |  | 2    |

TOTAL AMOUNT 2,496.00

## **EXHIBIT 9**



June 9, 2017

Rakeman Plumbing  
ATTN: Aaron Hawley  
4075 Losee Rd  
NORTH LAS VEGAS, NV 89030

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

I am responding to the claim you submitted under the above referenced RMA number.

Enclosed please find a check in the amount of \$2,496.00 offered by Uponor in full and complete satisfaction of all claims and damages you have or may have relating to the above referenced claim. Be assured that we take these matters seriously and are working to make sure this does not happen again.

Should you require any other information or have any additional questions, please do not hesitate to contact me at (952) 997-5383. Thank you for your assistance.

Sincerely,

Christy Wegner  
Claims Coordinator  
Christy.Wegner@uponor.com

Enclosure: Check

**Uponor North America**

**Uponor, Inc.**  
5925 148th Street West  
Apple Valley, MN 55124  
Tel: (800) 321-4739  
Fax: (952) 691-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**Uponor Ltd**  
2000 Argentia Road  
Plaza 1, Suite 200  
Mississauga, ON L5N 1W1  
Tel: (888) 994-7726  
Fax: (800) 638-9517  
Web: [www.uponor.ca](http://www.uponor.ca)



014805

uponor 5925 148TH STREET WEST, APPLE VALLEY, MN 55124

109033 RAKEMAN PLUMBING Jun 7, 2017 14805

| OUR REF NUMBER | INVOICE NUMBER | INVOICE DATE | INVOICE DESCRIPTION | NET AMOUNT |
|----------------|----------------|--------------|---------------------|------------|
| 418340         | RMA746512      | Jun 7, 2017  |                     | 2,496.00   |
| TOTAL AMOUNT   |                |              |                     | \$2,496.00 |

uponor

5925 148TH STREET WEST  
APPLE VALLEY, MN 55124

PIC Bank  
National Association  
Jardinet, PA  
60 160 423

014805

Check Date

07-Jun-2017

Check Amount

\$2,496.00

PAY Two Thousand Four Hundred Ninety-Six Dollars And Zero Cents\*\*\*\*\*

TO  
THE  
ORDER  
OF

RAKEMAN PLUMBING  
4075 LOSEE ROAD  
NORTH LAS VEGAS, NV 89030  
United States

*[Handwritten Signature]*

⑈014805⑈ ⑈043301627⑈ ⑈001149485⑈

## **EXHIBIT 10**

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 12:39 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** Uponor Warranty Claim - RMA 746512 (42 Meadowhawk)  
**Attachments:** 746512\_As\_Received\_2.JPG; Rakeman\_746512\_42\_meadowhawk\_invoice.pdf; 746512\_-\_payout.pdf

Hi Nicole,

I wanted to thank you for taking the time to speak with me today in regards to the Uponor products currently installed in your home. As discussed, Uponor has identified a limited manufacturing related issue with the tubing samples returned to our office for evaluation and are recommending replacement of all red and blue AQUAPEX tubing currently installed in your home with new Uponor AQUAPEX. It is my understanding that you will be discussing this recommendation with your husband and will be following up with me after the 1<sup>st</sup> of the year to begin conversations on how we can work together to accomplish this task.

Per your request, below please find the information associated with the initial claim submitted to Uponor in February 2017.

#### Claimant And Jobsite Information

##### Claimant Information

Builder/Contractor  
rakeman plumbing  
aaron hawley  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
aaron@rakeman.com  
Ph 702 642 8553  
Fax 702 399 1410

##### Jobsite Information

Residential  
aaron hawley  
42 meadow hawk ln.  
LAS VEGAS, NV 89131  
US  
aaron@rakeman.com  
Ph 702 642 8553

##### Past Occurrences

##### Estimated Claim Amount

##### Past Occurrences

|                         |                   |
|-------------------------|-------------------|
| Amount                  | \$5000 to \$10000 |
| Preferred Reimbursement | Cash              |
| Repairs Complete        | No                |

## Installation Information

### Application

### Contractor Information

**Application** Plumbing  
**Recirculation** Yes  
**Recirc Type** Timed/On Demand  
**Failure Location** Supply  
**Location Detail** master bed room closet

rakeman plumbing  
 aaron hawley  
 4075 losee rd  
 NORTH LAS VEGAS, NV  
 US  
 aaron@rakeman.com  
 Ph 702 642 8553  
 Installing? Yes

### Temperature/Pressure

### Other Information

**Temperature** Hot  
**System Temp Hot** 120 F  
**System Pressure** 65 PSI

**Present for destructive**  
**Phase of Construction**  
**Builder**

### Water Source

### Customer Comment(s)

**Water Source** Municipal

tubing split at fitting. Cu

### Dates

**Est. Installed Date** 19-JUN-2013  
**Failure Date** 16-FEB-2017

## Product Information

| Item Number | Description | Return |
|-------------|-------------|--------|
|-------------|-------------|--------|

|          |  |  |
|----------|--|--|
| Q4751775 | ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX |  |
|----------|--|--|

Problem: tubing split at fitting

Review Result: No Failure

|          |                                       |  |
|----------|---------------------------------------|--|
| F2060750 | 3/4" Uponor AquaPEX Red, 300-ft. coil |  |
|----------|---------------------------------------|--|

Problem: tubing split at fitting

Review Result: Manufacturing

|          |  |  |
|----------|--|--|
| F3060750 | 3/4" Uponor AquaPEX Blue, 300-ft. coil |  |
|----------|--|--|

Problem: tubing split at fitting

Review Result: Manufacturing

|          |                                       |  |
|----------|---------------------------------------|--|
| F1041000 | 1" Uponor AquaPEX White, 100-ft. coil |  |
|----------|---------------------------------------|--|

Problem: tubing split at fitting

Review Result: No Failure

|          |                             |  |
|----------|-----------------------------|--|
| Q4690756 | ProPEX Ring with Stop, 3/4" |  |
|----------|-----------------------------|--|

Problem: tubing split at fitting

Review Result: No Failure

|          |                           |  |
|----------|---------------------------|--|
| Q4691000 | ProPEX Ring with Stop, 1" |  |
|----------|---------------------------|--|

Problem: tubing split at fitting

Review Result: No Failure

Should you have any questions or concerns with the information supplied, please do not hesitate to reach out. My direct contact information is below.

Thank you  
Stacey

uponor

**Stacey Beissel**  
Warranty Manager  
Uponor North America

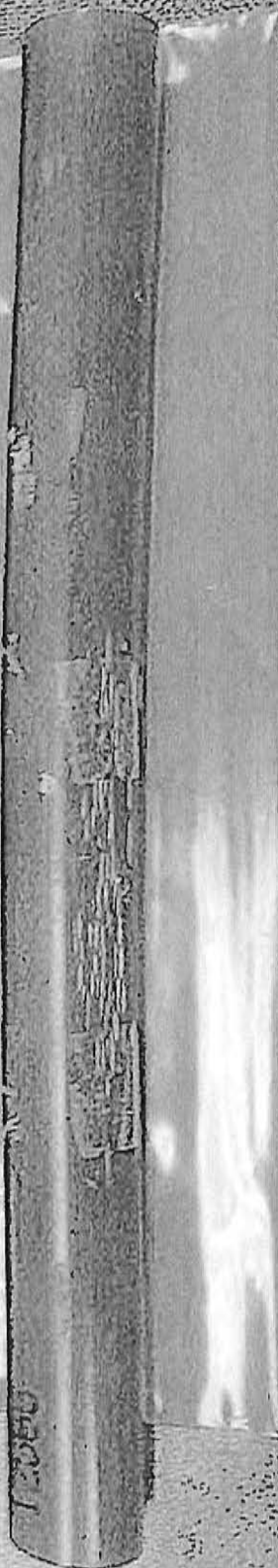
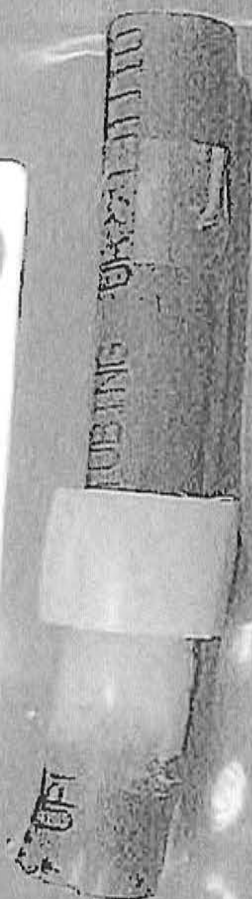
T +19529978984  
M +16512531956

[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

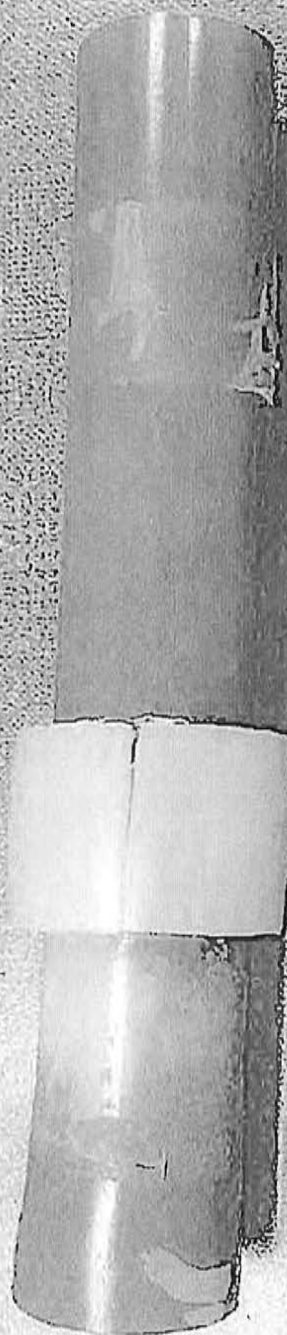
Uponor, Inc.  
5925 148th St W  
Apple Valley, MN, 55124

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RMA748395










## **EXHIBIT 11**

---

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 1:20 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** RE: Uponor Warranty Claim RMA 748395 (42 Meadowhawk)  
**Attachments:** 2012 Plumbing Warranty.pdf

Hi Again,  
I apologize; I just realized I forgot to send the Uponor warranty applicable to your home. I have attached it for your review.

Thanks  
Stacey

**From:** Beissel, Stacey  
**Sent:** Wednesday, December 13, 2017 2:47 PM  
**To:** 'Nicole Folino' <nfolino@sandlerpartners.com>  
**Cc:** Joe Folino <jfolino@swtch.com>  
**Subject:** Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)

Hi Nicole,  
As requested, the claim information for the most recent claim submitted to Uponor for evaluation (in November 2017) is below:

## Claimant And Jobsite Information

### Claimant Information

Builder/Contractor  
rakeman plumbing  
alison brooks  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
alison@rakeman.com  
Ph 702 642 8553

### Estimated Claim Amount

|                         |                  |
|-------------------------|------------------|
| Amount                  | \$1000 to \$2500 |
| Preferred Reimbursement | Cash             |

### Jobsite Information

Single Family  
todd watson  
42 meadowhawk ave.  
LAS VEGAS, NV 89135  
US  
alison@rakeman.com  
Ph 702 642 8553

### Past Occurrences

### Past Occurrences

### Past Occurrences Ref

## Installation Information

Application

Contractor Information

Application

Plumbing

rakeman plumbing

Recirculation

No

alison brooks

Location Detail

master bath closet below water heater

4075 losee rd

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Temperature/Pressure

Ph 702 642 8553

Installing? Yes

Temperature

Cold

Other Information

System Temp

70 F

System Pressure

65 PSI

Present for destructive

Phase of Construction

Water Source

Builder

Water Source

Municipal

Customer Comment(s)

Dates

Blue pipe split at fitting

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017

Product Information

| Item Number                           | Description   | Return |
|---------------------------------------|---|--------|
| LF4517575                             | ProPEX LF Brass Sweat Adapter, 3/4" PEX x 3/4" Copper |        |
| Problem: blue tubing split at fitting |   |        |
| Review Result:                        |   |        |
| F3040750                              | 3/4" Uponor AquaPEX Blue 100-ft. coil                 |        |
| Problem: blue tubing split at fitting |   |        |
| Review Result: Manufacturing          |   |        |

Thank you  
Stacey

uponor

Stacey Beissel  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

Uponor, Inc.  
5925 148th St W  
Apple Valley, MN, 55124

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PLUMBING SYSTEMS

WARRANTY

**UPONOR, INC. LIMITED WARRANTY** Valid for Uponor AquaPEX-a® Tubing, ProPEX® and Other Select Plumbing Products

**This Warranty Is Effective For Instalations Made After October 15, 2012**

Subject to the terms and conditions of this Limited Warranty, Uponor, Inc. ("Uponor") warrants to the owner of the applicable real property that the Uponor products listed below shall be free from defects in materials and workmanship, under normal conditions of use when installed as part of a potable water distribution system.

Unless otherwise specified, this Limited Warranty for the applicable Uponor products shall commence on the date the product was installed ("Commencement Date") and will expire after the following number of years:

- (a) Twenty-five (25) years for Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings when all are installed in combination with each other;
- (b) Ten (10) years for Uponor AquaPEX-a® tubing when installed in combination with non-Uponor fittings;
- (c) Ten (10) years for Uponor EP valves, EP valveless manifolds and Uponor tub ells, stub ells, and straight stubs;
- (d) Two (2) years for Uponor metal manifolds, Uponor EP manifolds with valves;
- (e) Five (5) years for the Uponor D'MAND® system;
- (f) Two (2) years for all other components of the Uponor ProPEX® fitting system and all other plumbing items listed in Uponor's catalog as of the effective date of this limited warranty.

For purposes of this warranty, the use of Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings in combination with each other shall constitute an Uponor ProPEX® system.

**Exclusions From Limited Warranty:**

This limited warranty applies only if the applicable Uponor products identified above: (a) are selected, configured and installed by a certified licensed plumbing contractor recognized by Uponor as having successfully completed the Uponor AquaPEX® training course and according to the installation instructions provided by Uponor; (b) are not exposed to temperatures and/or pressures that exceed the limitations printed on the warranted Uponor product or in the applicable Uponor installation manual; (c) remain in their originally installed location; (d) are connected to potable water supplies; (e) show no evidence of misuse, tampering, mishandling, neglect, accidental damage, modification or repair without the approval of Uponor; and (f) are installed in accordance with then-applicable building, mechanical, plumbing, electrical and other code requirements; (g) are installed in combination with Uponor AquaPEX-a® tubing unless otherwise specified below.

Without limiting the foregoing, this limited warranty does not apply if the product failure or resulting damage is caused by: (a) faulty installation; (b) components not manufactured or sold by Uponor; (c) exposure to ultra violet light; (d) external physical or chemical conditions, including, but not limited to chemically corrosive or aggressive water conditions; or (e) any abnormal operating conditions.

The use of non-Uponor termination devices such as tub/shower valves, sill cocks, stops and other similar components that attach at the termination or end-point of a run or branch of Uponor AquaPEX-a® tubing does not disqualify the additional parts of the Uponor ProPEX® fitting system from the terms of this Limited Warranty. Only the non-Uponor termination devices themselves are excluded from the Uponor Limited Warranty.

The use of non-Uponor AquaPEX-a® tubing disqualifies any and all parts of the Uponor ProPEX fitting® system from the terms of this Limited Warranty. This exclusion does not include certain circumstances wherein Uponor AquaPEX-a® tubing is installed in combination with CPVC, copper, PPR, or stainless steel pipe risers as may be required in limited residential and commercial plumbing applications. The use of non-Uponor fittings in combination with Uponor ProPEX® fittings disqualifies Uponor ProPEX fittings® from the terms of this Limited Warranty.

**Warranty Claim Process (for building owners and homeowners only):**

Written notification of an alleged failure of, or defect in, any Uponor part or product identified herein should be sent to Uponor, Attn: Warranty Department, 5925 148th Street West, Apple Valley, Minnesota 55124 or by facsimile to (866) 351-8402, and must be received by Uponor within thirty (30) days after detection of an alleged failure or defect occurring within the applicable warranty period. All products alleged to be defective must be sent to Uponor for inspection and testing for determination of the cause of the alleged failure or defect.

**Exclusive Remedies:**

If Uponor determines that a product identified herein has failed or is defective within the scope of this limited warranty, Uponor's liability is limited, at the option of Uponor, to: issue a refund of the purchase price paid for, or to repair or replace the defective product.

Notwithstanding anything to the contrary in this limited warranty, if Uponor determines that any damages to the real property in which a defective product was installed were the direct result of a leak or failure caused by a manufacturing defect in an Uponor product covered by this limited warranty and occurring within the first ten (10) years after the applicable Commencement Date or during the applicable limited warranty period, whichever is shorter, and if the claimant took reasonable steps to promptly mitigate (i.e., limit or stop) any damage resulting from such failure, then Uponor may at its discretion, reimburse claimant for the reasonable costs of repairing or replacing such damaged real property, including flooring, drywall, painting, and other real property damaged by the leak or failure. Uponor shall not pay for any other additional costs or expenses, including but not limited to, transportation, relocation, labor, repairs or any other work associated with removing and/or returning failed or defective products, installing replacement products, damage to personal property or damage resulting from mold.

**Warranty Claim Dispute Process:**

In the event claimant and Uponor are unable to resolve a claim through informal means, the parties shall submit the dispute to the American Arbitration Association or its successor (the "Association") for arbitration, and any arbitration proceedings shall be conducted before a single arbitrator in the Minneapolis, Minnesota metropolitan area. NOTWITHSTANDING THE FOREGOING, NEITHER THE CLAIMANT NOR UPONOR, INC. SHALL BE ENTITLED TO ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS, AND NEITHER THE CLAIMANT NOR UPONOR SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS WITH ANY OTHER PARTIES IN ARBITRATION OR IN LITIGATION BY CLASS ACTION OR OTHERWISE.

**Transferability:**

This limited warranty may only be assigned by the original owner of the applicable real property and may not be assigned or transferred after the period ending ten (10) years following the Commencement Date.

**Miscellaneous:**

By the mutual agreement of the parties, it is expressly agreed that this limited warranty and any claims arising from breach of contract, breach of warranty, tort, or any other claim arising from the sale or use of Uponor's products shall be governed and construed under the laws of the State of Minnesota. It is expressly understood that authorized Uponor sales representatives, distributors, and plumbing professionals have no express or implied authority to bind Uponor to any agreement or warranty of any kind without the express written consent of Uponor.

THIS LIMITED WARRANTY IS THE FULL EXTENT OF EXPRESS WARRANTIES PROVIDED BY UPONOR, AND UPONOR HEREBY DISCLAIMS ANY WARRANTY NOT EXPRESSLY PROVIDED HEREIN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS COVERED HEREUNDER.

UPONOR FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY.

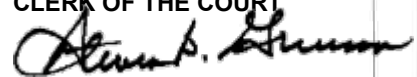
EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LIMITED WARRANTY, UPONOR FURTHER DISCLAIMS ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, AND SPECIAL, INDIRECT, SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OR RESULTING IN ANY MANNER FROM THE PRODUCTS COVERED HEREUNDER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THIS LIMITED WARRANTY GIVES THE CLAIMANT SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Revised as of 8/2012

Uponor, Inc.  
5925 148th Street West  
Apple Valley, MN 55124 USA  
Tel: (800) 321-4739  
Fax: (952) 891-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**uponor**



CHRISTOPHER M. YOUNG, ESQ.  
Nevada Bar No. 7961  
JAY T. HOPKINS, ESQ.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)  
Attorneys for Todd Swanson, et al.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**HEARING REQUESTED**

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee of the  
SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,  
LLC, (hereinafter referred to as "Defendants") by and through its counsel of record Christopher  
M. Young, Esq., and JAY T. HOPKINS of the law firm of Christopher M. Young, P.C., hereby  
submits the following motion seeking dismissal of Plaintiff's Second Amended Complaint.

///

///


///



1 This motion is made and based upon the pleading and papers on file, together with the  
2 following Points and Authorities with exhibits and the arguments at the hearing.

3 DATED this 24<sup>th</sup> day of September, 2019.

4 Respectfully Submitted,

5  
6   
7 CHRISTOPHER M. YOUNG, ESQ.  
8 Nevada Bar No. 7961  
9 JAY T. HOPKINS, ESQ.  
10 Nevada Bar No. 3223  
11 CHRISTOPHER M. YOUNG, PC  
12 2460 Professional Court, #200  
13 Las Vegas, Nevada 89128  
14 Tel: (702) 240-2499  
15 Fax: (702) 240-2489  
16 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
17 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)  
18 Attorneys for Todd Swanson, et al.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **NOTICE OF MOTION**

2 TO: TO ALL INTERESTED PARTIES AND THEIR COUNSEL:

3 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for  
4 hearing on the \_\_\_\_ day of \_\_\_\_\_, 2019, at the hour of \_\_\_\_\_ a.m./p.m. or as soon  
5 thereafter as counsel may be heard, in the Eighth Judicial District Court, Department XXIV,  
6 Courtroom

7 DATED this 24<sup>th</sup> day of September, 2019.

8 Respectfully Submitted,

9 CHRISTOPHER M. YOUNG, PC

10   
11 \_\_\_\_\_  
12 CHRISTOPHER M. YOUNG, ESQ.

13 Nevada Bar No. 7961

14 JAY T. HOPKINS, ESQ.

15 Nevada Bar No. 3223

16 2460 Professional Court, Suite 200

17 Las Vegas, Nevada 89128

18 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)

19 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

20 *Attorneys for Defendant Clark County Nevada*  
21 *Department of Aviation*

22 **I.**

23 **INTRODUCTION**

24 This is a lawsuit relating to the sale of real property in which the buyers claim the sellers  
25 concealed information which materially affected the value of the property. The buyers allege the  
26 sellers' failure to disclose a water leak establishes the sellers knew the plumbing system had a  
27 "systemic defect." The buyers' claims for fraud and statutory concealment under NRS Chapter  
28 113 cannot stand for two reasons:

- The undisputed facts show that the water leak was completely repaired. As such, under Nevada law, the sellers did not have knowledge of a "defect or condition" materially affecting the value of the property. Defendants request a ruling from this Court that the

completed repair negated the sellers' duty to disclose, thus barring the buyers' concealment claim based on NRS Chapter 113;

- The same undisputed facts - that the water leak was repaired and that the Defendants did not know of a defect - negates the intent element of the buyers' fraud claim. Summary judgment is warranted on this ground as well.

## II.

### **PROCEDURAL RECAP**

The Court is well-versed in the procedural history and factual issues in this case because the Court has already considered and ruled on two previous motions to dismiss. However, the following recap is presented to put the instant motion into context: *On October 19, 2018, the Plaintiffs filed their initial Complaint*

The Plaintiffs' based their case entirely on the Defendants' alleged failure to disclose a known water leak prior to the sale of real property and concealed their knowledge that the water leak was a "systemic defect" in the plumbing system.

*On February 4, 2019, the Defendants filed a motion to dismiss under NRCP 12(b)(5)*

The Court did not rule on the substance of the motion to dismiss but granted the Plaintiffs' request for leave to amend to cure the pleading deficiencies.

*On April 18, 2019, the Plaintiffs filed their First Amended Complaint*

The First Amended Complaint did not change the allegations or claims raised in the original Complaint, but simply added a Seventh Cause of Action for Piercing the Corporate Veil/Alter Ego. The Plaintiffs' First Amended Complaint incorporated several exhibits, including an invoice from Rakeman Plumbing, the plumbing company that repaired the subject water leak. (See Exhibits 8 & 9 to the Plaintiffs Complaint).<sup>1</sup>

*On May 20, 2019, the Defendants filed a motion to dismiss the Plaintiffs' First Amended Complaint*

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<sup>1</sup> The same exhibits were also attached as exhibits to the Plaintiffs First and Second Amended Complaints and are incorporated by reference, together with the arguments and other information in the two previous motions to dismiss.

1       The Defendants sought dismissal of each of the Plaintiffs' seven claims. Based on the  
2 Rakeman Plumbing invoice and related documents attached to the Plaintiffs' First Amended  
3 Complaint, the Defendants argued the invoice showed the leak had been repaired, thus negating  
4 the duty to disclose under *Nelson v. Heer*, 123 Nev. 217, 223-224, 163 P.3d 420, 425 (2007).

5       ***On July 18, 2019, this Court held a hearing on Defendants' Motion to Dismiss***

6       At the hearing, the Court dismissed all but two claims: (1) the Plaintiffs' fraud claim; and  
7 (2) the Plaintiffs' concealment claim under NRS Chapter 113.

8       The Court refused to dismiss the NRS Chapter 113 claim, stating that the Rakeman  
9 Plumbing invoices did not establish that the water leak had been *completely repaired*, as required  
10 by the *Nelson* case. The Court also ruled that the fraud claim could stand because it involved a  
11 question of fact.

12       ***On September 4, 2019, the Plaintiffs filed their Second Amended Complaint***

13       The Plaintiffs' Second Amended Complaint asserted claims for fraud and concealment  
14 under NRS Chapter 113, as ordered by the Court.

15       ***The Instant Motion***

16       The instant Motion for Summary Judgment is supported by undisputed (indisputable)  
17 evidence that Rakeman Plumbing completely repaired the water leak, thus negating the  
18 Defendants' purported "knowing concealment."

19       Following the Court's Order on the Motion to Dismiss the Plaintiffs' First Amended  
20 Complaint, the Defendants obtained an affidavit from Aaron Hawley, the owner of Rakeman  
21 Plumbing, who has knowledge regarding the adequacy of Rakeman's repair and what was  
22 communicated to the Defendants. (Exhibit A). Mr. Hawley stated that Rakeman Plumbing  
23 completely repaired the leak and no further information was conveyed to the Defendants. With  
24 these new facts, the Defendants request a ruling from this Court that neither of the Plaintiffs'  
25 claims can survive summary judgment. The concealment claim fails because under *Nelson* and  
26 NRS Chapter 113, the completed repair negates the duty to disclose. Because the Defendants did  
27 not have "knowledge" under the *Nelson* standards, summary judgment on the Plaintiffs' fraud  
28

claim is also warranted.<sup>2</sup>

### III.

#### UNDISPUTED FACTS

The following facts are not disputed or cannot be disputed:

- That there was a previous water leak at the property. (Exhibit A);
- That a licensed plumbing contractor, Rakeman Plumbing, came to the property on May 23, 2017 and completely repaired the leak. *Id.*
- That no information other than that the repair was completed was communicated to the Defendants; *Id.*
- That Rakeman Plumbing was the plumbing company that invoiced and submitted a warranty claim to the plumbing manufacturer, Uponor. *Id.*
- That the Defendants did not disclose the previous water leak in their October 24, 2017 Sellers Real Property Disclosure Form (SRPD). (Exhibit B).

### IV.

#### ARGUMENT

##### **A. Summary Judgment is Warranted on the Plaintiffs' Second Claim for Concealment**

##### **1. The Rakeman Plumbing Affidavit Establishes Undisputed Evidence Supporting Summary Judgment**

Under NRCP 56(a), “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007); *Wood v. Safeway, Inc.*, 731, 121 P.3d 1026, 1031 (2005).

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<sup>2</sup> The documents attached to the Plaintiffs' pleadings are incorporated into the pleadings, which together with the allegations can be viewed under NRCP 12(b)(5)'s standards. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, because the affidavit from Aaron Hawley of Rakeman Plumbing presents facts outside the pleadings, this Court must invoke the summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

1 Under NRCPP 56(c)1(A), facts can be established by affidavit. The affidavit “must be  
2 made on personal knowledge, set out facts that would be admissible in evidence, and show that  
3 the affiant or declarant is competent to testify on the matters stated.” NRCPP 56(c)(4). *See also*  
4 EDCR 2.21. Here, the Rakeman Plumbing affidavit satisfies these requirements. Mr. Hawley  
5 testified he has personal knowledge as the owner of Rakeman Plumbing with oversight of its  
6 operations. Further Mr. Hawley testified that he is competent to testify regarding the facts stated  
7 in his affidavit.

## 8 2. The Undisputed Evidence Supports Summary Judgment

9 In cases like this where the Plaintiffs have the burden of proof at trial, once the  
10 Defendants present evidence which negates an element of the Plaintiffs’ case, the burden shifts  
11 to the Plaintiffs to present *specific facts* showing a material issue of fact. *Cuzze*, 123 Nev. at 602,  
12 172 P.3d at 134. (Emphasis added). Here, the evidence presented in this motion cannot be  
13 controverted.

14 Under *Nelson* and the specific language of NRS §113.140, the Defendants *could not* have  
15 *knowledge* of a defect which triggers the duty to disclose. “NRS §113.140 states the following:  
16 “NRS §113.130 does not require a seller to disclose a *defect* in residential property of which the  
17 seller is not aware.” Tracking the statute, the *Nelson* court explained that “[t]he ‘term ‘aware’  
18 means ‘marked by realization, perception, or knowledge.’” Giving the term “‘aware’ its plain  
19 meaning,” the court “determine(d) that the seller of residential real property does not have a duty  
20 to disclose a defect or condition that ‘materially affects the value or use of residential property in  
21 an adverse manner, *if* the seller does not realize, perceive, or have knowledge of that defect or  
22 condition.” The *Nelson* court stated that “[a]ny other interpretation of the statute would be  
23 unworkable, as it is *impossible* for a seller to disclose conditions in the property of which he or  
24 she has no *realization, perception, or knowledge*.” *Nelson*, 163 P.3d 420, 425, 123 Nev. 217,  
25 224.

## 26 3. *Nelson v. Heer* is Directly on Point and Mandates Summary Judgment

27 Although the *Nelson* case was briefed in earlier motions to dismiss, the Defendants  
28 include the same discussion in this motion because this case is on all fours with *Nelson*. The

1 Nevada Supreme Court rule from *Nelson*, is that a seller repairing a water leak negates the  
2 seller's duty to disclose. *Nelson*, 123 Nev. at 220, 163 P.3d at 423.

3 The facts in *Nelson* are remarkably similar to this case. In *Nelson*, a water pipe on the  
4 third floor of the owner's cabin "burst, flooding the cabin." As in this case, the property owner  
5 hired a general contractor who repaired the broken water pipe. Much worse than this case, the  
6 leak in *Nelson* caused extensive water damage and the owner had to replace the "flooring, ceiling  
7 tiles, several sections of wallboard, insulation, kitchen cabinets, bathroom vanities, kitchen  
8 appliances, and certain furniture." At that time, the owner did not conduct any mold remediation.

9 Four years later, the owner listed the cabin for sale and completed a Seller's Real  
10 Property Disclosure Form (SRPD). The owner did not disclose the previous water damage.  
11 Without being informed of *any* water leaks, the buyer closed on the property. The buyer later  
12 learned the damage would cost \$81,000 to repair.

13 The jury found in favor of the plaintiff. On appeal, following the district court's denial of  
14 the defendants' motion for judgment notwithstanding the verdict, the court considered whether  
15 the seller had a duty to disclose the earlier damages which had been repaired. The Nevada  
16 Supreme Court found that the seller did not violate the disclosure rules because the earlier water  
17 flood and damages *were repaired*, and the seller *could not have knowledge* of a defect. Using  
18 the terms in the statute and the disclosure form, the court noted the seller was not aware of a  
19 "defect or condition" that "materially lessened the value or use of the cabin" because the water  
20 damage was repaired. *Id.*

21 Here, the Plaintiffs allege the Defendants failed to disclose a water leak in their October  
22 24, 2017 disclosures. The exhibits attached to this motion show that the leak was completely  
23 repaired. As in *Nelson*, the Defendants could not have any "realization, perception or  
24 knowledge" of a defective condition because the prior water leak was fixed. This negates the  
25 Plaintiffs' allegations the Defendants had the "knowledge or belief" that answering "no" on the  
26 SRPD form was a false statement. The complete repair of the leak negated the Defendants' duty  
27 of disclosure. Summary judgment regarding the Plaintiffs' second claim for relief is warranted.

28 ///

1     **B.     The Plaintiffs Fraud Claim Fails as a Matter of Law**

2             In short, if this Court grants summary judgment on the concealment claim, the Plaintiffs'  
3 fraud claim automatically fails. Under NRCP 56, the Plaintiffs' fraud claim fails because the  
4 undisputed evidence "negates an essential element of [their] claim," and shows "there is an  
5 absence of evidence to support their case." *Cuzze* 123 Nev. at 602-603, 172 P.3d at 134.

6             The first two elements for fraud are: (1) that the Defendant made a false representation or  
7 misrepresentation of fact; and (2) that the Defendant had knowledge or belief that the  
8 representation was false. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev.  
9 44, 75, 110 P.3d 30, 51 (2005). The Plaintiffs cannot establish either element. Rakeman  
10 Plumbing's completed repair eviscerates the factual allegation that the Defendants made a false  
11 representation. With the repair completed and with no other information from the plumbing  
12 company that fixed the leak, the Defendants could not have the knowledge necessary for the  
13 intent element for the fraud claim. Summary judgment is warranted.

14   V.

15   **CONCLUSION**

16             The instant motion and the viability of the Plaintiffs' entire action boils down to one fact,  
17 as recognized by this Court: whether the work done by Rakeman Plumbing completely repaired  
18 the leak which is the basis of the Plaintiffs' claims for fraud and concealment. The evidence  
19 presented in the affidavit of Aaron Hawley of Rakeman Plumbing establishes two critical facts:  
20 First, it establishes that the leak was repaired by Rakeman Plumbing, a licensed plumbing  
21 contractor. Second, it establishes that the Defendants did not have any knowledge of a defect  
22 which the Plaintiffs allege the Defendants concealed.

23     ///

24     ///

25     ///

26     ///

27     ///

28     ///



1 Under Nevada law, the Plaintiffs' claims fail. The Defendants request that this Court  
2 grant summary judgment and enter an order dismissing the Plaintiffs' case in its entirety, with  
3 prejudice.

4 DATED this 24<sup>th</sup> day of September, 2019.

5 Respectfully Submitted,

6 CHRISTOPHER M. YOUNG, PC

7   
8 CHRISTOPHER M. YOUNG, ESQ.

9 Nevada Bar No. 7961

10 JAY T. HOPKINS, ESQ.

11 Nevada Bar No. 3223

12 2460 Professional Court, Suite 200

13 Las Vegas, Nevada 89128

14 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)

15 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

16 *Attorneys for Defendant Clark County Nevada*  
17 *Department of Aviation*  
18  
19  
20  
21  
22  
23  
24  
25  
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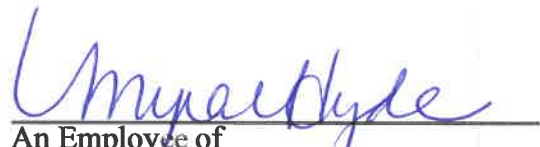
1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and  
3 N.E.F.C.R. 9, I hereby certify that on the 24th day of September, 2019, I caused the foregoing

4 **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED**

5 **COMPLAINT** to be electronically filed and e-served on counsel as follows:

6 Rusty Graf, Esq.  
7 Shannon M. Wilson, Esq.  
8 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
9 Las Vegas, Nevada 89135  
10 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
11 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)

12   
13 An Employee of  
14 CHRISTOPHER M. YOUNG, PC

15  
16  
17  
18  
19 H:\Open Case Files\0300.003\MTN DIS 2nd AMD COMP

EXHIBIT A

EXHIBIT A

**AFFIDAVIT OF AARON HAWLEY**

STATE OF NEVADA       )  
                                  :  
COUNTY OF CLARK     )       ss.

1. Aaron Hawley, being first duly sworn, deposes and states as follows:

2. I am the owner of Rakeman Plumbing. I have been a plumber since 1982 and have owned Rakeman Plumbing since 2006.

3. This affidavit is made and based upon my personal knowledge.

4. I am competent to testify to all matters and information contained herein, and hereby swear and certify that the Exhibits attached to this Affidavit were kept in the regular course of my business as Rakeman Plumbing's owner.

5. I oversee my employees and have personal knowledge regarding the work they perform on behalf of Rakeman Plumbing.

6. On May 23, 2017, my company received a call regarding a plumbing leak in the master bedroom at 42 Meadowhawk Lane, Las Vegas, Nevada 89135.

7. Rakeman Plumbing was familiar with the Uponor plumbing system installed at the residence because Rakeman Plumbing had installed it during construction of the house. I recall that the leak was in the side wall in the master closet.

8. Rakeman Plumbing technician William "Rocky" Gerber went to 42 Meadowhawk Lane to repair the reported leak. Mr. Gerber met a person at the residence, who informed Mr. Gerber that she was Dr. Todd Swanson's assistant.

9. On site, Mr. Gerber found the following and took the following corrective action:

"Tech found 3/4 Uponor tee leaking on the hot side of the plumbing system.

Cut out leaking fitting and replace with new fitting and restore water with no further leaks.

Rakeman had to remove toe kicks on built in cabinets in closet cut out drywall, carpet pad and place equipment to dry out closet.

After everything is dry, Rakeman repaired all drywall to match existing texture and color and repaired all damaged built in closets the (sic) reset all carpet."

(Exhibit A, PO #13382, Invoice #232809).

10. The May 23, 2017 leak was fully and completely repaired, and we did not expect any further problems. As such, nothing further was conveyed to Dr. Swanson, other than that the leak was repaired and that we remediated the damage to the drywall, paint and carpet.

11. I invoiced Uponor, the manufacturer of the repaired pipe because the pipes at the residence were under a 25-year Uponor warranty.

12. Uponor paid the Rakeman Plumbing invoice on June 9, 2017. (Exhibit B).

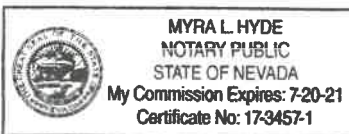
1 13. The attached Exhibits A & B are business records of Rakeman Plumbing. Those records  
2 were kept in the regular course of business. I have personal knowledge that the invoice  
3 was created at or near the time the leak was repaired on or about May 23, 2017 and that  
the June 9, 2017 letter from Uponor was received by Rakeman on or shortly after June 9,  
2017.

4 FURTHER AFFIANT SAYETH NAUGHT.

5  
6   
AARON HAWLEY

7 SUBSCRIBED AND SWORN to before  
8 me this 23 day of September, 2019.

9   
10 NOTARY PUBLIC in and for said  
County and State



26 H:\Open Case Files\0300.003\AFF-RAKEMAN  
27  
28

**AFFIDAVIT  
EXHIBIT A**

**AFFIDAVIT  
EXHIBIT A**



Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

**INVOICE**

INVOICE NO  
232809

CUST **UPONOR**  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE **SWANSON RESIDENCE**  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

| ACCOUNT NO | INVOICE DATE | TERMS  | DUE DATE  |  |  | PAGE |
|------------|--------------|--------|-----------|--|--|------|
| UPONOR     | 5/23/2017    | Net 30 | 6/22/2017 |  |  | 1    |

ORDER 13382, PO

RESOLUTION RMA # 747000

TECH FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM.

CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER WITH NO FURTHER LEAKS.

RAKEMAN HAD TO REMOVE TOE KICKS ON BUILT IN CABINETS IN CLOSET, CUT OUT WET DRYWALL, CARPET PAD AND PLACE EQUIPMENT TO DRY OUT CLOSET.

AFTER EVERYTHING IS DRY RAKMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THE RESET ALL CARPET.

| ITEM NO      | QUANTITY | DESCRIPTION  | UNIT PRICE | EXTENDED  |
|--------------|----------|--------------|------------|-----------|
| BID ACCEPTED | 1        | BID ACCEPTED | 2496.00    | 2,496.00* |

Your Business is Appreciated!

\* means item is non-taxable



Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

**INVOICE**

INVOICE NO  
232809

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

| ACCOUNT NO | INVOICE DATE | TERMS  | DUE DATE  |  | PAGE |
|------------|--------------|--------|-----------|--|------|
| UPONOR     | 5/23/2017    | Net 30 | 6/22/2017 |  | 2    |

TOTAL AMOUNT 2,496.00



**AFFIDAVIT  
EXHIBIT B**

**AFFIDAVIT  
EXHIBIT B**



June 9, 2017

Rakeman Plumbing  
ATTN: Aaron Hawley  
4075 Losee Rd  
NORTH LAS VEGAS, NV 89030

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

I am responding to the claim you submitted under the above referenced RMA number.

Enclosed please find a check in the amount of \$2,496.00 offered by Uponor in full and complete satisfaction of all claims and damages you have or may have relating to the above referenced claim. Be assured that we take these matters seriously and are working to make sure this does not happen again.

Should you require any other information or have any additional questions, please do not hesitate to contact me at (952) 997-5383. Thank you for your assistance.

Sincerely,

Christy Wegner  
Claims Coordinator  
Christy.Wegner@uponor.com

Enclosure: Check

**Uponor North America**

**Uponor, Inc.**  
5925 148th Street West  
Apple Valley, MN 55124  
Tel: (800) 321-4739  
Fax: (952) 891-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**Uponor Ltd**  
2000 Argentia Road  
Plaza 1, Suite 200  
Mississauga, ON L5N 1W1  
Tel: (888) 994-7726  
Fax: (800) 638-9517  
Web: [www.uponor.ca](http://www.uponor.ca)

014805

Uponor 5925 148TH STREET WEST, APPLE VALLEY, MN 55124

109088 RAKEMAN PLUMBING Jun 7, 2017 1005

| OUR REF NUMBER | INVOICE NUMBER | INVOICE DATE | INVOICE DESCRIPTION | NET AMOUNT |
|----------------|----------------|--------------|---------------------|------------|
| 418340         | RMA746512      | Jun 7, 2017  |                     | 2,496.00   |
| TOTAL AMOUNT   |                |              |                     | \$2,496.00 |

UPONOR 5925 148TH STREET WEST APPLE VALLEY, MN 55124

PNC Bank  
National Association  
Jeannette, PA  
60-182/433

014805

Check Date  
07-Jun-2017

Check Amount  
\$2,496.00

PAY TO THE ORDER OF TWO THOUSAND FOUR HUNDRED NINETY SIX DOLLARS AND ZERO CENTS

RAKEMAN PLUMBING  
402 LOSEE ROAD  
NORTH LAS VEGAS, NV 89001  
UNION SQUARE

TO THE ORDER OF

014805 043301627 1001149485

# EXHIBIT B

# EXHIBIT B

## SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (see NRS 113.130 and 113.140).

Date 10/24/2017

Do you currently occupy or have you ever occupied this property?

YES

NO

☒

☐

Property address 42 Meadowhawk Lane

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (NRS 113.130(3))

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☒ Owner-occupier; ☐ Other: \_\_\_\_\_

**Purpose of Statement:** (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

**Instructions to the Seller:** (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (see NRS 113.150).

**Systems / Appliances:** Are you aware of any problems and/or defects with any of the following:

|   | YES                                 | NO                       | N/A                      |   | YES                                 | NO                       | N/A                      |
|---|-------------------------------------|--------------------------|--------------------------|---|-------------------------------------|--------------------------|--------------------------|
| Electrical System .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Shower(s) .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Plumbing .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sink(s) .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sewer System & line .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sauna / hot tub(s) .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Septic tank & leach field .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Built-in microwave .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Well & pump .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Range / oven / hood-fan .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Yard sprinkler system(s) .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Dishwasher .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fountain(s) .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Garbage disposal .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Heating system .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Trash compactor .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Cooling system .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Central vacuum .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Solar heating system .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Alarm system .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Fireplace & chimney .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                                     |                          |                          |
| Wood burning system .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Smoke detector .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Garage door opener .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Intercom .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Water treatment system(s) .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Data Communication line(s) .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                                     |                          |                          | Satellite dish(es) .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Water heater .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                                     |                          |                          |
| Toilet(s) .....   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other .....   | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> |
| Bathtub(s) .....  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |   |                                     |                          |                          |

**EXPLANATIONS:** Any "Yes" must be fully explained on page 3 of this form.

TS  
Seller(s) Initials

  
10/24/17  
Buyer(s) Initials

  
10/24/17  
Buyer(s) Initials

Property conditions, improvements and additional information: ..... YES NO N/A

Are you aware of any of the following?:

1. Structure:
  - (a) Previous or current moisture conditions and/or water damage? ..... ☒ ☐ ☐
  - (b) Any structural defect? ..... ☒ ☐ ☐
  - (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ..... ☐ ☐ ☐
  - (d) Whether the property is or has been the subject of a claim governed by NRS 40.690 to 40.695 (construction defect claims)? ..... ☐ ☐ ☐
  - (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)
2. Land / Foundation:
  - (a) Any of the improvements being located on unstable or expansive soil? ..... ☐ ☐ ☐
  - (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ..... ☐ ☐ ☐
  - (c) Any drainage, flooding, water seepage, or high water table? ..... ☐ ☐ ☐
  - (d) The property being located in a designated flood plain? ..... ☐ ☐ ☐
  - (e) Whether the property is located next to or near any known future development? ..... ☐ ☐ ☐
  - (f) Any encroachments, easements, zoning violations or nonconforming uses? ..... ☐ ☐ ☐
  - (g) Is the property adjacent to "open range" land? ..... ☐ ☐ ☐
  - (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
3. Roof: Any problems with the roof? ..... ☐ ☐ ☐
4. Pool/spa: Any problems with structure, wall, liner, or equipment? ..... ☐ ☐ ☐
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ..... ☐ ☐ ☐
6. Environmental:
  - (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ..... ☐ ☐ ☐
  - (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ..... ☐ ☐ ☐
7. Fungi / Mold: Any previous or current fungus or mold? ..... ☐ ☐ ☐
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ..... ☐ ☐ ☐
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ..... ☐ ☐ ☐
- (a) Common Interest Community Declaration and Bylaws available? ..... ☐ ☐ ☐
- (b) Any periodic or recurring association fees? ..... ☐ ☐ ☐
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ..... ☐ ☐ ☐
- (d) Any litigation, arbitration, or mediation related to property or common area? ..... ☐ ☐ ☐
- (e) Any assessments associated with the property (excluding property taxes)? ..... ☐ ☐ ☐
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ..... ☐ ☐ ☐

10. Any problems with water quality or water supply? ..... ☐ ☐ ☐

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ..... ☐ ☐ ☐

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ..... ☐ ☐ ☐

(If yes, additional Federal EPA notification and disclosure documents are required)

13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐

If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐

Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ..... ☐ ☐ ☐

15. Solar panels: Are any installed on the property? ..... ☐ ☐ ☐

If yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐

16. Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐

17. This property is subject to a Private Transfer Fee Obligation? ..... ☐ ☐ ☐

(standard transfer tax)

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form

TS  
Seller(s) Initials

[Signature]  
Buyer(s) Initials

**EXPLANATIONS:** Any "Yes" to questions on pages 1 and 2 must be fully explained here.  
**Attach additional pages if needed.**

TS  
*Seller(s) Initials*

  
11/07/17  
2:05PM EST

  
12/12/17  
7:54PM EST

*Buyer(s) Initials*





**NRS 113.135** Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:
    - (a) Provide to the initial purchaser a copy of NRS 11.201, to 11.206, inclusive, and 40.600 to 40.605, inclusive;
    - (b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and
    - (c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.
  2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.
  3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.
- (Added to NRS by 1999, 1446)

**NRS 113.140** Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.
  2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.
  3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.
- (Added to NRS by 1995, 843; A 2001, 2896)

**NRS 113.150** Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

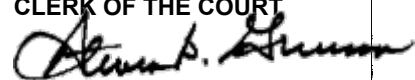
1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.
  2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:
    - (a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or
    - (b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
  3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:
    - (a) On the holder of any escrow opened for the conveyance; or
    - (b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.
  4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.
  5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:
    - (a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or
    - (b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.
  6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.
- (Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): John V. Lyons Date: 10/24/2017  
 Co-trustee, the Shiraz Trust  
 Seller(s): Manager, Lyons Development LLC Date: \_\_\_\_\_

**BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-160, including attached forms as pages four (4) and five (5).**

Buyer(s): Joseph Folino Date: 10/25/2017  
 Buyer(s): Nicole Folino Date: 10/25/2017



1 **SAO**  
2 Rusty Graf, Esq.  
3 Nevada Bar No. 6322  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
6 Las Vegas, Nevada 89135  
7 Telephone: (702) 869-8801  
8 Facsimile: (702) 869-2669  
9 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JOSEPH FOLINO, an individual and NICOLE  
10 FOLINO, an individual,

11 Plaintiff,

12 v.

13 TODD SWANSON, an individual; TODD  
14 SWANSON, Trustee of the SHIRAZ TRUST;  
15 SHIRAZ TRUST, a Trust of unknown origin;  
16 LYONS DEVELOPMENT, LLC, a Nevada  
17 limited liability company; DOES I through X;  
18 and ROES I through X,

19 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**STIPULATION AND ORDER FOR SIXTY  
(60) DAY CONTINUING PRODUCTION,  
PLAINTIFFS' BRIEF AND HEARING  
DATE**

**[FIRST REQUEST]**

HEARING DATE  
ALREADY ENTERED  
IN ODYSSEY

19 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
20 Rusty Graf, Esq. of Black & LoBello, their attorneys of record, hereby submit this stipulated  
21 request to extend the time for Production, Plaintiffs' Brief and Hearing Date by sixty (60) days.

22 **A. Statement of Completed Discovery.**

23 The Parties have endeavored to complete the discovery under the deadlines ordered by the  
24 Court, and a significant amount of the discovery has been completed or partially completed. The  
25 following depositions have been conducted:

- 26 1. Dr. Todd Swanson
- 27 2. Kelli Contenta (Seller's Real Estate Agent)
- 28 3. Ivan Sher (Seller's Real Estate Broker)

1 4. William Gerber (Rakeman Plumbing Plumber)

2 5. Aaron Hawley (Rakeman Plumbing Owner)

3 The Parties have also conducted significant written discovery. Both Plaintiffs and  
4 Defendants have produced their NRCP 16.1 productions as well as supplements thereto. In  
5 addition, written discovery was propounded by Plaintiffs upon all three defendants in the form of  
6 Interrogatories and Requests to Produce, and the Defendants have provided written responses  
7 thereto. There are other documents discussed below that were requested during the deposition of  
8 Dr. Swanson that would have been in compliance with the Requests for Documents.

9 **B. Statement of Discovery that Remains to Be Completed.**

10 Information was obtained during the deposition of Dr. Todd Swanson about other documents  
11 that he had in his possession and control that had not been produced pursuant to the written  
12 discovery propounded upon him as an individual, as a Trustee of the Shiraz Trust, or as the  
13 NRCP 30(b)(6) deponent for Lyons Development, LLC. Those new documents were produced  
14 on January 31, 2020 and received by counsel for the Plaintiff on February 3, 2020. The  
15 continued deposition of Dr. Swanson is currently set to be completed on February 6, 2020 at  
16 9:00. This is the same date as the date ordered by the Court to produce Plaintiffs' supplemental  
17 brief on the Motion for Summary Judgment.

18 In addition, the Parties need to meet and confer on the written discovery responses given the  
19 recent production of documents.

20 **C. Statement Supporting the Necessity of Extending Dates.**

21 The Parties request that the Court entertain a one-week extension of the previously ordered  
22 deadlines for the supplemental responses to accommodate the completion of the discovery as  
23 ordered by the Court. There are no other pending deadlines or trial dates to be moved or  
24 continued.

25 ///

26 ///

27 ///

28 ///

**D. Proposed Revised Schedule.**

The Deadlines are currently as follows and the requested extension dates are included:

| <u>Deadline</u>         | <u>Current Date</u> | <u>Extended Date</u>   |
|-------------------------|---------------------|--|
| Supplemental Production | February 6, 2020    | February 13, 2020  |
| Defense Reply           | February 20, 2020   | February 27, 2020  |
| Hearing date            | February 27, 2020   | March 5, 2020 9:00 am<br><br>(or other date to be set by the<br><br>Court) |

**IT IS SO STIPULATED BY:**


DATED this 6<sup>th</sup> day of February 2020.

**BLACK & LOBELLO**

Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
*Attorneys for Plaintiff*

DATED this 6 day of February 2020.

**Christopher M. Young, PC**

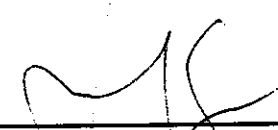
  
Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128  
*Attorneys for Defendants*

///

BLACK & LOBELLO  
10777 W. Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

DATED this 6 day of February 2020.

Galliher Legal, P.C.

  
\_\_\_\_\_  
Jeffrey L. Galliher, Esq.  
Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
*Attorneys for Defendants*

**ORDER**

**IT IS SO ORDERED** that the deadlines for this matter shall be amended as follows:

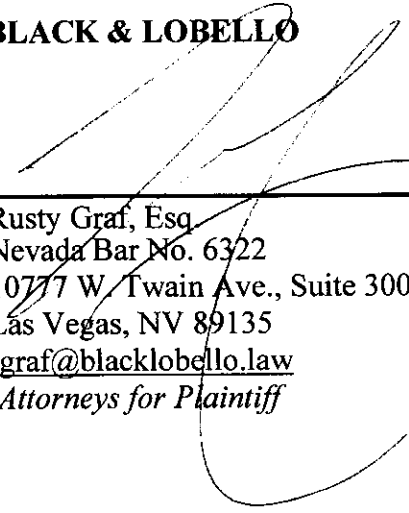
| <u>Deadline</u>         | <u>Current Date</u> | <u>Extended Date</u>                      |
|-------------------------|---------------------|---|
| Supplemental Production | February 6, 2020    | February 13, 2020                         |
| Defense Reply           | February 20, 2020   | February 27, 2020                         |
| Hearing date            | February 27, 2020   | <sup>3 AMT</sup><br>March 5, 2020 9:00 am |

Dated: 2/6/20

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

AMT

**BLACK & LOBELLO**

  
\_\_\_\_\_  
Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
*Attorneys for Plaintiff*

**BLACK & LOBELLO**  
10777 W. Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

**CERTIFICATE OF MAILING**

Pursuant to NBCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 27<sup>th</sup> day of February 2020, I caused the above and foregoing document **STIPULATION AND ORDER FOR SIXTY (60) DAY CONTINUING PRODUCTION, PLAINTIFFS' BRIEF AND HEARING DATE [FIRST REQUEST]** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961

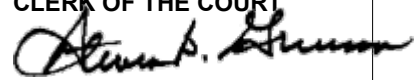
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223

Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128  
Attorneys for Defendants

Jeffrey L. Galliher, Esq.  
Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & Lobello



**NOE**  
J. RUSTY GRAF, ESQ.  
Nevada Bar No. 6322  
**BLACK & LOBELLO**  
10777 W. Twain Ave., 3<sup>rd</sup> Fl.  
Las Vegas, Nevada 89135  
(702) 869-8801  
(702) 869-2669 (fax)  
*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff,

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYONS DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that a STIPULATION AND ORDER CONTINUING  
PRODUCTION, PLAINTIFFS' BRIEF AND HEARING DATE was entered on February 7,  
2020. A true and correct copy is attached here.

Dated this 11<sup>th</sup> day of February 2020.

**BLACK & LOBELLO**

/s/ Rusty Graf  
RUSTY GRAF, ESQ.  
Nevada Bar No. 6322  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
*Attorneys for Plaintiffs*

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 11<sup>th</sup> day of February 2020, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128  
Attorneys for Defendants

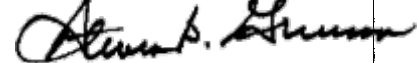
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Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Joyce L. Martin

\_\_\_\_\_  
An Employee of Black & LoBello





1 **SAO**  
2 Rusty Graf, Esq.  
3 Nevada Bar No. 6322  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
6 Las Vegas, Nevada 89135  
7 Telephone: (702) 869-8801  
8 Facsimile: (702) 869-2669  
9 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JOSEPH FOLINO, an individual and NICOLE  
10 FOLINO, an individual,

11 Plaintiff,

12 v.

13 TODD SWANSON, an individual; TODD  
14 SWANSON, Trustee of the SHIRAZ TRUST;  
15 SHIRAZ TRUST, a Trust of unknown origin;  
16 LYONS DEVELOPMENT, LLC, a Nevada  
17 limited liability company; DOES I through X;  
18 and ROES I through X,

19 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**STIPULATION AND ORDER FOR SIXTY  
(60) DAY CONTINUING PRODUCTION,  
PLAINTIFFS' BRIEF AND HEARING  
DATE**

**[FIRST REQUEST]**

HEARING DATE  
ALREADY ENTERED  
IN ODYSSEY

19 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
20 Rusty Graf, Esq. of Black & LoBello, their attorneys of record, hereby submit this stipulated  
21 request to extend the time for Production, Plaintiffs' Brief and Hearing Date by sixty (60) days.

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1 4. William Gerber (Rakeman Plumbing Plumber)

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4 Defendants have produced their NRCP 16.1 productions as well as supplements thereto. In  
5 addition, written discovery was propounded by Plaintiffs upon all three defendants in the form of  
6 Interrogatories and Requests to Produce, and the Defendants have provided written responses  
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10 Information was obtained during the deposition of Dr. Todd Swanson about other documents  
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13 NRCP 30(b)(6) deponent for Lyons Development, LLC. Those new documents were produced  
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17 brief on the Motion for Summary Judgment.

18 In addition, the Parties need to meet and confer on the written discovery responses given the  
19 recent production of documents.

20 **C. Statement Supporting the Necessity of Extending Dates.**

21 The Parties request that the Court entertain a one-week extension of the previously ordered  
22 deadlines for the supplemental responses to accommodate the completion of the discovery as  
23 ordered by the Court. There are no other pending deadlines or trial dates to be moved or  
24 continued.

25 ///

26 ///

27 ///

28 ///

**D. Proposed Revised Schedule.**

The Deadlines are currently as follows and the requested extension dates are included:

| <u>Deadline</u>         | <u>Current Date</u> | <u>Extended Date</u>   |
|-------------------------|---------------------|--|
| Supplemental Production | February 6, 2020    | February 13, 2020  |
| Defense Reply           | February 20, 2020   | February 27, 2020  |
| Hearing date            | February 27, 2020   | March 5, 2020 9:00 am<br><br>(or other date to be set by the<br><br>Court) |

**IT IS SO STIPULATED BY:**


DATED this 6<sup>th</sup> day of February 2020.

**BLACK & LOBELLO**

Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
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*Attorneys for Plaintiff*

DATED this 6 day of February 2020.

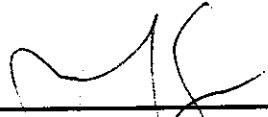
**Christopher M. Young, PC**

  
Christopher M. Young, Esq.  
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Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
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*Attorneys for Defendants*

///

DATED this 6 day of February 2020.

Galliher Legal, P.C.

  
Jeffrey L. Galliher, Esq.  
Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
Attorneys for Defendants

**ORDER**

**IT IS SO ORDERED** that the deadlines for this matter shall be amended as follows:

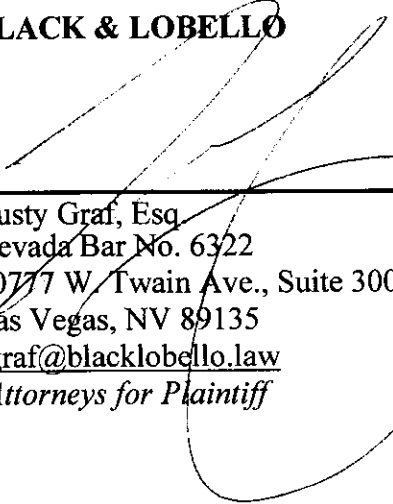
| <u>Deadline</u>         | <u>Current Date</u> | <u>Extended Date</u>                   |
|-------------------------|---------------------|--|
| Supplemental Production | February 6, 2020    | February 13, 2020                      |
| Defense Reply           | February 20, 2020   | February 27, 2020                      |
| Hearing date            | February 27, 2020   | <sup>3 AMT</sup> March 5, 2020 9:00 am |

Dated: 2/6/20

  
DISTRICT COURT JUDGE

AMT

**BLACK & LOBELLO**

  
Rusty Graf, Esq.  
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**CERTIFICATE OF MAILING**

Pursuant to NBCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 27<sup>th</sup> day of February 2020, I caused the above and foregoing document **STIPULATION AND ORDER FOR SIXTY (60) DAY CONTINUING PRODUCTION, PLAINTIFFS' BRIEF AND HEARING DATE [FIRST REQUEST]** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

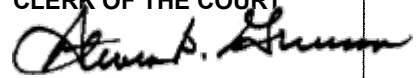
to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
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Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & Lobello



1 SB  
2 Rusty Graf, Esq.  
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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 JOSEPH FOLINO, an individual and NICOLE  
17 FOLINO, an individual,

18 Plaintiff,

19 v.

20 TODD SWANSON, an individual; TODD  
21 SWANSON, Trustee of the SHIRAZ TRUST;  
22 SHIRAZ TRUST, a Trust of unknown origin;  
23 LYONS DEVELOPMENT, LLC, a Nevada  
24 limited liability company; DOES I through X;  
25 and ROES I through X,

26 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**PLAINTIFFS' SUPPLEMENTAL BRIEF**

27 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
28 Rusty Graf, Esq. and Mark Lounsbury, Esq., of Black & LoBello, their attorneys of record,  
hereby respectfully submit their Supplemental Memorandum of Points And Authorities to  
Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint  
(the "Supplemental Brief").

1 This Supplemental Brief is made and based on the memorandum of points and  
2 authorities that follow, the Supplemental Production of Documents served and produced  
3 contemporaneously herewith, the pleadings, papers, and other records on file with the clerk of  
4 the above-captioned Court, and the argument of counsel at the time of the hearing on the  
5 Supplemental Brief.

6 DATED this 13<sup>th</sup> day of February 2020.

7 **BLACK & LOBELLO**

8  
9  
10 Rusty Graf, Esq.  
11 Nevada Bar No. 6322  
12 Mark Lounsbury  
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21 *Attorneys for Plaintiff*  
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1 *Production; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for*  
2 *color photos documenting the leaks))* and an additional two (2) in the same location were  
3 repaired by Rakeman Plumbing in August, 2015),<sup>2</sup> a leak in the ceiling of the basement  
4 bathroom (also identified in May 2015 Criterium Report),<sup>3</sup> and three (2) separate leaks in the  
5 master bathroom.<sup>4</sup> Further, evidence indicates that these incidents of water loss potentially went  
6 months without being addressed, with no mold or fungus tests conducted except incident to the  
7 final incident of water loss on or about November 7, 2017.<sup>5</sup>

8  
9 **II.**

10 **PROCEDURAL HISTORY**

11 On October 19, 2018, Plaintiffs filed their initial Complaint for Defendants’ failure to  
12 disclose known water leaks and issues with a plumbing system prior to the sale of the Subject  
13 Property. Defendants filed their first Motion to Dismiss on February 4, 2019, but it was not  
14 granted, and the Court instead granted Plaintiffs Leave to Amend. On May 20, 2019, Defendants  
15 filed their Motion to Dismiss the Amended Complaint. On July 18, 2019, the Court dismissed  
16 several of Plaintiffs claims, but denied Defendants’ Motion to Dismiss the claim for fraud and  
17 claim of concealment in violation of NRS 113.  
18

19 Plaintiffs then filed their Second Amended Complaint, with the surviving claims of fraud  
20 and concealment in violation of NRS 113 on September 4, 2019. Defendants’ Motion to Dismiss  
21  
22

---

23 <sup>2</sup> See Plaintiffs’ Supplemental Production, Exhibit 49, May 2015 Criterium Home Inspection Report for  
24 Subject Property; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color  
photos documenting the leaks); See also Deposition of Todd Swanson, Pg. 83 ln 1 – Pg. 84 ln 25;

25 <sup>3</sup> Id.

26 <sup>4</sup> See Deposition of Todd Swanson, Volume I, Pg. 83 ln 1 – Pg. 84 ln 25.

27 <sup>5</sup> See Deposition of Todd Swanson, Volume I, Pg. 215, ln 12-17; See also Deposition of Aaron Hawley,  
28 Pg.75, ln 22.

1 the Second Amended Complaint was heard by the Court on November 7, 2019, and the matter  
2 was ordered continued for this Supplemental Brief and Production of Documents.

3  
4 **III.**

5 **LEGAL ARGUMENT**

6 **A. STANDARD FOR SUMMARY JUDGMENT**

7 The Defendants' original motion was filed as a Motion to Dismiss but, because it  
8 contains matters outside the pleadings, the Court will apply summary judgment standards. *See*  
9 *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998). Under NRCP 56,  
10 evidence supporting a motion for summary judgment must be viewed in the light most favorable  
11 to the Plaintiffs as the non-moving party. *See NRCP 56.*

12 **B. PLAINTIFFS' CLAIM OF FRAUDULENT MISREPRESENTATION**  
13 **MUST SURVIVE SUMMARY JUDGMENT**

14  
15 Fraudulent misrepresentation occurs when (1) a false representation is made with either  
16 knowledge or belief that it is false or with an insufficient basis of information for making the  
17 representation, (2) with an intent to induce another's reliance, and (3) damages that result from  
18 this reliance. *See Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007). At least 10 days  
19 before residential property is conveyed to a purchaser the seller "shall complete a disclosure  
20 form regarding the residential property." *See NRS 113.130(1)(a)*. Here, the SRPD for the Subject  
21 Property asked if Defendants were aware of any "**previous or current** moisture conditions  
22 and/or water damage" and the question was answered "No".<sup>6</sup> (emphasis added).

23 Fraudulent misrepresentation undoubtedly occurred when Defendant Todd Swanson  
24 falsely represented on the SRPD for the Subject Property that there had been no previous or  
25 current incidents of moisture conditions and/or water damage for the purpose of inducing the  
26

27 <sup>6</sup> See Plaintiffs' Supplemental Production Exhibit 4, Sellers Real Property Disclosure Form for Subject  
28 Property.

1 Folinos to purchase the property.<sup>7</sup> Setting aside for the moment the defense’s argument that  
2 ignores the actual language of the SRPD that the repairs of the previous water leaks were  
3 complete and “like new,” the water loss identified in the Criterium report as the leak in the  
4 ceiling of the basement bathroom, was never repaired or even located. *See Exhibit 49 of*  
5 *Plaintiffs’ Supplemental Production*. The fact of this one water loss is not disputed, and it is  
6 clearly irrefutably documented as an unrepaired water loss or known incident of a condition of  
7 water and moisture. There is clear evidence that there in fact were previous moisture conditions  
8 and/or water damage, and under the Summary Judgment standard this evidence must be viewed  
9 in the light most favorable to the Plaintiffs. Thus, Plaintiffs’ claim of fraudulent  
10 misrepresentation and violations of the NRS 113 claims therefore survive Summary Judgment.

11 Defendants have argued that under *Nelson v. Heer* and NRS 113.140, they did not  
12 commit concealment because they were not “aware” of the defect after they believed it  
13 completely repaired. *See Defendants’ Reply to Plaintiffs’ Opposition to Defendants’ Motion to*  
14 *Dismiss Plaintiffs’ Second Amended Complaint*. In their previous pleadings Defendants argued  
15 that under *Nelson*, if a defect or condition is repaired, the seller is not aware that a condition  
16 “which materially affects the value of the property” and used this alleged lack of awareness due  
17 to repairs to argue that fraudulent misrepresentation could not have occurred. *Id.*, at Pg. 5.  
18 Though Defendants’ argument was already deficient, subsequent discovery has revealed  
19 evidence making it abundantly clear that Defendant Todd Swanson was fully aware that he was  
20 answering the SRPD question untruthfully and inapposite of the knowledge he had. In *Nelson v.*  
21 *Heer*, the Court held that “The determination of whether a seller is aware of a defect, however, is  
22 a question of fact to be decided by the trier of fact.” *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d  
23 420, 425 (2007). Plaintiffs have plead that Swanson is aware and this is now a question of fact to  
24 be decided by the trier of fact.  
25  
26

---

27 <sup>7</sup> Id.  
28

1           The question on the SRPD was explicitly clear. Todd Swanson has stated that he  
2 understood moisture condition to only refer to “something that was an ongoing or chronic  
3 problem.”<sup>8</sup> Any moisture condition that was an ongoing or chronic problem would fall under the  
4 current or prior moisture conditions and/or water damage portion of the question. There is no  
5 reasonable rationale for thinking that when the question asked about previous moisture  
6 conditions and/or water damage, it was only referring to ongoing issues when these would be  
7 covered under current moisture conditions and/or water damage. Ignoring six (6) or more prior  
8 instances of water loss of conditions of moisture aside, the one identified incident not repaired  
9 bars the granting of this motion.  
10

11           Moreover, it does not matter whether the Defendants believe that any repair removed  
12 their awareness of the issue, because the question did not only ask about current issues, it clearly  
13 asked about prior issues. To put a finer point on this issue, why would it ask for prior issues, if it  
14 was not seeking information about even repaired issues. Thus, giving the purchaser notice of  
15 what to look for and make sure in their own mind what had been repaired. The SRPD  
16 specifically asked, if there were any “previous or current moisture conditions and/or water  
17 damage”.<sup>9</sup> A repair does not remove one’s awareness of previous occurrences. This becomes a  
18 question of fact when there are so many instances in separate locations. Despite this, on the  
19 SRPD Defendants indicated “No,” that they were not aware of any previous moisture conditions  
20 or water damage.<sup>10</sup> This is concealment.  
21  
22

23 ///  
24

---

25 <sup>8</sup> See Deposition of Todd Swanson, Volume 1, Pg. 64, ln 18-20.

26 <sup>9</sup> See Plaintiffs’ Supplemental Production Exhibit 4, Seller’s Real Property Disclosure Form, Pg. 2,  
27 Question 1.

28 <sup>10</sup> Id.

i. **EVEN UNDER TODD SWANSON’S OWN DEFINITION OF  
MOISTURE CONDITIONS AND/OR WATER DAMAGE THAT  
MUST BE DISCLOSED, HE STILL COMMITTED FRAUDULENT  
MISREPRESENTATION**

In his deposition, Todd Swanson stated that he believed he only had to disclose moisture issues or water damages “that was an ongoing or chronic problem”.<sup>11</sup> This is clearly incorrect, but even if Swanson’s definition was the standard to be applied, he would still be required to disclose the leaks due to their “chronic and ongoing” nature.

Todd Swanson stated under oath that he was aware of at least five (5) additional leaks that occurred prior to the final November 2017 leak immediately prior to the sale of the Subject Property. These included two (2) leaks at the location of the recirculation pumps that were identified in the May 2015 Criterium Home Inspection Report,<sup>12</sup> these two (2) additional leaks at the recirculation pumps were allegedly repaired by Rakeman Plumbing in August of 2015 (it may be that these are the same two leaks that were simply left unrepaired for months, as Swanson has no recollection or documentation of getting them fixed),<sup>13</sup> a leak in the ceiling of the basement bathroom that was also identified in the May 2015 Criterium Home Inspection

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<sup>11</sup> See Deposition of Todd Swanson, Volume I, Pg. 64, ln 18-20.

<sup>12</sup> See Plaintiffs’ Supplemental Production Exhibit 49, May 2015 Criterium Home Inspection Report for Subject Property; see also Deposition of Todd Swanson, Volume I, Pg. 130 – 133; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for Criterium report color photos documenting the leaks).

<sup>13</sup> Id.

1 Report,<sup>14</sup> and a leak that occurred in February of 2017. However the Rakeman affidavit of  
2 completed repairs does not address the 2015 leaks.

3  
4 The Rakeman affidavit previously submitted does not speak to the 2015 recirculation  
5 pump leaks. Further, the affidavit of Dr. Swanson does state that the recirculation pumps were  
6 replaced, but it does not speak to the extent of the water damage and the extent of the repairs as a  
7 result of that water damage. *See Exhibit 60, Affidavit of Todd Swanson, and Exhibit 50,*  
8 *Deposition Exhibit 13 – Executive Summary of Findings (for color photos documenting the*  
9 *leaks), to Plaintiffs’ Supplemental Production of Documents.* Further, the evidence shows that  
10 the condition and the subsequent damage existed for months and was left in the Subject Property.  
11 *See Deposition of Todd Swanson, Volume II, Pg. 332- 333, Deposition of Aaron Hawley, Pg. 62*  
12 *– 64, and Deposition of William Gerber Pg. 36.* Moreover, there are inconsistencies in the  
13 occurrence dates and repair dates for the leak that occurred in the Subject Property during or  
14 about January to May of 2017. *Id.*

15  
16 In addition to the fact that these leaks should have been disclosed simply due to either a  
17 plain reading of the SRPD question or that they represented an ongoing and chronic problem  
18 with the Subject Property, there are two other key issues. First, the fact that the recirculation  
19 pump leaks were identified in the Criterium Home Inspection Report dated May 21, 2015, and  
20 then those leaks were not invoiced as repaired until after the August 2, 2015 incidents. Todd  
21 Swanson admitted in his deposition that he could not point to any document or way of him  
22 knowing that the repairs were conducted shortly after the May 2015 Criterium report, other than  
23 simply stating “To the best of my knowledge, yes” they were repaired and this knowledge was  
24  
25

26  
27 <sup>14</sup> See Plaintiffs’ Supplemental Production Exhibit 49, May 2015 Criterium Home Inspection Report for  
28 Subject Property; See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color  
photos from the Criterium report documenting the leaks)

1 based only on “the fact that I wouldn’t have let them not fix these items, unless there was some  
2 reason and there would be no reason not to fix a water leak.”<sup>15</sup> Thus, there is no affirmative  
3 statement as to how long or when those repairs were completed. Further, when asked if he agreed  
4 that the leaks in the recirculation pumps existing from May to August of 2015 would constitute a  
5 chronic condition, Dr. Swanson stated “If they existed for that full period, yes.”<sup>16</sup> This makes it  
6 clear that it was fraudulent misrepresentation when Todd Swanson answered “No” on the SRPD  
7 question.  
8

9 **ii. EVEN IF REPAIRED LEAKS DO NOT HAVE TO BE**  
10 **DISCLOSED, THERE WAS STILL FRAUDULENT**  
11 **MISREPRESENTATION**  
12

13 Though as discussed above, Plaintiffs do not concede that the SRPD question did not  
14 cover repaired leaks, fraudulent misrepresentation still occurred due to the second key issue, the  
15 failure of Swanson to repair or disclose a leak in his basement bathroom ceiling. There is  
16 uncontroverted evidence that this leak was required to be disclosed on the SRDP, using whatever  
17 common sense application, definition of standards. The leak in the ceiling of the basement  
18 bathroom was identified and documented in the May 2015 Criterium Home Inspection Report,<sup>17</sup>  
19 yet Swanson admitted in his deposition that it was never repaired.<sup>18</sup> There are color pictures  
20 clearly showing the leak to the reader, of which Dr. Swanson was one. *See deposition of*  
21 *Swanson Volume I, Pg. 118, ln 5 – Pg. 127, ln 4., admitting he received and read the report.*  
22

23  
24 <sup>15</sup> See Deposition of Todd Swanson, Volume I, Pg. 130 – 133.

25 <sup>16</sup> Id., at 127, ln 14-15.

26 <sup>17</sup> See Plaintiffs’ Supplemental Production Exhibit 49, May 2015 Criterium Home Inspection Report for  
27 Subject Property, Pg. 82-83. See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of  
Findings (for color photos from the Criterium report documenting the leaks)

28 <sup>18</sup> See Deposition of Todd Swanson, Volume I, Pg. 146.

Moreover, Dr. Swanson, in a sort of obsessive-compulsive act, kept not one, but four versions of the report where he wrote ongoing notes on the progress of the repairs of the conditions. *See Exhibit 38, Deposition Exhibits 13 and 14 to the Supplemental Production of Documents.* Swanson has also essentially admitted to providing false information in his affidavit,<sup>19</sup> and in effect admitted that, regardless of the interpretation of the SRPD question, he should have answered yes.<sup>20</sup> Further, there is no reference to the basement bathroom leak or the third leak in the master bath in response to the relevant interrogatory responses verified by Dr. Swanson. *See Swanson deposition pg. 133, lns 16-22, and Swanson Interrogatory Responses, submitted as Exhibit 30 to the Supplemental Production of Documents.* All of which support the claims as plead in this Complaint and all of which remain uncontroverted by the Defendants.

In light of these facts and admissions, answering “No” on the SRPD was clearly a false misrepresentation meant to induce the Folinis to purchase the property. Further, it must be emphasized that, as Plaintiffs are the non-moving party, all of these facts discussed above must be viewed in the light most favorable to them. Therefore, Defendants’ Motion should be dismissed.

**C. DEFENDANTS ALSO FAILED TO DISCLOSE POTENTIAL ISSUES  
WITH MOLD AND FUNGUS**

Question seven (7) on the SRPD asked whether there were any “previous or current fungus or mold” in the Subject Property, and Defendants again answered “No”.<sup>21</sup> This too was a

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<sup>19</sup> See Plaintiffs’ Supplemental Production Exhibit 60, Affidavit of Todd Swanson.

<sup>20</sup> Swanson states that he understood the SRPD question should be answered yes if there was “something that was an ongoing or chronic problem” (*See Deposition of Todd Swanson, Volume 1, Pg. 64, ln 18-20*) and subsequently in his Deposition reveals knowledge of chronic leaks occurring at the subject property.

<sup>21</sup> See Plaintiffs’ Supplemental Production Exhibit 4, *Seller’s Real Property Disclosure Form, Pg. 2, Question 7.*



1 false representation, as Todd Swanson stated in his deposition that he did not have Rakeman or  
2 any other contractors conduct any mold or airborne fungal post-remediation verification tests  
3 after the August 2015 or the February 2017 water loss incidents.<sup>22</sup> Aaron Hawley of Rakeman  
4 Plumbing verified this in his deposition, stating Rakeman wouldn't always do mold test, only if  
5 either "extreme water or spores were found".<sup>23</sup> When asked specifically why they didn't do mold  
6 reports for either the January/May 2017 leaks or the August 2015 leaks, he stated "Probably  
7 because we didn't see anything."<sup>24</sup>

8 The issue with this choice not to test for mold or fungus, and the subsequent answer  
9 given on the SRPD, is the fact that for at least one of the 2015 leaks, it is likely that the water sat  
10 their unaddressed for months! As discussed above, the recirculation pump leaks identified in the  
11 Criterium Home Inspection Report in May of 2015 were likely not repaired until August of 2015  
12 or they were repaired twice. Dr. Swanson was on notice of those leaks from May 2015 until they  
13 were eventually fixed. There is no documentation as to when. Todd Swanson admitted in his  
14 deposition that he could not point to any document or way of knowing that the repairs were  
15 conducted earlier.<sup>25</sup> Further, when asked if he could say with any certainty that the May 2015  
16 leaks had been fixed before August of 2015, Dr. Swanson stated, "I would have no way of  
17 knowing, not being a plumber".<sup>26</sup>

18 What we do have are the versions of the Criterium notes regarding the progress of the  
19 repairs by Dr. Swanson on the Criterium report.<sup>27</sup> These notes span several weeks/months. Over  
20

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21 <sup>22</sup> See Deposition of Todd Swanson, Volume I, Pg. 215, ln 12-17.

22 <sup>23</sup> See Deposition of Aaron Hawley, Pg. 73, ln 15.

23 <sup>24</sup> See Deposition of Aaron Hawley, Pg. 75, ln 22.

24 <sup>25</sup> See Deposition of Todd Swanson, Volume I, Pg. 130 – 133.

25 <sup>26</sup> See Deposition of Todd Swanson, Volume II, Pg. 316, lns 1-2.

26 <sup>27</sup> See also Exhibit 50, Deposition Exhibit 13 – Executive Summary of Findings (for color photos from  
27 the Criterium report documenting the leaks); See also Exhibit 51, Deposition Exhibit 14 – Executive  
28 Summary of Findings.

1 the course of these several weeks/months, Dr. Swanson updated if and when the repairs were  
2 made. Given Dr. Swanson's own interpretation of whether the water loss or moisture condition  
3 was chronic would control, and thus require him to answer yes on the SRPD, then this creates yet  
4 another material issue of fact upon which the Court must deny the current motion.

5 As the only documentation for the repair of these pumps is from Rakeman in August of  
6 2015,<sup>28</sup> it is evident that those conditions of moisture were not repaired immediately, at the very  
7 least, and the moisture condition remained unaddressed for months (rather than believe the  
8 Defendants exacted same repairs, twice in the same year, the documentation was lost, and  
9 Swanson cannot remember or identify who conducted the repairs). Further, the same issue likely  
10 occurred in the February 16, 2017 leak. This leak was identified as occurring in an Uponor  
11 warranty claim on February 16, 2017,<sup>29</sup> yet Rakeman invoices for the repair demonstrate that it  
12 did not occur until May 23, 2017.<sup>30</sup> This means the chronic leak, using Dr. Swanson standard,  
13 was there for at least three months and possibly more unaddressed. Therefore, this moisture  
14 condition was required to be identified and reported on the SRPD.

15 With the moisture remaining for so long in both incidents, a reasonable person would  
16 understand that mold or fungus is a significant risk. Dr. Swanson was the Plaintiff in a mold  
17 case in approximately 2003-2005. *See Volumes I and II of Dr. Swanson's deposition in that case,*  
18 *included as Exhibit 28 in Plaintiffs' Supplemental Production of Documents.* Dr. Swanson  
19 cannot claim lack of awareness as to this issue and the proper SRPD response as well. Any lack  
20 of awareness would be either purposeful or as a direct result of his failure to exercise reasonable  
21 judgment and simply have a test conducted. Additionally, it is again worth noting that all of these  
22 facts and pieces of evidence must be interpreted in the light most favorable to Plaintiffs under the  
23 summary judgment standard.

24 ///

25 \_\_\_\_\_  
26 <sup>28</sup> See Plaintiffs' Supplemental Production Exhibit 139, Aaron Hawley Deposition Exhibit 12.

27 <sup>29</sup> See Plaintiffs' Supplemental Production Exhibit 12, E-correspondence regarding water loss that  
28 occurred in February 2017.

<sup>30</sup> See Plaintiffs' Supplemental Production Exhibit 18, Rakeman Production – Invoice No. 232809.

1           **D.     PLAINTIFFS' CLAIM OF VIOLATION OF NRS 113.100 ET SEQ. MUST**  
2                           **ALSO SURVIVE SUMMARY JUDGMENT**

3  
4           As discussed in depth above, Defendants committed numerous violations of Nevada's  
5 rules and regulations regarding the Conditions of Residential Property offered for Sale,  
6 specifically NRS 113.115, by failing to inform Plaintiffs that there were "defects" known to Dr.  
7 Swanson at the time he executed and affirmed compliance with the SRPD regarding the Subject  
8 Property. *See NRS 113.115*. The Nevada Revised Statutes create a separate duty from any  
9 contractual duty to disclose the requested information by Defendants, and this separate duty  
10 requires these Defendants to have been candid, honest and forthcoming as to the topics of  
11 information, defects and general condition of the property as requested on the SRPD form. *Id.*

12           Not only is there significant evidence that the Defendants violated their duty under NRS  
13 113, in the form of invoices, warranties, and emails regarding chronic and unaddressed water  
14 leaks, there is also deposition testimony that directly proves Defendants failed to make the  
15 required disclosures. Dr. Swanson directly admitted that there was at least one leak (the  
16 bathroom ceiling leak) of which he was notified by the home inspection report<sup>31</sup> and yet never  
17 had repaired and failed to disclose. Further, under the legal standard for summary judgment, all  
18 of this evidence must be interpreted in the light most favorable to Plaintiffs as the non-moving  
19 party. Thus, it is clear that Defendants were in violation of NRS 113.100 and Plaintiffs' cause of  
20 action should therefore survive this Summary Judgment Motion.

21           In addition, Dr. Swanson evidenced his knowledge of the need to supplement the SRPD  
22 by producing the Addendum 4-A, dated November 16, 2017. *See Deposition of Todd Swanson,*  
23 *Volume II, Pg. 333, ln 20 – Pg. 334, ln 25*. However, Addendum 4-A does not indicate any  
24 presence of mold, and Dr. Swanson was aware of the presence of mold on or after November 17,

25  
26 <sup>31</sup> See Plaintiffs' Supplemental Production of Documents Exhibit 49, May 2015 Criterium Home  
27 Inspection Report for Subject Property, Pg. 82-83. See also Exhibit 50, Deposition Exhibit 13 – Executive  
28 Summary of Findings (for color photos from the Criterium report documenting the leaks);

<sup>31</sup> See Deposition of Todd Swanson, Volume I, Pg. 146.

2017, the date of closing.<sup>32</sup> Infinity Environmental Services, an industrial hygienist firm, was on that day, November 17, 2017, performing tests for the presence of mold at the Subject Property. On or about, November 24, 2017, during which time Dr. Swanson was still leasing back the Subject Property and residing at the Subject Property, Infinity Environmental produced a report that was positive for the presence of mold. This fact alone creates an issue of material fact of whether Dr. Swanson was on notice and had knowledge of the presence of mold as they were clearly testing for it, and it subsequently came back positive for the presence of Aspergillus and other harmful forms of mold/fungi. *See Exhibit 24 of Plaintiffs' Supplemental Production of Documents.* More importantly, Dr. Swanson informed the Plaintiffs of the water loss/moisture condition, and he failed to inform them of the presence of mold. It is likely the defense will come back with the statement that they were not aware of the positive test for mold on November 16, 2017, when they prepared Addendum 4-A. However, Dr. Swanson was aware that there were pictures showing black mold that was tested at or about that time. *See Plaintiffs' Supplemental Production, Exhibit 25, Infinity Environmental documents produced pursuant to Subpoena, November 24, 2017 Report, (PLT001813 - PLT001831).*

#### IV.

**DOCUMENTS BEING PRODUCED AND INCORPORATED BY REFERENCE**  
**HEREIN THIS SUPPLEMENTAL BRIEF TO THE OPPOSITION TO THE**  
**MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

The Plaintiffs hereby incorporate by reference, and as cited to above, all documents being produced in its Supplemental Production of Documents as follows:

| <i>No.</i> | <i>Document</i>                        | <i>Bates Numbers</i>  |
|------------|--|-----------------------|
| 1          | Residential Purchase Agreement         | PLT000001 - PLT000010 |
| 2          | Counter Offer No. 1                    | PLT000011             |
| 3          | Counter Offer No. 2                    | PLT000012             |
| 4          | Seller's Real Property Disclosure Form | PLT000013 - PLT000017 |

<sup>32</sup> See Plaintiffs' Supplemental Production of Documents Exhibit 72, Deposition Exhibit 5 - Various addendums and counteroffers that were included on this property.

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| 5  | The Uniform Building Inspection Report Condensed                                 | PLT000018 - PLT000027 |
| 6  | Request for Repair No. 1   | PLT000028 - PLT000029 |
| 7  | Grant, Bargain, Sale Deed  | PLT000030 - PLT000033 |
| 8  | Rakeman Plumbing Invoice   | PLT000034 - PLT000035 |
| 9  | Rakeman Plumbing Letter with enclosure of payment record                         | PLT000036 - PLT000037 |
| 10 | E-correspondence from Uponor informing past water losses                         | PLT000038 - PLT000046 |
| 11 | Uponor Warranty  | PLT000047 - PLT000048 |
| 12 | E-correspondence regarding water loss that occurred in February 2017             | PLT000049 - PLT000053 |
| 13 | Rakeman Production – Email from Whitfield to Hawley                              | PLT000054 – PLT000055 |
| 14 | Rakeman Production – Letter to Swanson from Hawley                               | PLT000056             |
| 15 | Rakeman Production – Work Order 2018.01.05 – Invoice 237000                      | PLT000057 – PLT000058 |
| 16 | Rakeman Production – Invoice No. 236828  | PLT000059 – PLT000060 |
| 17 | Rakeman Production – Invoice No. 236151  | PLT000061 – PLT000062 |
| 18 | Rakeman Production – Invoice No. 232809  | PLT000063 – PLT000064 |
| 19 | Americana LLC dba Berkshire Hathaway HomeServices – Nevada Properties – Subpoena | PLT000065 – PLT000156 |
| 20 | The Ridges Community Association - Subpoena                                      | PLT000157 – PLT000764 |
| 21 | Las Vegas Homes and Fine Estates, LLC – Documents produced pursuant to Subpoena  | PLT000765 – PLT001007 |
| 22 | Uponor, Inc. – Documents produced pursuant to Subpoena                           | PLT001008 – PLT001648 |
| 23 | EH Designs LLC. - Documents produced pursuant to Subpoena                        | PLT001649 – PLT001800 |
| 24 | Infinity Environmental - Documents produced pursuant to Subpoena                 | PLT001801 – PLT001843 |
| 25 | Ivan Sher – Documents produced pursuant to Subpoena                              | PLT001844 – PLT002038 |
| 26 | Kelly Contenta – Documents produced pursuant to Subpoena                         | PLT002039 – PLT002132 |
| 27 | Document Removed (Bates Number Purposefully Omitted from Production)             | PLT002133 – PLT002235 |
| 28 | Todd Swanson v. Trophy Homes Deposition Transcripts (Add the Case Number)        | PLT002236 – PLT002405 |

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| 29 | Todd Swanson Response To Plaintiffs' First Set of Requests For Production & Attached Documents                                   | PLT002406 – PLT002900 |
| 30 | Todd Swanson Interrogatory Response Verification and Interrogatory Responses to Plaintiffs' First Set of Interrogatories         | PLT002901 – PLT002916 |
| 31 | Todd Swanson Response to Plaintiffs' First Set of Requests For Admission   | PLT002917 – PLT002922 |
| 32 | Shiraz Trust Response to Plaintiffs' First Set of Requests for Production & Attached Documents                                   | PLT002923 – PLT003415 |
| 33 | Shiraz Trust Response to Plaintiffs' First Set Of Interrogatories  | PLT003416 – PLT003428 |
| 34 | Shiraz Trust Response to Plaintiffs' First Set of Requests for Admission   | PLT003429 – PLT003433 |
| 35 | Lyons Development Response to Plaintiffs' First Set of Interrogatories   | PLT003434 – PLT003446 |
| 36 | Lyons Development Response to Plaintiffs' First Set of Requests for Admission  | PLT003447 – PLT003451 |
| 37 | Todd Swanson Deposition Transcript – 1/24/2020 (A-18-782494-C)   | PLT003452 – PLT003781 |
|    | Todd Swanson Deposition Exhibits - 1/24/2020 (A-18-782494-C)   |                       |
| 38 | Deposition Exhibit 1 - Notice of deposition  | PLT003782 – PLT003785 |
| 39 | Deposition Exhibit 2 – Defendant Swanson's Responses to Plaintiffs' First Request for Production of Documents                    | PLT003786 – PLT003796 |
| 40 | Deposition Exhibit 3 – Seller's Real Property Disclosure Form  | PLT003797 – PLT003801 |
| 41 | Deposition Exhibit 4 – Residential Purchase Agreement  | PLT003802 – PLT003813 |
| 42 | Deposition Exhibit 5 – Curriculum Vitae  | PLT003814 – PLT003836 |
| 43 | Deposition Exhibit 6 – Defendant Swanson's Responses to Plaintiffs' First Request For Interrogatories                            | PLT003837 – PLT003849 |
| 44 | Deposition Exhibit 7 – Defendant Swanson, as Trustee of Shiraz Trust, Responses to Plaintiffs' First Request For Interrogatories | PLT003850 – PLT003862 |
| 45 | Deposition Exhibit 8 – Defendant Lyon Development's Responses to Plaintiffs' First Request For Interrogatories                   | PLT003863 – PLT003875 |
| 46 | Deposition Exhibit 9 – Verification  | PLT003876             |
| 47 | Deposition Exhibit 10 - Verification   | PLT003877             |
| 48 | Deposition Exhibit 11 – Verification   | PLT003878             |
| 49 | Deposition Exhibit 12 – Home Inspection Report   | PLT003879 – PLT003946 |

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| 50 | Deposition Exhibit 13 – Executive Summary of Findings  | PLT003947 – PLT003966 |
| 51 | Deposition Exhibit 14 – Executive Summary of Findings  | PLT003967 – PLT003986 |
| 52 | Deposition Exhibit 15 - November 16, 2017, letter  | PLT003987 – PLT003988 |
| 53 | Deposition Exhibit 16 - December 13, 2017, e-mail  | PLT003989 – PLT003993 |
| 54 | Deposition Exhibit 17 - November 17, 2017, e-mail  | PLT003994 – PLT004004 |
| 55 | Deposition Exhibit 18 - December 7, 2017, letter   | PLT004005 – PLT004010 |
| 56 | Deposition Exhibit 19 - December 15, 2017, e-mail  | PLT004011             |
| 57 | Deposition Exhibit 20 - November 16, 2017, e-mail  | PLT004012             |
| 58 | Deposition Exhibit 21 - November 21, 2017, e-mail  | PLT004013             |
| 59 | Deposition Exhibit 22 - August 9, 2015, e-mail   | PLT004014             |
| 60 | Deposition Exhibit 23 – Affidavit of Todd Swanson  | PLT004015 – PLT004017 |
| 61 | Deposition Exhibit 24 – Receipt  | PLT004018             |
| 62 | Deposition Exhibit 25 – August 25, 2015, e-mail  | PLT004019             |
| 63 | Deposition Exhibit 26 - Invoice  | PLT004020             |
| 64 | Deposition Exhibit 27 - Invoice  | PLT004021             |
| 65 | Deposition Exhibit 28 – Defendants’ Motion To Dismiss Plaintiffs’ Second Amended Complaint     | PLT004022 – PLT004047 |
| 66 | Ivan Sher Deposition Transcript – 2/3/2020 (A-18-782494-C)                                     | PLT004048 – PLT004200 |
| 67 | Kelly Contenta Deposition Transcript – 2/3/2020 (A-18-782494-C)                                | PLT004201 – PLT004244 |
|    | Ivan Sher & Kelly Contenta Deposition Exhibits - 2/3/2020 (A-18-782494-C)                      |                       |
| 68 | Deposition Exhibit 1 - Notice of deposition  | PLT004245 – PLT004248 |
| 69 | Deposition Exhibit 2 - Subpoena for the records  | PLT004249 – PLT004253 |
| 70 | Deposition Exhibit 3 - MLS sheet regarding 42 Meadowhawk                                       | PLT004254             |
| 71 | Deposition Exhibit 4 - Residential purchase agreement  | PLT004255 – PLT004266 |
| 72 | Deposition Exhibit 5 - Various addendums and counteroffers that were included on this property | PLT004267 – PLT004275 |
| 73 | Deposition Exhibit 6 - E-mail dated October 24, 2017 between Mike Pappas and Swanson           | PLT004276             |

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| 74 | Deposition Exhibit 7 - Seller's Real Property Disclosure Form  | PLT004277 – PLT004281 |
| 75 | Deposition Exhibit 8 - E-mail string dated November 2, 2017 between Sherwood and Swanson   | PLT004282 – PLT004312 |
| 76 | Deposition Exhibit 9 - E-mail string Bates stamped SWANSON 370 to SWANSON 372  | PLT004313 – PLT004315 |
| 77 | Deposition Exhibit 10 - E-mail string Bates stamped SWANSON 248 to 251   | PLT004316 – PLT004319 |
| 78 | Deposition Exhibit 11 - E-mail string Bates stamped SWANSON 302 to SWANSON 304   | PLT004320 – PLT004325 |
| 79 | Deposition Exhibit 12 - Extended e-mail chain that includes some, if not all, of previous e-mails, Bates stamped SWANSON 363 through SWANSON 369 | PLT004326 – PLT004332 |
| 80 | Deposition Exhibit 13 - E-mail from Austin to Nicky and Dr. Swanson, Bates stamped SWANSON 235   | PLT004333 – PLT004334 |
| 81 | Deposition Exhibit 14 - November 16th e-mail   | PLT004335 – PLT004336 |
| 82 | Deposition Exhibit 15 - Rakeman Plumbing letter dated November 16, 2017  | PLT004337             |
| 83 | Deposition Exhibit 16 - Correspondence between Mr. Sher and Dr. Swanson  | PLT004338 – PLT004342 |
| 84 | Deposition Exhibit 17 - E-mail from Dr. Swanson to Mr. Sher on November 17th   | PLT004343             |
| 85 | Deposition Exhibit 18 - E-mail from Austin Sherwood to Dr. Swanson, dated June 15, 2018  | PLT004344 – PLT004348 |
| 86 | Deposition Exhibit 19 - A November 17, 2017, e-mail at 9:36 from Dr. Swanson to Mr. Sher   | PLT004349 – PLT004352 |
| 87 | Deposition Exhibit 20 - A November 22nd e-mail from Austin Sherwood to Dr. Swanson and Nicky Whitfield   | PLT004353             |
| 88 | Deposition Exhibit 21 - E-mail chain, Defendant 69 through Defendant 72  | PLT004354 – PLT004357 |
| 89 | Deposition Exhibit 22 - E-mail string between Nicky Whitfield and Dr. Swanson  | PLT004358 – PLT004360 |
| 90 | Deposition Exhibit 23 - December 15, 2017, e-mail from Dr. Swanson to Mr. Sher   | PLT004361             |
| 91 | Deposition Exhibit 24 - E-mail between Mr. Sher and Dr. Swanson, dated July 5, 2018  | PLT004362 - PLT004363 |
| 92 | Deposition Exhibit 25 - Notice of deposition Kelly Contenta  | PLT004364 - PLT004367 |
| 93 | Deposition Exhibit 26 – Subpoena for Records Kelly Contenta  | PLT004368 - PLT004372 |
| 94 | Nicole Whitfield Deposition Transcript – 1/29/2020 (A-18-782494-C)   | PLT004373 – PLT004528 |



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|     | Nicole Whitfield Deposition Exhibits – 1/29/2020 (A-18-782494-C)                 |                       |
| 95  | Deposition Exhibit 1 - E-mails   | PLT004529 – PLT004532 |
| 96  | Deposition Exhibit 1B – Timeline and miscellaneous documents                     | PLT004533 – PLT004578 |
| 97  | Deposition Exhibit 2 – Addendum to Purchase Agreement                            | PLT004579 – PLT004580 |
| 98  | Deposition Exhibit 3 - Affidavit of Aaron Hawley                                 | PLT004581 – PLT004583 |
| 99  | Deposition Exhibit 4 - E-mails   | PLT004584 – PLT004587 |
| 100 | Deposition Exhibit 5 - E-mails   | PLT004588 – PLT004596 |
| 101 | Deposition Exhibit 6 - E-mails   | PLT004597 – PLT004605 |
| 102 | Deposition Exhibit 7 - E-mails   | PLT004606 – PLT004609 |
| 103 | Deposition Exhibit 8 - E-mails   | PLT004610 – PLT004612 |
| 104 | Deposition Exhibit 9 – Text Messages   | PLT004613 – PLT004619 |
| 105 | Deposition Exhibit 10 - Affidavit of Nicole Whitfield                            | PLT004620 – PLT004623 |
| 106 | Deposition Exhibit 11 – Affidavit of Todd Swanson                                | PLT004624 – PLT004627 |
| 107 | Deposition Exhibit 12 - December 7, 2017, Environmental Services                 | PLT004628 – PLT004634 |
| 108 | Deposition Exhibit 13 – E-mails  | PLT004635 – PLT004636 |
| 109 | Deposition Exhibit 14 - E-mails  | PLT004637 – PLT004638 |
| 110 | Deposition Exhibit 15 - Receipt  | PLT004639 – PLT004640 |
| 111 | Deposition Exhibit 16 - Nova Geotechnical report                                 | PLT004641 – PLT004643 |
| 112 | Deposition Exhibit 17 - E-mails  | PLT004644 – PLT004647 |
| 113 | Deposition Exhibit 18 - E-mails  | PLT004648 – PLT004650 |
| 114 | Deposition Exhibit 19 - E-mails  | PLT004651 – PLT004653 |
| 115 | Deposition Exhibit 20 - E-mails  | PLT004654 – PLT004660 |
| 116 | Deposition Exhibit 21 - E-mails  | PLT004661 – PLT004668 |
| 117 | Deposition Exhibit 22 - E-mails  | PLT004669 – PLT004670 |
| 118 | Deposition Exhibit 23 - November 24, 2017 Infinity Environmental Services report | PLT004671 – PLT004688 |
| 119 | Deposition Exhibit 24 - Home Inspection Report                                   | PLT004689 – PLT004756 |

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| 120 | William Gerber Deposition Transcript – 1/31/2020<br>(A-18-782494-C)                   | PLT004757 – PLT004874 |
|     | William Gerber Deposition Exhibits – 1/31/2020<br>(A-18-782494-C)                     |                       |
| 121 | Deposition Exhibit 1 - Documents Bates No PLT<br>01049 - 01052                        | PLT004875 – PLT004878 |
| 122 | Deposition Exhibit 2 - Documents Bates No. 1014 -<br>1041                             | PLT004879 – PLT004906 |
| 123 | Deposition Exhibit 3 - Documents Bates No.<br>SWANSON 0140 - 0141                     | PLT004907 – PLT004908 |
| 124 | Deposition Exhibit 4 - E-Mail Chain   | PLT004909 – PLT004919 |
| 125 | Deposition Exhibit 5 - November 24, 2017, Report<br>- Infinity Environmental Services | PLT004920 – PLT004944 |
| 126 | Deposition Exhibit 6 - December 7, 2017, Report -<br>Infinity Environmental Services  | PLT004945 – PLT004952 |
| 127 | Aaron Hawley Deposition Transcript – 1/29/2020<br>(A-18-782494-C)                     | PLT004953 – PLT005083 |
|     | Aaaron Hawley Deposition Exhibits – 1/29/2020<br>(A-18-782494-C)                      |                       |
| 128 | Deposition Exhibit 1 - Documents Bates No PLT<br>01049 - 01052                        | PLT005084 – PLT005087 |
| 129 | Deposition Exhibit 2 - Documents Bates No. 1014 -<br>1041                             | PLT005088 – PLT005115 |
| 130 | Deposition Exhibit 3 - Documents Bates No.<br>SWANSON 0140 - 0141                     | PLT005116 – PLT005117 |
| 131 | Deposition Exhibit 4 - E-Mail Chain   | PLT005118 – PLT005128 |
| 132 | Deposition Exhibit 5 - November 24, 2017, Report<br>- Infinity Environmental Services | PLT005129 – PLT005153 |
| 133 | Deposition Exhibit 6 - December 7, 2017, Report -<br>Infinity Environmental Services  | PLT005154 – PLT005161 |
| 134 | Deposition Exhibit 7 - Documents Bates No. PLT<br>01646                               | PLT005162             |
| 135 | Deposition Exhibit 8 - Documents Bates No. PLT<br>01645                               | PLT005163             |
| 136 | Deposition Exhibit 9 - Documents Bates No. PLT<br>01645 - 01648                       | PLT005164 – PLT005165 |
| 137 | Deposition Exhibit 10 - Home Inspection Report  | PLT005166 – PLT005233 |
| 138 | Deposition Exhibit 11 - Executive Summary of<br>Findings                              | PLT005234 – PLT005253 |

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| 139 | Deposition Exhibit 12 - Documents Bates No. 183 - 184                             | PLT005254 – PLT005255 |
| 140 | Deposition Exhibit 13 - Documents Bates No. SWANSON 179 - 181                     | PLT005256 – PLT005258 |
| 141 | Todd Swanson Continued Deposition Transcript – 2/6/2020 (A-18-782494-C)           | PLT005259 – PLT005346 |
|     | Todd Swanson Continued Deposition Exhibits – 2/6/2020 (A-18-782494-C)             |                       |
| 142 | Deposition Exhibit 29 - May 21, 2015, e-mail string                               | PLT005347 – PLT005371 |
| 143 | Deposition Exhibit 30 - May 26, 2015, e-mail string                               | PLT005372 – PLT005375 |
| 144 | Deposition Exhibit 31 – September 3, 2015, e-mail string                          | PLT005376 – PLT005383 |
| 145 | Deposition Exhibit 32 – October 13, 2015, e-mail string                           | PLT005384 – PLT005386 |
| 146 | Deposition Exhibit 33 - October 13, 2015, e-mail string                           | PLT005387 – PLT005388 |
| 147 | Deposition Exhibit 34 - May 31, 2017, e-mail string                               | PLT005389 – PLT005401 |
| 148 | Deposition Exhibit 35 – November 24, 2017, Infinity Environmental Services report | PLT005402 – PLT005420 |
| 149 | Deposition Exhibit 36 - December 7, 2017, Infinity Environmental Services report  | PLT005421 – PLT005426 |
| 150 | Deposition Exhibit 37 – Affidavit of Todd Swanson                                 | PLT005427 – PLT005429 |

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V.

**CONCLUSION**

When viewing the facts in the light most favorable to Plaintiffs and drawing all reasonable inferences therefrom in their favor, it is clear Defendant's both engaged in fraudulent misrepresentation and violated the duty imposed upon them by NRS 113. Therefore, Defendants Motion should be dismissed, and the matter allowed complete discovery and to proceed to trial.

DATED this 15<sup>th</sup> day of February 2020.

**BLACK & LOBELLO**

  
Rusty Graf, Esq.

Nevada Bar No. 6322

Mark Lounsbury

Nevada Bar No. 15271

**BLACK & LOBELLO**

10777 West Twain Avenue, 3<sup>rd</sup> Floor

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E-mail: [mlounsbury@blacklobello.law](mailto:mlounsbury@blacklobello.law)

*Attorneys for Plaintiff*

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 13<sup>th</sup> day of February 2020, I caused the above and foregoing document **PLAINTIFFS' SUPPLEMENTAL BRIEF** to be served as follows:

☒ by placing same to be deposited for mailing in the United States Mail **[FLASH DRIVE CONTAINING PRODUCTION]**, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system.

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.

Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

Christopher M. Young, PC

2640 Professional Court, #200

Las Vegas, Nevada 89128

Jeffrey L. Galliher, Esq.

Galliher Legal, P.C.

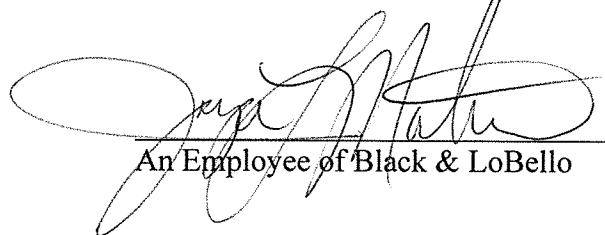
Nevada Bar No. 8078

1850 E. Sahara Ave., #107

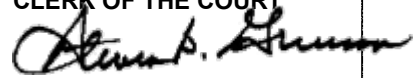
Las Vegas, NV 89104

Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.



An Employee of Black & LoBello



1 SWPD  
2 Rusty Graf, Esq.  
3 Nevada Bar No. 6322  
4 Mark Lounsbury  
5 Nevada Bar No. 15271  
6 **BLACK & LOBELLO**  
7 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 JOSEPH FOLINO, an individual and NICOLE  
17 FOLINO, an individual,

18 Plaintiff,

19 v.

20 TODD SWANSON, an individual; TODD  
21 SWANSON, Trustee of the SHIRAZ TRUST;  
22 SHIRAZ TRUST, a Trust of unknown origin;  
23 LYONS DEVELOPMENT, LLC, a Nevada  
24 limited liability company; DOES I through X;  
25 and ROES I through X,

26 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**PLAINTIFFS' SUPPLEMENTAL LIST OF  
WITNESSES AND PRODUCTION OF  
DOCUMENTS**

27 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
28 Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, their attorneys of record,  
hereby submit the Plaintiffs' List of Witnesses and Production of Documents.

These disclosures are based on information reasonably available to Plaintiffs as of this  
date. Plaintiffs reserve the right to supplement or modify this initial disclosure statement at any  
time as additional information becomes available during the course of discovery.

In making these disclosures, Plaintiffs do not purport to identify every individual,  
document, data compilation, or tangible thing possibly relevant to this lawsuit. Rather,

1 Plaintiffs' disclosure represents a good faith effort to identify discoverable information they  
2 currently and reasonably believe may be used to support their claims and defenses as required  
3 by NRCP 16.1.

4 Plaintiffs make these disclosures without waiving their right to object to the production  
5 of any document, data compilations, or tangible thing disclosed on the basis of any privilege,  
6 work product, relevancy, undue burden, or other valid objection. These disclosures do not  
7 include information that may be used solely for impeachment purposes. While making these  
8 disclosures, Plaintiffs reserve among other rights, (1) the right to object on the grounds of  
9 competency, privilege, work product, relevancy and materiality, admissibility, hearsay, or any  
10 other proper grounds to the use of any disclosed information, for any purpose in whole or in part  
11 in this action or any other action, and (2) the right to object on any and all grounds, at any time,  
12 to any discovery request or motion relating to the subject matter of this disclosure.

13 The following disclosures are made subject to the above objections and qualifications:

14 **I. LIST OF WITNESSES**

- 15 1. Todd Swanson  
16 c/o Christopher M. Young, PC.  
17 2460 Professional Court, #200  
18 Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489

19 This witness is expected to have information regarding the facts and circumstances at  
20 issue in this action and any damages sustained therein.

- 21 2. Joseph Folino  
22 c/o Black & LoBello  
23 10777 W Twain Ave, #300  
24 Las Vegas, Nevada 89135  
(702) 869-8801

25 This witness is expected to have information regarding the facts and circumstances at  
26 issue in this action and any damages sustained therein.

- 27 3. Nicole Folino  
28 c/o Black & LoBello

10777 W Twain Ave, #300  
Las Vegas, Nevada 89135  
(702) 869-8801

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

4. Person Most Knowledgeable for Rakeman Plumbing, Inc.  
4075 Losee Rd  
North Las Vegas, NV 89030  
(702) 642-8553

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

5. Aaron Hawley  
c/o Rakeman Plumbing, Inc.  
4075 Losee Rd  
North Las Vegas, NV 89030  
(702) 642-8553

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

6. William Gerber  
c/o Rakeman Plumbing, Inc.  
4075 Losee Rd  
North Las Vegas, NV 89030  
(702) 642-8553

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

7. Person Most Knowledgeable for Repipe Specialists of Nevada, Inc.  
c/o Contractors License Information Service-LV  
4175 S Riley St., Ste 200  
Las Vegas, NV 89147

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

8. Person Most Knowledgeable for Uponor Inc.  
5925 148th Street West



Apple Valley, MN 55124

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

9. Kelly Contenta  
c/o The Ivan Sher Group  
10777 W Twain Ave, #333  
Las Vegas, Nevada 89135  
(702) 869-8801

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

10. Ivan Sher  
c/o The Ivan Sher Group  
10777 W Twain Ave, #333  
Las Vegas, Nevada 89135  
(702) 869-8801

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

11. Person Most Knowledgeable for The Ivan Sher Group.  
10777 W Twain Ave, #333  
Las Vegas, Nevada 89135  
(702) 869-8801

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

12. Ashley Oakes-Lazosky  
c/o Las Vegas Homes and Fine Estates, LLC.  
9691 Trailwood Dr., Ste 10&  
Las Vegas, Nevada 89134  
(702) 874-8555

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

13. John Lazosky  
c/o Las Vegas Homes and Fine Estates, LLC.  
9691 Trailwood Dr., Ste 10&

Las Vegas, Nevada 89134  
(702) 874-8555

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

14. Person Most Knowledgeable for Las Vegas Homes and Fine Estates, LLC.  
9691 Trailwood Dr., Ste 10&  
Las Vegas, Nevada 89134  
(702) 874-8555

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

15. Person Most Knowledgeable for Lyons Development, LLC.  
c/o Christopher M. Young, PC.  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

16. Person Most Knowledgeable for The Shiraz Trust.  
c/o Christopher M. Young, PC.  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

17. Craig Jiu  
(702) 214-5990  
[craig@valpro-group.com](mailto:craig@valpro-group.com)

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

18. Person Most Knowledgeable for The Summerlin Association  
2115 Festival Plaza Drive, Suite 220

Las Vegas, NV 89135  
(702) 791-4600

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

18. Julie Torchin  
Address Unknown

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

18. Colleen Crawford  
Address Unknown

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

19. Troy Buckler  
Wells Fargo Home Mortgage  
P.O. Box 10335  
Des Moines, IA 50306-0335

This witness is expected to have information regarding the facts and circumstances at issue in this action and any damages sustained therein.

Plaintiffs herein reserve their right to supplement this witness list as allowed by the applicable Discovery Scheduling Order and/or applicable provisions of the Nevada Rules of Civil Procedure as the identity of additional witnesses becomes known during the course of discovery. Plaintiffs incorporate by reference all documents produced by any other parties in this action.

## **II. LIST OF DOCUMENTS**

Pursuant to NRCP 16.1(a)(1)(B), Plaintiffs hereby produce the following documents:

| <b><i>No.</i></b> | <b><i>Document</i></b>         | <b><i>Bates Numbers</i></b> |
|-------------------|--------------------------------|-----------------------------|
| 1                 | Residential Purchase Agreement | PLT000001 - PLT000010       |
| 2                 | Counter Offer No. 1            | PLT000011                   |

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Las Vegas, Nevada 89135

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|    |   |                       |
|----|---|-----------------------|
| 3  | Counter Offer No. 2   | PLT000012             |
| 4  | Seller's Real Property Disclosure Form  | PLT000013 - PLT000017 |
| 5  | The Uniform Building Inspection Report<br>Condensed                                 | PLT000018 - PLT000027 |
| 6  | Request for Repair No. 1  | PLT000028 - PLT000029 |
| 7  | Grant, Bargain, Sale Deed   | PLT000030 - PLT000033 |
| 8  | Rakeman Plumbing Invoice  | PLT000034 - PLT000035 |
| 9  | Rakeman Plumbing Letter with enclosure of<br>payment record                         | PLT000036 - PLT000037 |
| 10 | E-correspondence from Uponor informing past<br>water losses                         | PLT000038 - PLT000046 |
| 11 | Uponor Warranty   | PLT000047 - PLT000048 |
| 12 | E-correspondence regarding water loss that<br>occurred in February 2017             | PLT000049 - PLT000053 |
| 13 | Rakeman Production – Email from Whitfield to<br>Hawley                              | PLT000054 – PLT000055 |
| 14 | Rakeman Production – Letter to Swanson from<br>Hawley                               | PLT000056             |
| 15 | Rakeman Production – Work Order 2018.01.05 –<br>Invoice 237000                      | PLT000057 – PLT000058 |
| 16 | Rakeman Production – Invoice No. 236828   | PLT000059 – PLT000060 |
| 17 | Rakeman Production – Invoice No. 236151   | PLT000061 – PLT000062 |
| 18 | Rakeman Production – Invoice No. 232809   | PLT000063 – PLT000064 |
| 19 | Americana LLC dba Berkshire Hathaway<br>HomeServices – Nevada Properties – Subpoena | PLT000065 – PLT000156 |
| 20 | The Ridges Community Association - Subpoena   | PLT000157 – PLT000764 |
| 21 | Las Vegas Homes and Fine Estates, LLC –<br>Documents produced pursuant to Subpoena  | PLT000765 – PLT001007 |
| 22 | Uponor, Inc. – Documents produced pursuant to<br>Subpoena                           | PLT001008 – PLT001648 |
| 23 | EH Designs LLC. - Documents produced pursuant<br>to Subpoena                        | PLT001649 – PLT001800 |
| 24 | Infinity Environmental - Documents produced<br>pursuant to Subpoena                 | PLT001801 – PLT001843 |
| 25 | Ivan Sher – Documents produced pursuant to<br>Subpoena                              | PLT001844 – PLT002038 |
| 26 | Kelly Contenta – Documents produced pursuant to<br>Subpoena                         | PLT002039 – PLT002132 |
| 27 | Document Removed (Bates Number Purposefully<br>Omitted from Production)             | PLT002133 – PLT002235 |

|    |  |                       |
|----|--|-----------------------|
| 28 | Todd Swanson v. Trophy Homes Deposition Transcripts (Case No. A448566)   | PLT002236 – PLT002405 |
| 29 | Todd Swanson Response To Plaintiffs' First Set of Requests For Production & Attached Documents                                   | PLT002406 – PLT002900 |
| 30 | Todd Swanson Interrogatory Response Verification and Interrogatory Responses to Plaintiffs' First Set of Interrogatories         | PLT002901 – PLT002916 |
| 31 | Todd Swanson Response to Plaintiffs' First Set of Requests For Admission   | PLT002917 – PLT002922 |
| 32 | Shiraz Trust Response to Plaintiffs' First Set of Requests for Production & Attached Documents                                   | PLT002923 – PLT003415 |
| 33 | Shiraz Trust Response to Plaintiffs' First Set Of Interrogatories  | PLT003416 – PLT003428 |
| 34 | Shiraz Trust Response to Plaintiffs' First Set of Requests for Admission   | PLT003429 – PLT003433 |
| 35 | Lyons Development Response to Plaintiffs' First Set of Interrogatories   | PLT003434 – PLT003446 |
| 36 | Lyons Development Response to Plaintiffs' First Set of Requests for Admission  | PLT003447 – PLT003451 |
| 37 | Todd Swanson Deposition Transcript – 1/24/2020 (A-18-782494-C)   | PLT003452 – PLT003781 |
|    | Todd Swanson Deposition Exhibits - 1/24/2020 (A-18-782494-C)   |                       |
| 38 | Deposition Exhibit 1 - Notice of deposition  | PLT003782 – PLT003785 |
| 39 | Deposition Exhibit 2 – Defendant Swanson's Responses to Plaintiffs' First Request for Production of Documents                    | PLT003786 – PLT003796 |
| 40 | Deposition Exhibit 3 – Seller's Real Property Disclosure Form  | PLT003797 – PLT003801 |
| 41 | Deposition Exhibit 4 – Residential Purchase Agreement  | PLT003802 – PLT003813 |
| 42 | Deposition Exhibit 5 – Curriculum Vitae  | PLT003814 – PLT003836 |
| 43 | Deposition Exhibit 6 – Defendant Swanson's Responses to Plaintiffs' First Request For Interrogatories                            | PLT003837 – PLT003849 |
| 44 | Deposition Exhibit 7 – Defendant Swanson, as Trustee of Shiraz Trust, Responses to Plaintiffs' First Request For Interrogatories | PLT003850 – PLT003862 |
| 45 | Deposition Exhibit 8 – Defendant Lyon Development's Responses to Plaintiffs' First Request For Interrogatories                   | PLT003863 – PLT003875 |
| 46 | Deposition Exhibit 9 – Verification  | PLT003876             |
| 47 | Deposition Exhibit 10 - Verification   | PLT003877             |

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|    |  |                       |
|----|--|-----------------------|
| 48 | Deposition Exhibit 11 – Verification   | PLT003878             |
| 49 | Deposition Exhibit 12 – Home Inspection Report   | PLT003879 – PLT003946 |
| 50 | Deposition Exhibit 13 – Executive Summary of Findings                                      | PLT003947 – PLT003966 |
| 51 | Deposition Exhibit 14 – Executive Summary of Findings                                      | PLT003967 – PLT003986 |
| 52 | Deposition Exhibit 15 - November 16, 2017, letter  | PLT003987 – PLT003988 |
| 53 | Deposition Exhibit 16 - December 13, 2017, e-mail  | PLT003989 – PLT003993 |
| 54 | Deposition Exhibit 17 - November 17, 2017, e-mail  | PLT003994 – PLT004004 |
| 55 | Deposition Exhibit 18 - December 7, 2017, letter   | PLT004005 – PLT004010 |
| 56 | Deposition Exhibit 19 - December 15, 2017, e-mail  | PLT004011             |
| 57 | Deposition Exhibit 20 - November 16, 2017, e-mail  | PLT004012             |
| 58 | Deposition Exhibit 21 - November 21, 2017, e-mail  | PLT004013             |
| 59 | Deposition Exhibit 22 - August 9, 2015, e-mail   | PLT004014             |
| 60 | Deposition Exhibit 23 – Affidavit of Todd Swanson  | PLT004015 – PLT004017 |
| 61 | Deposition Exhibit 24 – Receipt  | PLT004018             |
| 62 | Deposition Exhibit 25 – August 25, 2015, e-mail  | PLT004019             |
| 63 | Deposition Exhibit 26 - Invoice  | PLT004020             |
| 64 | Deposition Exhibit 27 - Invoice  | PLT004021             |
| 65 | Deposition Exhibit 28 – Defendants’ Motion To Dismiss Plaintiffs’ Second Amended Complaint | PLT004022 – PLT004047 |
| 66 | Ivan Sher Deposition Transcript – 2/3/2020 (A-18-782494-C)                                 | PLT004048 – PLT004200 |
| 67 | Kelly Contenta Deposition Transcript – 2/3/2020 (A-18-782494-C)                            | PLT004201 – PLT004244 |
|    | Ivan Sher & Kelly Contenta Deposition Exhibits - 2/3/2020 (A-18-782494-C)                  |                       |
| 68 | Deposition Exhibit 1 - Notice of deposition  | PLT004245 – PLT004248 |
| 69 | Deposition Exhibit 2 - Subpoena for the records  | PLT004249 – PLT004253 |
| 70 | Deposition Exhibit 3 - MLS sheet regarding 42 Meadowhawk                                   | PLT004254             |
| 71 | Deposition Exhibit 4 - Residential purchase agreement                                      | PLT004255 – PLT004266 |
| 72 | Deposition Exhibit 5 - Various addendums and   | PLT004267 – PLT004275 |

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|    |  |                       |
|----|--|-----------------------|
|    | counteroffers that were included on this property  |                       |
| 73 | Deposition Exhibit 6 - E-mail dated October 24, 2017 between Mike Pappas and Swanson   | PLT004276             |
| 74 | Deposition Exhibit 7 - Seller's Real Property Disclosure Form  | PLT004277 – PLT004281 |
| 75 | Deposition Exhibit 8 - E-mail string dated November 2, 2017 between Sherwood and Swanson   | PLT004282 – PLT004312 |
| 76 | Deposition Exhibit 9 - E-mail string Bates stamped SWANSON 370 to SWANSON 372  | PLT004313 – PLT004315 |
| 77 | Deposition Exhibit 10 - E-mail string Bates stamped SWANSON 248 to 251   | PLT004316 – PLT004319 |
| 78 | Deposition Exhibit 11 - E-mail string Bates stamped SWANSON 302 to SWANSON 304   | PLT004320 – PLT004325 |
| 79 | Deposition Exhibit 12 - Extended e-mail chain that includes some, if not all, of previous e-mails, Bates stamped SWANSON 363 through SWANSON 369 | PLT004326 – PLT004332 |
| 80 | Deposition Exhibit 13 - E-mail from Austin to Nicky and Dr. Swanson, Bates stamped SWANSON 235   | PLT004333 – PLT004334 |
| 81 | Deposition Exhibit 14 - November 16th e-mail   | PLT004335 – PLT004336 |
| 82 | Deposition Exhibit 15 - Rakeman Plumbing letter dated November 16, 2017  | PLT004337             |
| 83 | Deposition Exhibit 16 - Correspondence between Mr. Sher and Dr. Swanson  | PLT004338 – PLT004342 |
| 84 | Deposition Exhibit 17 - E-mail from Dr. Swanson to Mr. Sher on November 17th   | PLT004343             |
| 85 | Deposition Exhibit 18 - E-mail from Austin Sherwood to Dr. Swanson, dated June 15, 2018  | PLT004344 – PLT004348 |
| 86 | Deposition Exhibit 19 - A November 17, 2017, e-mail at 9:36 from Dr. Swanson to Mr. Sher   | PLT004349 – PLT004352 |
| 87 | Deposition Exhibit 20 - A November 22nd e-mail from Austin Sherwood to Dr. Swanson and Nicky Whitfield   | PLT004353             |
| 88 | Deposition Exhibit 21 - E-mail chain, Defendant 69 through Defendant 72  | PLT004354 – PLT004357 |
| 89 | Deposition Exhibit 22 - E-mail string between Nicky Whitfield and Dr. Swanson  | PLT004358 – PLT004360 |
| 90 | Deposition Exhibit 23 - December 15, 2017, e-mail from Dr. Swanson to Mr. Sher   | PLT004361             |
| 91 | Deposition Exhibit 24 - E-mail between Mr. Sher and Dr. Swanson, dated July 5, 2018  | PLT004362 - PLT004363 |
| 92 | Deposition Exhibit 25 - Notice of deposition Kelly Contenta  | PLT004364 - PLT004367 |
| 93 | Deposition Exhibit 26 – Subpoena for Records Kelly Contenta  | PLT004368 - PLT004372 |

|     |  |                       |
|-----|--|-----------------------|
| 94  | Nicole Whitfield Deposition Transcript – 1/29/2020 (A-18-782494-C)               | PLT004373 – PLT004528 |
|     | Nicole Whitfield Deposition Exhibits – 1/29/2020 (A-18-782494-C)                 |                       |
| 95  | Deposition Exhibit 1 - E-mails   | PLT004529 – PLT004532 |
| 96  | Deposition Exhibit 1B – Timeline and miscellaneous documents                     | PLT004533 – PLT004578 |
| 97  | Deposition Exhibit 2 – Addendum to Purchase Agreement                            | PLT004579 – PLT004580 |
| 98  | Deposition Exhibit 3 - Affidavit of Aaron Hawley                                 | PLT004581 – PLT004583 |
| 99  | Deposition Exhibit 4 - E-mails   | PLT004584 – PLT004587 |
| 100 | Deposition Exhibit 5 - E-mails   | PLT004588 – PLT004596 |
| 101 | Deposition Exhibit 6 - E-mails   | PLT004597 – PLT004605 |
| 102 | Deposition Exhibit 7 - E-mails   | PLT004606 – PLT004609 |
| 103 | Deposition Exhibit 8 - E-mails   | PLT004610 – PLT004612 |
| 104 | Deposition Exhibit 9 – Text Messages   | PLT004613 – PLT004619 |
| 105 | Deposition Exhibit 10 - Affidavit of Nicole Whitfield                            | PLT004620 – PLT004623 |
| 106 | Deposition Exhibit 11 – Affidavit of Todd Swanson                                | PLT004624 – PLT004627 |
| 107 | Deposition Exhibit 12 - December 7, 2017, Environmental Services                 | PLT004628 – PLT004634 |
| 108 | Deposition Exhibit 13 – E-mails  | PLT004635 – PLT004636 |
| 109 | Deposition Exhibit 14 - E-mails  | PLT004637 – PLT004638 |
| 110 | Deposition Exhibit 15 - Receipt  | PLT004639 – PLT004640 |
| 111 | Deposition Exhibit 16 - Nova Geotechnical report                                 | PLT004641 – PLT004643 |
| 112 | Deposition Exhibit 17 - E-mails  | PLT004644 – PLT004647 |
| 113 | Deposition Exhibit 18 - E-mails  | PLT004648 – PLT004650 |
| 114 | Deposition Exhibit 19 - E-mails  | PLT004651 – PLT004653 |
| 115 | Deposition Exhibit 20 - E-mails  | PLT004654 – PLT004660 |
| 116 | Deposition Exhibit 21 - E-mails  | PLT004661 – PLT004668 |
| 117 | Deposition Exhibit 22 - E-mails  | PLT004669 – PLT004670 |
| 118 | Deposition Exhibit 23 - November 24, 2017 Infinity Environmental Services report | PLT004671 – PLT004688 |



|     |  |                       |
|-----|--|-----------------------|
| 119 | Deposition Exhibit 24 - Home Inspection Report                                     | PLT004689 – PLT004756 |
| 120 | William Gerber Deposition Transcript – 1/31/2020 (A-18-782494-C)                   | PLT004757 – PLT004874 |
|     | William Gerber Deposition Exhibits – 1/31/2020 (A-18-782494-C)                     |                       |
| 121 | Deposition Exhibit 1 - Documents Bates No PLT 01049 - 01052                        | PLT004875 – PLT004878 |
| 122 | Deposition Exhibit 2 - Documents Bates No. 1014 - 1041                             | PLT004879 – PLT004906 |
| 123 | Deposition Exhibit 3 - Documents Bates No. SWANSON 0140 - 0141                     | PLT004907 – PLT004908 |
| 124 | Deposition Exhibit 4 - E-Mail Chain  | PLT004909 – PLT004919 |
| 125 | Deposition Exhibit 5 - November 24, 2017, Report - Infinity Environmental Services | PLT004920 – PLT004944 |
| 126 | Deposition Exhibit 6 - December 7, 2017, Report - Infinity Environmental Services  | PLT004945 – PLT004952 |
| 127 | Aaron Hawley Deposition Transcript – 1/29/2020 (A-18-782494-C)                     | PLT004953 – PLT005083 |
|     | Aaron Hawley Deposition Exhibits – 1/29/2020 (A-18-782494-C)                       |                       |
| 128 | Deposition Exhibit 1 - Documents Bates No PLT 01049 - 01052                        | PLT005084 – PLT005087 |
| 129 | Deposition Exhibit 2 - Documents Bates No. 1014 - 1041                             | PLT005088 – PLT005115 |
| 130 | Deposition Exhibit 3 - Documents Bates No. SWANSON 0140 - 0141                     | PLT005116 – PLT005117 |
| 131 | Deposition Exhibit 4 - E-Mail Chain  | PLT005118 – PLT005128 |
| 132 | Deposition Exhibit 5 - November 24, 2017, Report - Infinity Environmental Services | PLT005129 – PLT005153 |
| 133 | Deposition Exhibit 6 - December 7, 2017, Report - Infinity Environmental Services  | PLT005154 – PLT005161 |
| 134 | Deposition Exhibit 7 - Documents Bates No. PLT 01646                               | PLT005162             |
| 135 | Deposition Exhibit 8 - Documents Bates No. PLT 01645                               | PLT005163             |
| 136 | Deposition Exhibit 9 - Documents Bates No. PLT 01645 - 01648                       | PLT005164 – PLT005165 |
| 137 | Deposition Exhibit 10 - Home Inspection Report                                     | PLT005166 – PLT005233 |

|     |   |                       |
|-----|---|-----------------------|
| 138 | Deposition Exhibit 11 - Executive Summary of Findings                             | PLT005234 – PLT005253 |
| 139 | Deposition Exhibit 12 - Documents Bates No. 183 - 184                             | PLT005254 – PLT005255 |
| 140 | Deposition Exhibit 13 - Documents Bates No. SWANSON 179 - 181                     | PLT005256 – PLT005258 |
| 141 | Todd Swanson Continued Deposition Transcript – 2/6/2020 (A-18-782494-C)           | PLT005259 – PLT005346 |
|     | Todd Swanson Continued Deposition Exhibits – 2/6/2020 (A-18-782494-C)             |                       |
| 142 | Deposition Exhibit 29 - May 21, 2015, e-mail string                               | PLT005347 – PLT005371 |
| 143 | Deposition Exhibit 30 - May 26, 2015, e-mail string                               | PLT005372 – PLT005375 |
| 144 | Deposition Exhibit 31 – September 3, 2015, e-mail string                          | PLT005376 – PLT005383 |
| 145 | Deposition Exhibit 32 – October 13, 2015, e-mail string                           | PLT005384 – PLT005386 |
| 146 | Deposition Exhibit 33 - October 13, 2015, e-mail string                           | PLT005387 – PLT005388 |
| 147 | Deposition Exhibit 34 - May 31, 2017, e-mail string                               | PLT005389 – PLT005401 |
| 148 | Deposition Exhibit 35 – November 24, 2017, Infinity Environmental Services report | PLT005402 – PLT005420 |
| 149 | Deposition Exhibit 36 - December 7, 2017, Infinity Environmental Services report  | PLT005421 – PLT005426 |
| 150 | Deposition Exhibit 37 – Affidavit of Todd Swanson                                 | PLT005427 – PLT005429 |

Plaintiffs incorporate by reference all documents produced by any other parties in this action. Plaintiffs reserve the right to amend/supplement this List of Documents throughout the discovery process as additional information becomes available, to designate as an exhibit any documents or other tangible evidence identified by any party and/or identified in any exhibits by any party to this action, and to submit any documents or other tangible evidence for the purpose of rebuttal and/or impeachment.

In addition, neither inclusion of any documents or tangible items within this disclosure nor acceptance of documents provided by any other party hereto in a disclosure shall be deemed

as a waiver by Plaintiffs of any evidentiary rights Plaintiffs may have with respect to those documents and/or tangible items, including, but not limited to, objection related to authenticity, materiality, relevance, foundation, hearsay, or any other rights as may be permitted pursuant to the Nevada Rules of Evidence.

### **III. PLAINTIFFS' COMPUTATION OF DAMAGES**

Plaintiffs hereby offer the following computation of damages pursuant to NRCP 16.1 (a)(1)(c). This list is not all-inclusive, as discovery is continuing, and Plaintiffs, therefore, reserve the right to supplement as additional information becomes available.

|    |                            |                             |
|----|----------------------------|-----------------------------|
| 1. | Fraud Damages              | Approximately \$300,000.00  |
| 2. | Breach of Contract Damages | To be determined            |
| 3. | Bad Faith Damages          | \$100,000.00                |
| 4. | Attorneys Fees             | To be determined (Accruing) |

Plaintiffs reserve the right to seek other damages including, but not limited to, general and exemplary damages, in an amount to be proven at trial.

### **IV. DEMONSTRATIVE EXHIBITS**

Plaintiffs may offer at trial, certain Exhibits for demonstrative purposes including, but not limited to, the following:

1. Demonstrative and actual photographs and videos;
2. Diagrams, drawings, pictures, photos, film, models, video, DVD and CD ROM.
3. Timeline of Company events;
4. Photographs and videos of Plaintiffs' witnesses;
5. Storyboards and computer digitized power point images;
6. Blow-ups/transparencies/digitized images of photographs and other exhibits;

By disclosing witnesses and/or documents, Plaintiffs do not waive the right to challenge

1 and/or exclude any such witness or document or portions thereof on any basis.

2 Plaintiffs reserve the right to object to any document identified by any party in the instant  
3 matter. Plaintiffs further reserve the right to use any and all of any other parties' exhibits at the  
4 time of trial of this matter.

5 DATED this 13<sup>th</sup> day of February 2020.

6  
7 **BLACK & LOBELLO**

8  
9 Rusty Graf, Esq.  
10 Nevada Bar No. 6322  
11 Mark Lounsbury  
12 Nevada Bar No. 15271  
13 BLACK & LOBELLO  
14 10777 West Twain Avenue, 3rd Floor  
15 Las Vegas, Nevada 89135  
16 Telephone: (702) 869-8801  
17 Facsimile: (702) 869-2669  
18 E-mail: rgraf@blacklobello.law  
19 E-mail: mlounsbury@blacklobello.law  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

Pursuant to NRCp 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 13<sup>th</sup> day of February 2020, I caused the above and foregoing document **PLAINTIFFS' LIST OF WITNESSES AND SUPPLEMENTAL PRODUCTION OF DOCUMENTS** to be served as follows:

☒ by placing same to be deposited for mailing in the United States Mail **[FLASH DRIVE CONTAINING PRODUCTION]**, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.

Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

Christopher M. Young, PC

2640 Professional Court, #200

Las Vegas, Nevada 89128

Jeffrey L. Galliher, Esq.

Galliher Legal, P.C.

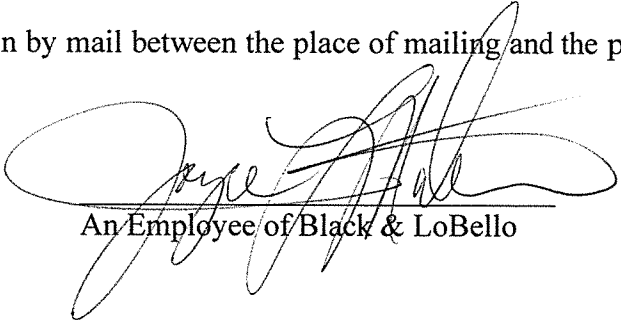
Nevada Bar No. 8078

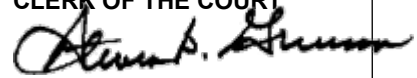
1850 E. Sahara Ave., #107

Las Vegas, NV 89104

Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello



Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
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*Attorneys for Defendants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**I.**

**PREAMBLE**

On April 7, 2020, this Court held a hearing to address the Defendants' Motion to Dismiss

|                                     |                              |                          |                                  |
|-------------------------------------|------------------------------|--------------------------|----------------------------------|
| <input type="checkbox"/>            | Voluntary Dismissal          | <input type="checkbox"/> | Summary Judgment                 |
| <input type="checkbox"/>            | Involuntary Dismissal        | <input type="checkbox"/> | Stipulated Judgment <sup>1</sup> |
| <input type="checkbox"/>            | Stipulated Dismissal         | <input type="checkbox"/> | Default Judgment                 |
| <input checked="" type="checkbox"/> | Motion to Dismiss by Deft(s) | <input type="checkbox"/> | Judgment of Arbitration          |

Docket 81831 Document 2020-36638

1 Plaintiffs' Second Amended Complaint, which Defendants filed on September 24, 2019.<sup>1</sup> Rusty J.  
2 Graf, Esq. appeared on behalf of the Plaintiffs; Jeffrey L. Galliher, Esq. and Jay T. Hopkins, Esq.  
3 appeared on behalf of the Defendants.<sup>2</sup>

4 This Court considered the parties' motions and supplements, together with the exhibits and  
5 arguments of counsel. Viewing the evidence in the light most favorable to the Plaintiffs, this Court  
6 finds that the Plaintiffs failed to establish the existence of any genuine dispute as to a material issue  
7 of fact to preclude summary judgment. Accordingly, this Court makes the following Findings of Fact  
8 and Conclusions of Law under the standards set forth below.

## 10 II.

### 11 PROCEDURAL HISTORY

12 This is a case involving the purchase and sale of a \$3,000,000 luxury home located at 42  
13 Meadowhawk Lane in Las Vegas, Nevada. The dispute emanates from an October 27, 2017  
14 Residential Purchase Agreement in which the Plaintiffs were the Buyers and Lyons Development,  
15 LLC was the Seller. The gist of the Plaintiffs' lawsuit is that "the Defendants" concealed a water leak  
16 in the plumbing system.

#### 18 *Plaintiffs' Complaint*

19 On October 19, 2018, the Plaintiffs filed their initial Complaint seeking damages for  
20 Defendants' alleged concealment of a February 2017 water leak which Plaintiffs alleged indicated a  
21 "systemic defect" in the plumbing system. The Plaintiffs asserted six causes of action for: (1)  
22 Fraud/Intentional Misrepresentation; (2) Negligent Misrepresentation; (3) Violation of NRS 598.010  
23

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25 <sup>1</sup> While the Defendants styled their instant motion as a motion to dismiss, Defendants acknowledged in their motion that  
26 because the motion and supplements referenced and attached documents outside the pleadings, this Court must invoke the  
summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

27 <sup>2</sup> The parties named the following parties: Plaintiffs, Nicole and Joseph Folino (hereinafter the "Plaintiffs" or the  
28 "Folinos"); and Defendants: Dr. Todd Swanson, an individual; Todd Swanson, Trustee of the Shiraz Trust; Shiraz Trust;  
and Lyons Development, LLC (hereinafter "Defendants" or "Dr. Swanson.").

et seq. (Deceptive Trade Practices); (4) Violation of NRS 113.100 et seq. (Failure to Disclose Known Defects); (5) Civil RICO; and (6) Respondeat Superior.<sup>3</sup>

***Defendants' February 4, 2019 Motion to Dismiss***

On February 4, 2019, the Defendants moved to dismiss the Plaintiffs' Complaint pursuant to NRCP 12(b)(5). At the April 8, 2019 hearing, the Court did not rule on the substance of the Defendants' motion but granted the Plaintiffs' request for leave to amend to cure the pleading deficiencies.

***Plaintiffs' First Amended Complaint***

On April 18, 2019, the Plaintiffs filed their First Amended Complaint, asserting the same claims as in the initial Complaint. The Plaintiffs also asserted a Seventh Cause of Action for Piercing the Corporate Veil/Alter Ego.

***Defendants' May 20, 2019 Motion to Dismiss***

On May 20, 2019, the Defendants moved to dismiss the Plaintiffs' First Amended Complaint, seeking dismissal of each of the Plaintiffs' seven claims. On July 18, 2019, this Court held a hearing on Defendants' Motion to Dismiss. At the hearing, the Court dismissed the Plaintiffs Negligent Misrepresentation, Deceptive Trade Practices, Civil RICO; Respondeat Superior and Piercing the Corporate Veil claims. The Court ruled the Plaintiffs' fraud or NRS Chapter 113 concealment claims survived and ordered the Plaintiffs to file a Second Amended Complaint.

***Plaintiffs' Second Amended Complaint***

On September 4, 2019, the Plaintiffs filed their Second Amended Complaint, alleging concealment in violation of NRS 113 *et seq.* and fraud/intentional misrepresentation. The Plaintiffs

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<sup>3</sup> The Plaintiffs attached several documents to their Complaint, First Amended Complaint and Second Amended Complaint which, under NRCP 12(b)(5)'s standards, are incorporated into the pleadings. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).



1 also sought punitive damages.

2 ***Defendants' September 24, 2019 Motion to Dismiss***

3 Defendants moved for dismissal/summary judgment on September 24, 2019. Defendants  
4 provided evidence in the form of an affidavit from the licensed plumbing company that the February  
5 2017 leak had been repaired, thus negating the Defendants duty to disclose under NRS Chapter 113  
6 and *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007).  
7

8 In their Opposition, the Plaintiffs did not present any facts to rebut the Defendants' evidence  
9 that the February 2017 leak had been repaired, but instead sought sanctions for Defendants filing the  
10 motion.

11 At the November 7, 2019 hearing, because the Plaintiffs failed to rebut the facts in the  
12 Defendants' motion, this Court stated its inclination to grant the Defendants' motion. Instead, to  
13 permit the Plaintiffs to fully present their case, this Court gave Plaintiffs 90 days to conduct discovery  
14 and permitted the Plaintiffs to file a supplemental brief demonstrating a genuine issue of material fact.  
15 Defendants were also permitted to file a supplemental brief in response to the Plaintiffs' supplement.  
16

17 ***The Plaintiffs' Discovery***

18 Between November 7, 2019 and February 13, 2020, the Plaintiffs conducted extensive  
19 discovery, which included serving numerous subpoenas for documents, serving interrogatories,  
20 requests for production of documents and requests for admissions. Plaintiffs took the depositions of  
21 six witnesses.<sup>4</sup> The Defendants produced nearly 1000 pages of documents as supplemental disclosures  
22 and responses to the Plaintiffs' interrogatories and requests for production. The Plaintiffs also  
23 produced over 5000 pages of documents.  
24

25  
26  
27 <sup>4</sup> The Plaintiffs deposed Rakeman principal Aaron Hawley and employee William "Rocky" Gerber, Dr. Swanson (two  
28 separate depositions), Dr. Swanson's assistant Nicky Whitfield, and Defendants'/Sellers' real estate agents, Ivan Sher and  
Kelly Contenda.

On February 13, 2020, the Plaintiffs filed their Supplemental Brief. On February 27, 2020, the Defendants filed their Supplemental Reply in Support of Motion for Summary Judgment. Each party attached voluminous exhibits.

On April 7, 2020, this Court held a hearing regarding the Defendants' motion, and makes the following findings of fact and conclusions of law.

### III.

#### LEGAL STANDARDS

The following legal standards are applicable to this case:

##### **A. Summary Judgment Standards**

Because the parties presented matters outside the pleadings, this Court treats the Defendants' motion "as one for summary judgment and disposed of as provided in Rule 56." *See* NRCP 12(c) and *Kopicko*, 114 Nev. at 1336, 971 P.2d at 790 (1998).

Since *Wood v. Safeway*,<sup>5</sup> the Nevada Supreme Court has followed a gradual trend toward favoring summary judgment as a "valuable tool to weed out meritless cases [which is] no longer a 'disfavored procedural shortcut.'" *Boesiger v. Desert Appraisals, LLC*, 444 P.3d 436, 438-439, 2019 Nev. LEXIS 39, \*4-5 (July 3, 2019) ("[s]ummary judgment is an important procedural tool by which factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources"). *See also Wood*, 121 Nev. at 730, 121 P.3d at 1030 (summary judgment "is an integral part of the [rules of civil procedure] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.")

"Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact

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<sup>5</sup> *Wood v. Safeway*, 121 Nev. 724, 727, 121 P.3d 1026, 1028 (2005).

remains in dispute and that the moving party is entitled to judgment as a matter of law.” *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 117, 134 Nev. Adv. Rep. 72 (September 13, 2018). “A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party.” *Id.*

**B. NRS Chapter 113 Standards Regarding Pre-Closing Disclosures in Real Estate Transactions**

Plaintiffs’ claims are premised on the Defendants’ purported failure to disclose a February 16, 2017 water leak which, according to the Plaintiffs, was indicative of a systemic plumbing defect. The Plaintiffs’ claims are based on violation of NRS Chapter 113.

NRS §113.140 provides:

Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS §113.130 does not require a seller to disclose a defect in residential property of which the seller is not aware.
2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.
3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself.

In *Nelson v. Heer*, the Nevada Supreme Court defined a seller’s disclosure obligations under NRS 113.130 and NRS 113.140. The Nevada Supreme Court ruled that repairing damage negates a seller’s duty to disclose damage because repaired damage “no longer constitute[s] a condition that materially lessen[s] the value of the property.” *Nelson*, 123 Nev. at 224, 163 P.3d at 425. *Id.* According to the Court, “the seller of residential real property does not have a duty to disclose a defect or condition that ‘materially affects the value or use of residential property in an adverse manner,’ if the seller does not realize, perceive, or have knowledge of that defect or condition.”<sup>6</sup>

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<sup>6</sup> Further, pursuant to statute, recovery is completely barred “on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:… (b) A contractor, engineer, land

1 NRS §113.150(2) provides:

2 Remedies for seller's delayed disclosure or nondisclosure of defects in property;  
3 waiver.

4 2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent  
5 informs the purchaser or the purchaser's agent, through the disclosure form or another written  
6 notice, of a defect in the property of which the cost of repair or replacement was not limited  
7 by provisions in the agreement to purchase the property, the purchaser may:

8 (a) Rescind the agreement to purchase the property at any time before the conveyance  
9 of the property to the purchaser; or

10 (b) Close escrow and accept the property with the defect as revealed by the seller or  
11 the seller's agent without further recourse.

12 **IV.**

13 **SUMMARY OF FINDINGS OF FACT**

14 The Court finds the following facts are undisputed and supported by the evidence presented  
15 by the parties:

- 16 • In 2015, Rakeman Plumbing installed the plumbing system manufactured by Uponor at  
17 property located at 42 Meadowhawk Lane, Las Vegas, Nevada.
- 18 • The 42 Meadowhawk Lane property is the subject of the Plaintiffs' lawsuit.
- 19 • There was a leak in the Uponor plumbing system on February 16, 2017;
- 20 • Plaintiffs' action is premised on the Defendants' failure to disclose the February 16, 2017 leak;
- 21 • A licensed plumbing contractor, Rakeman Plumbing, completely repaired the February 16,  
22 2017 leak;<sup>7</sup>
- 23 • Because Rakeman repaired the February 16, 2017 leak, Defendants did not disclose it on the  
24

25 \_\_\_\_\_  
26 surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that  
27 profession in this State at the time the information was provided." NRS 113.150(5).

28 <sup>7</sup> The Court notes that the Rakeman invoice relating to the February 2017 leak has a May 23, 2017 date. However, the  
undisputed evidence shows that the invoice was created after the fact when Rakeman submitted its warranty claim to  
Uponor. The evidence is undisputed that invoice with the May 23, 2017 date is for the February 16, 2017 leak and  
documents that Rakeman completely repaired that leak.

October 24, 2017 Sellers' Real Property Disclosure form;

- There was a second leak in the Uponor system on November 7, 2017 during the escrow period of the sale;
- On November 15, 2017, prior to the November 17, 2017 closing date, Defendants disclosed the leak in an addendum;
- Defendants' agent emailed the disclosure to Plaintiffs' agent on November 16, 2017;
- Plaintiffs did a walk-through before closing and knew about the November 7, 2017 leak;
- With knowledge of the November 7, 2017 leak, the Plaintiffs' agent emailed Defendants' agent with proposed options, including an acknowledgment that Plaintiffs could walk away and elect to terminate the contract and not close on the property;
- With knowledge of the November 7, 2017 leak, the Plaintiffs elected to close on the property on November 17, 2017;
- In 2015, an inspection revealed that two recirculating pumps were leaking and the recirculating pumps were replaced. The recirculating pumps failure occurred in a different area of the residence than the February 2017 and November 2017 leaks, and are not related to the claims in Plaintiffs' Second Amended Complaint;
- The same inspection showed a plumbing leak above the ceiling of the basement bathroom, which the report also described as a "drip." The leak/drip occurred in a different area of the residence than the February 2017 and November 2017 leaks, and are not related to the claims in Plaintiffs' Second Amended Complaint. Neither Rakeman nor the Defendants could identify a source of the drip, and there is no evidence that the leak/drip persisted after the date of the report, May 11, 2015;
- On November 17, 2017, the day of the closing, Infinity Environmental Services conducted

1 mold tests at the property;

- 2 • Infinity tested for possible fungal levels in the master bathroom and master closet, which is the
- 3 area where the February 2017 and November 7, 2017 leaks occurred;
- 4 • Infinity provided results of their mold testing on November 24, 2017, seven (7) days after the
- 5 Plaintiffs closed on the property;
- 6 • Plaintiffs knew Infinity was conducting the tests on November 17, 2017.
- 7 • Plaintiffs closed on the property on November 17, 2017 before the Infinity results were
- 8 reported;
- 9 • After closing, the mold was fully remediated and a subsequent mold test conducted on
- 10 December 5, 2017 showed the area to be mold-free, as documented in a December 7, 2017
- 11 Infinity Report;
- 12 • The results of the mold test were not provided by Infinity to Defendants because the
- 13 Defendants no longer owned the property and there is no evidence showing that the Defendants
- 14 knew of the results of the mold test on or before the closing date.
- 15
- 16
- 17

18 **V.**

19 **CONCLUSIONS OF LAW**

20 This case centers around the Plaintiffs' claim that the Defendants concealed a February 2017  
21 water leak. Throughout these proceedings, the Defendants have asserted, together with providing  
22 undisputed proof, that the February 2017 water leak was completely repaired by a licensed plumbing  
23 contractor, Rakeman Plumbing. Defendants have always asserted that under *Nelson v. Heer* and NRS  
24 Chapter 113, the repair negated Defendants' duty to disclose.

25 In responding to the Defendants' motion on the Plaintiffs' Second Amended Complaint, the  
26 Plaintiffs did not refute the Defendants' proof that the leak had been repaired. However, rather than  
27 dismiss the action at that time, this Court granted the Plaintiffs' request for discovery to establish facts  
28

1 showing the February 2017 leak was not repaired and that the Defendants knew the leak had not been  
2 repaired, two facts required by *Nelson*.

3 The Defendants cooperated fully with the discovery undertaken by the Plaintiffs. While the  
4 discovery revealed additional facts, none of those additional facts are material to the claims made in  
5 the Plaintiffs' Second Amended Complaint. Rather, the end-result of Plaintiffs' discovery efforts is  
6 that, despite the testimony and the plethora of documents produced, and despite the Plaintiffs' efforts  
7 to cast the evidence in their Supplement as creating genuine issues of material fact, the Plaintiffs' case  
8 still fails as a matter of law.  
9

10 Specifically, through the discovery undertaken and the resulting arguments in Plaintiffs'  
11 Supplemental Brief, Plaintiffs attempted to create a question of fact by asserting that there were "at  
12 least six (6) water losses in a little over two years (April 2015 to November 2017) that [the Defendants]  
13 owned the home." However, the evidence shows that the only relevant "water losses" relate to two  
14 failures in the Uponor plumbing system, one which occurred in February 2017, which the Defendants'  
15 repaired, and one which occurred in November 2017, which the Defendants disclosed prior to the  
16 Plaintiffs' closing on the property.  
17

18 The Plaintiffs have failed to present evidence to establish the one fact that could possibly make  
19 their claims viable: that the February 2017 leak was not repaired. To the contrary, the undisputed facts  
20 establish that the February 2017 leak was repaired, thus abrogating any requirement that it be  
21 disclosed, as fully explained in *Nelson*. The other purported "water losses" complained of by the  
22 Plaintiffs are unrelated to their claims and, further, do not materially affect the value of the property.  
23

24 **A. The Undisputed Evidence Shows that the Allegedly Concealed Leak Was**  
25 **Repaired and that Pursuant to NRS Chapter 113 the Defendants Did Not Conceal**  
26 **the Leak**

27 Plaintiffs lawsuit is predicated on their allegations that the Defendants failed to disclose a  
28

February 16, 2017 water leak in the Uponor plumbing system. The Plaintiffs allege the leak indicated a “systemic” defect “known to the defendants prior to the closing of the transaction.” The Plaintiffs allege that:

Shortly after the closing occurred, the Plaintiffs were made aware of [a] water loss that had occurred at the Subject Property in approximately February of 2017 by the plumbing system manufacturer, Uponor.

The Defendants have always maintained that the February 2017 leak was repaired, and the undisputed evidence shows that indeed it was repaired. The Defendants presented an invoice from Rakeman Plumbing showing that Rakeman repaired the leak in question.

The Rakeman invoice is dated May 23, 2017, thus causing some confusion regarding the date the leak occurred. The documents and testimony, considered in conjunction with one another, clarify any potential confusion.<sup>8</sup> The undisputed evidence shows the following: (1) The Uponor system had two leaks in 2017, one occurring on February 16, 2017 and one occurring on November 7, 2017; (2) the February 16, 2017 leak was completely repaired by Rakeman, and the details of the repair are outlined in the May 23, 2017 Rakeman invoice; and (3) the November 7, 2017 leak was disclosed by the Defendants on November 15, 2017, prior to closing.

The Defendants presented the following testimony showing the leak occurred on February 16, 2017, and that Rakeman repaired that leak:

***Dr. Swanson’s Testimony***

The undisputed evidence shows that early in the case, just prior to the August 2018 mediation, Dr. Swanson recalled a “small pinhole leak” which, to his recollection, occurred in January 2017.

---

<sup>8</sup> The affidavit of Rakeman owner Aaron Hawley, which accompanied the Defendants’ motion for judgment on the Plaintiffs’ Second Amended Complaint, references work done on May 23, 2017. The affidavit was prepared with reference to the May 23, 2017 invoice. The May 23, 2017 document has confused everyone - because there is *no evidence* of a May 23, 2017 leak. However, as discussed herein, the May 23, 2017 date reflects Rakeman’s documentation for seeking payment under the Uponor warranty. The documents and testimony, reviewed together, establish that the leak occurred in February 16, 2017, not May 23, 2017.



1 During his deposition, Dr. Swanson testified that the leak actually occurred in February:

2 Q: So there was another leak in January, 2017?

3 A: No. I think there was a lot of trouble pinning down the date of the February leak,  
4 but the date was February 17<sup>th</sup> or 18<sup>th</sup> or something like that, I think. Or 7<sup>th</sup> or 8<sup>th</sup>.

5 The Defendants' responses to Plaintiffs' interrogatories confirmed the February 16, 2017 date.

6 Dr. Swanson testified in his deposition and when questioned about the May 23, 2017 date on  
7 the Rakeman invoice, cleared up the confusion regarding the date of the leak:  
8

9 Q: [The May 23, 2017 date is] not accurate, is it, Doctor?

10 A: I don't believe so, unless my dates are off. Because I keep seeing this date, but I  
11 think that was the date of the [Rakeman] invoice.

12 Q: Okay. And the actual leak occurred sometime in February of 2017, didn't it Doctor?

13 A: Yeah, to the best of my knowledge.

14 Dr. Swanson also testified as follows:  
15

16 Q: Doctor, were there two leaks in early part of '17? Did it occur in January or February  
17 of 2017 and then there was a subsequent leak in May of 2017.

18 A: No. . . . There was only one leak.

19 Plaintiffs' counsel cleared up the confusion by his own questions:

20 Q: Okay. I — and that's what we don't want to be, is confused about the dates of any  
21 of these leaks occurring. So it's your understanding that the leak occurred somewhere  
22 in the time period of January or February of 2017, correct?

23 A: Yes, I — I saw those dates and I found some documents that were pretty persuasive  
24 that the date was in February, whatever the date was, February 8<sup>th</sup> or whatever.

25 \*\*\*

26 A: All I know is that I kept seeing [the May 23, 2017] date and it didn't make sense,  
27 so I tried to find the correct date. . . . And that's what I came up with.  
28

///

///

***Rakeman Plumbing Testimony***

The Rakeman Plumbing documents and testimony showed that the leak in question occurred in February 2017 and that Rakeman plumbing repaired the leak. The Defendants submitted the affidavit of Aaron Hawley, which establishes that the leak in question was repaired. Clearing up the date “confusion,” Mr. Hawley testified that Rakeman does not always prepare invoices for Rakeman warranty work. According to Mr. Hawley,

if there’s warranty work done behind our new construction, there may not be any papers behind it. It’s not like it’s an invoicable call to where somebody calls up. . . . If this was done under warranty, which I don’t know if it was or wasn’t, there may not be any papers involved.

Mr. Hawley testified that he was very familiar with the 42 Meadowhawk Lane property and that he and his employee, Rocky Gerber, discussed the property on many occasions. Mr. Hawley recalled that there were only two leaks in 2017. He recalled one leak during closing (November) and testified that the other leak occurred in either February or May, but not both.

Rocky Gerber testified that for warranty work covered by the manufacturer, as opposed to work covered under Rakeman’s own warranty, a summary is always prepared “after the fact.” According to Mr. Gerber, a summary to the manufacturer “has to be done after the fact.”<sup>9</sup>

***Uponor Documents***

The Uponor documents are perhaps the most revealing. Uponor records show the “initial claim [was] submitted [by Rakeman Plumbing] to Uponor in February 2017. Uponor documents reference a failure date of February 16, 2017. Uponor sent a check to Rakeman for \$2,496.00 on June 9, 2017 in satisfaction the February 16, 2017 leak. The check and letter reference the \$2,496.00 amount, which

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<sup>9</sup> Consistent with the testimony from Hawley and Gerber, the May 23, 2017 invoice had to be prepared after the fact. Indeed, the attached Rakeman document references April 5, 2017 as “Wanted” and “Promised” which predates the May 23, 2017 invoice date. So, it is impossible that the leak occurred in May.

1 corresponds with the May 23, 2017 Rakeman invoice which was also for \$2,496.00.

2       These documents clearly establish a nexus between the February 16, 2017 “failure date”  
3 documented by Uponor and the Rakeman repair invoice dated May 23, 2017, thereby establishing the  
4 fact that there was only one leak in the first half of 2017, on February 16<sup>th</sup>.  
5

6       ***Nicky Whitfield’s Testimony***

7       At the time Dr. Swanson’s assistant, Nicky Whitfield, began working for Dr. Swanson in  
8 March 2017, Rakeman was in the process of finalizing repairs on the February 16, 2017 leak.  
9 According to Ms. Whitfield’s sworn testimony, “when I started [working for Dr. Swanson] they were  
10 just finishing repairs of the carpet.” Based on this testimony, the repairs could not have been underway  
11 in March if the leak did not occur until May.

12       Viewing the evidence in the light most favorable to the Plaintiffs, it cannot be reasonably  
13 disputed that the first leak in 2017 was in February. Further, the Plaintiff presented no evidence that  
14 more than one leak occurred in the first half of 2017. It cannot be reasonably disputed that the leak  
15 occurring in the first half of 2017, regardless of whether it happened in February or May, was fully  
16 repaired, thus abrogating its disclosure under *Nelson*.  
17

18       This Court finds that the undisputed evidence establishes that the leak which is the subject of  
19 the Plaintiffs’ action occurred on February 16, 2017, not May 23, 2017, which is the date on the  
20 Rakeman invoice.  
21

22       Further, this Court finds that the Rakeman invoice, testimony and Hawley affidavit provide  
23 uncontroverted evidence that the February 16, 2017 leak was completely repaired, thus negating the  
24 Defendants’ duty of disclosure. This Court finds that the Plaintiffs’ allegation the Defendants failed  
25 to disclose a water leak in their October 24, 2017 disclosures is not supported by the evidence and  
26 fails as a matter of law. Thus, summary judgment is warranted under the standards set forth in NRCP  
27 56(a), NRS Chapter 113 and *Nelson v. Heer*.  
28

**B. The Undisputed Evidence Shows that the Plaintiffs Knew About the November 7, 2017 Leak, But Nonetheless Elected to Close**

Plaintiffs Supplement asserted for the first time that Plaintiffs did not know about the November 7, 2017 leak until after the closing. Referencing “Affidavit of Joe Folino and Affidavit of Nicole Folino,” the Plaintiffs’ Supplement asserts they executed the closing documents on November 16, 2017 and “were not notified of any plumbing problems with the Subject Property prior to November 17, 2017.” Plaintiffs’ filed Supplement, however, did not actually include either affidavit.<sup>10</sup>

On February 25, 2020, 12 days after filing their Supplement and 5 days after Defendants’ counsel requested that Plaintiffs provide the affidavits, Plaintiffs’ counsel emailed two un-signed “affidavits,” purportedly made by Joseph Folino and Nicole Folino, to defense counsel. However, the un-signed and unsworn Folino “affidavits” do not support Plaintiffs’ claim that they were unaware of the November 7, 2017 leak prior to closing. Even if they did, under NRCP 56, the “affidavits” are not admissible “facts” for purposes of challenging summary judgment since neither is signed.

The admissible facts, however, refute the Plaintiffs’ claim they did not know about the November 7, 2017 leak before they closed. First, this new allegation *directly* contradicts the allegations in the Plaintiffs’ own pleadings. Plaintiffs asserted the following allegations in their Second Amended Complaint:

24. Prior to the closing of this transaction, the Plaintiffs requested and were given the opportunity to perform their own site inspection of the Subject Property;
25. This pre-closing inspection occurred on or before November 17, 2017;
26. During this inspection, the Plaintiffs uncovered a water leak that was in the process of being repaired by the Defendants;

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<sup>10</sup> The unsigned and unsworn “affidavits” further allege that Defendants requested a lease-back of the property “for the purpose of concealing repairs taking place on a leak that had occurred on or about the first week of 2017.” This contention ignores the undisputed evidence that the lease-back agreement is dated November 6, 2017, which was the day before the November 7, 2017 leak.

1  
2 28. The Plaintiffs' real estate agent, Ashley Lazosky . . . had specific conversations with  
3 the Defendants and the subcontractor hired to make the repairs.

4 These allegations directly contradict the unsupported argument that they did not know about the  
5 November 7, 2017 leak.

6 Second, Plaintiffs' assertion is also contradicted by evidence showing the Defendants  
7 specifically disclosed the leak via Addendum 4-A, emailed to Plaintiffs' agent early in the day, at 8:31  
8 a.m., on November 16, 2017.<sup>11</sup> Addendum 4-A, stated:

9  
10 Seller is disclosing that there was a water leak in the master closet from a water pipe  
11 that broke. The Seller is fully remediating the issue to include new baseboards, carpet,  
etc. and all repair items regarding this leak will be handled prior to closing.

12 The same day, at 1:48 p.m., the parties' agents exchanged texts discussing a \$20,000 hold back  
13 because the buyers "don't want to rely on the plumber and their warranty." This shows that on  
14 November 16, the day prior to closing, the parties' agents were discussing potential remedies for  
15 dealing with the disclosed leak.

16 Again, later that same day, but prior to closing, at 9:00 p.m. on November 16, 2017, the  
17 Plaintiffs' agent, Ashley Oakes-Lazosky, sent a detailed email to Defendants' agent wherein she  
18 acknowledges that "at this point due to the change in circumstances with the last minute issue with  
19 the leak, the buyer's recourse is to walk at this point if they are not comfortable with the  
20 repairs/credits."

21  
22 Finally, Plaintiffs' knowledge of the November 7, 2017 leak is further confirmed by the  
23

24 <sup>11</sup> An agent's knowledge is imputed to the principal. *ARCPE I, LLC v. Paradise Harbor Place Trust*, 2019 Nev. Unpub.  
25 LEXIS 1017, \*2, 448 P.3d 553 (2019); *Strohecker v. Mut. Bldg. & Loan Ass'n of Las Vegas*, 55 Nev. 350, 355, 34 P.2d  
26 1076, 1077 (1934). Under this maxim, the Plaintiffs had at least constructive knowledge of the November 7, 2017 leak.  
27 See e.g. *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196, 214, 252 P.3d 681, 695 (2011).  
28

1 testimony of Nicky Whitfield. Ms. Whitfield testified by affidavit that “[o]n November 16, Mr. &  
2 Mrs. Folino conducted a walk-through of the entire house” and Ms. Whitfield “showed [Ms. Folino]  
3 exactly where the leak had occurred. Ms. Whitfield’s testimony is consistent with the Plaintiffs’ own  
4 allegations and the other evidence.  
5

6 **C. The Plaintiffs’ Election to Close Bars Their Concealment Action**

7  
8 The Plaintiffs’ election to close escrow bars their claims under general waiver principles. *See*  
9 *e.g. Udevco, Inc. v. Wagner*, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984) (discussing elements of  
10 waiver as: (1) voluntary and intentional relinquishment of a known right; and (2) made with  
11 knowledge of all material facts.) Waiver of a known right can be implied by conduct. *Id.* The  
12 Plaintiffs’ conduct shows that they relinquished their rights to refuse to close.

13 NRS 113.150(2) incorporates these waiver principles. Under NRS §113.150(2), the Plaintiffs’  
14 options were to either “rescind the agreement to purchase the property at any time before the  
15 conveyance of the property to the purchaser; or close escrow and accept the property with the defect  
16 as revealed by the seller or the seller’s agent without further recourse.”  
17

18 The evidence is undisputed that prior to closing, the Defendants provided notice to the  
19 Plaintiffs regarding the November 2017 Uponor system leak. The evidence is undisputed that the  
20 Plaintiffs’ agent sent a detailed email to Defendants’ agent acknowledging that the Plaintiffs’ recourse  
21 was to elect to not close. The evidence is undisputed that with knowledge of all the material facts,  
22 Plaintiffs relinquished their right to walk by closing on the property on November 17, 2017.  
23

24 This Court finds that the Plaintiffs’ election to close escrow bars “further recourse,” as a matter  
25 of law.

26 ///

27 ///

**D. The 2015 “Water Losses” are Unrelated to the Plaintiffs’ Allegations that the Defendants Failed to Disclose a Systemic Plumbing Defect**

For the first time in their Supplement, Plaintiffs assert that Defendants wrongfully failed to disclose “water losses” that occurred in 2015. But the Plaintiffs failed to present any evidence showing that the 2015 leaks have anything to do with the Uponor plumbing system, which is the basis of their Second Amended Complaint. In contrast, the undisputed evidence shows that these issues have nothing to do with the Uponor system. Rocky Gerber of Rakeman Plumbing testified that the recirculating pumps and the Uponor piping system are two different systems.

The parties do not dispute that construction of the 42 Meadowhawk property was completed in April 2015. Shortly thereafter, on May 11, 2015, Defendants contracted for a post-construction Home Inspection Report. The evidence shows that Dr. Swanson made notes on the report as the items in the report were repaired, to document the progress of the repairs,<sup>12</sup> rather than to conceal a defect.

Dr. Swanson testified:

Q. What was the reason why you had this report prepared?

A. Because the house was essentially finished being built. I had moved in already, and I wanted to make sure that there were no issues or problems that Blue Heron hadn't finished or there were no problems with their construction.

This Court finds that the Plaintiffs’ failed to present any facts that the 2015 leaks are in any way related to their claims that the Defendants concealed a water leak indicative of a “systemic defect” in the plumbing system, as alleged in their Second Amended Complaint and as such, cannot defeat summary judgment.

///

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<sup>12</sup> The notes are admissible as “present sense impressions” and thus are not hearsay under NRS 51.085. NRS 51.085 provides that a “present sense impression” is “[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not inadmissible under the hearsay rule.”

**E. The Plaintiffs' Fraud Claim is Derivative of Plaintiffs' Concealment Claim and Fails by Operation of Law**

This Court also finds that the Plaintiffs' fraud claim fails as a matter of law. The Plaintiffs' Second Amended Complaint alleges one wrong: Defendants' failure to disclose a February 2017 water leak, which purportedly concealed a systemic plumbing defect. The Plaintiffs fraud claim is derivative of their NRS Chapter 113 concealment claim.<sup>13</sup>

Because this court finds that summary judgment is warranted regarding the Plaintiffs concealment claim, the Plaintiffs' fraud claim fails as a matter of law.

**VI.**

**ORDER**

Pursuant to the findings of fact and conclusions of law detailed herein, this Court finds that summary judgment is warranted regarding the Plaintiffs' Second Amended Complaint because the Plaintiffs failed to present facts showing disputed issues of material fact which preclude summary judgment under NRCP 56.

The evidence shows that the Defendants' purported concealment relates to a February 16, 2017 water leak and that the leak was completely repaired by licensed plumbing contractor, Rakeman Plumbing. The evidence shows that under *Nelson v. Heer* and NRS §113.130 & 140, the repair and Defendants' knowledge of the repair negated the Defendants' duty to disclose the leak in the October 24, 2017 Sellers Real Property Disclosure Form. Further, the undisputed evidence shows the Plaintiffs knew about the November 2017 leak, but nonetheless elected to close on the property. The Plaintiffs' election to close bars further recourse under NRS §113.150(2).

---

<sup>13</sup> NRS Chapter 113 provides plaintiffs with a statutory remedy to redress a seller's failure to disclose a defect or condition in a real estate transaction. The statute preempts the Plaintiffs' fraud claim. *See Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000), *citing Casa Clara v. Charley Toppino and Sons*, 620 So.2d 1244, 1247 (Fla 1993) (noting that home buyers are protected by "statutory remedies, the general warranty of habitability and the duty of sellers to disclose defects, as well as the ability of purchasers to inspect houses for defects.")



1 Accordingly, this Court hereby GRANTS the Defendants' motion regarding Plaintiffs' Second  
2 Amended Complaint, and ORDERS that the Plaintiffs' Second Amended Complaint is hereby  
3 DISMISSED, with prejudice.

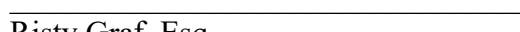
4 DATED this 11th day of May 2020.

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8 Hon. Jim Crockett  
District Court Judge

9  
10 Respectfully submitted by:

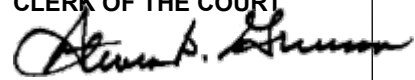
11 */s/ Jeffrey L. Galliher*  
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15 Las Vegas, Nevada 89104  
16 Attorney for Defendants

17 Approved as to form and content:

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the above-entitled Court entered its Order on the 11<sup>th</sup>  
day of May, 2020.

1 A copy of said Order is attached hereto.

2  
3 Dated this 13<sup>th</sup> day of May 2020.

4  
5  
6 GALLIHER LEGAL P.C.

7 /s/ Jeffrey L. Galliher  
8 Jeffrey Galliher, Esq.  
9 Nevada Bar No. 8078  
10 1850 E. Sahara Ave., Suite 107  
11 Las Vegas, NV 89104

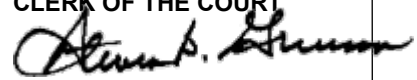
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**CERTIFICATE OF E-SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and N.E.F.C.R. 9, I hereby certify that on the 13<sup>th</sup> of May I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically e-served on counsel as follows:

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*Attorneys for Defendants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**I.**

**PREAMBLE**

On April 7, 2020, this Court held a hearing to address the Defendants' Motion to Dismiss

|                                     |                              |                          |                                  |
|-------------------------------------|------------------------------|--------------------------|----------------------------------|
| <input type="checkbox"/>            | Voluntary Dismissal          | <input type="checkbox"/> | Summary Judgment                 |
| <input type="checkbox"/>            | Involuntary Dismissal        | <input type="checkbox"/> | Stipulated Judgment <sup>1</sup> |
| <input type="checkbox"/>            | Stipulated Dismissal         | <input type="checkbox"/> | Default Judgment                 |
| <input checked="" type="checkbox"/> | Motion to Dismiss by Deft(s) | <input type="checkbox"/> | Judgment of Arbitration          |

1 Plaintiffs' Second Amended Complaint, which Defendants filed on September 24, 2019.<sup>1</sup> Rusty J.  
2 Graf, Esq. appeared on behalf of the Plaintiffs; Jeffrey L. Galliher, Esq. and Jay T. Hopkins, Esq.  
3 appeared on behalf of the Defendants.<sup>2</sup>

4 This Court considered the parties' motions and supplements, together with the exhibits and  
5 arguments of counsel. Viewing the evidence in the light most favorable to the Plaintiffs, this Court  
6 finds that the Plaintiffs failed to establish the existence of any genuine dispute as to a material issue  
7 of fact to preclude summary judgment. Accordingly, this Court makes the following Findings of Fact  
8 and Conclusions of Law under the standards set forth below.

## 10 II.

### 11 PROCEDURAL HISTORY

12 This is a case involving the purchase and sale of a \$3,000,000 luxury home located at 42  
13 Meadowhawk Lane in Las Vegas, Nevada. The dispute emanates from an October 27, 2017  
14 Residential Purchase Agreement in which the Plaintiffs were the Buyers and Lyons Development,  
15 LLC was the Seller. The gist of the Plaintiffs' lawsuit is that "the Defendants" concealed a water leak  
16 in the plumbing system.

#### 18 *Plaintiffs' Complaint*

19 On October 19, 2018, the Plaintiffs filed their initial Complaint seeking damages for  
20 Defendants' alleged concealment of a February 2017 water leak which Plaintiffs alleged indicated a  
21 "systemic defect" in the plumbing system. The Plaintiffs asserted six causes of action for: (1)  
22 Fraud/Intentional Misrepresentation; (2) Negligent Misrepresentation; (3) Violation of NRS 598.010  
23

---

25 <sup>1</sup> While the Defendants styled their instant motion as a motion to dismiss, Defendants acknowledged in their motion that  
26 because the motion and supplements referenced and attached documents outside the pleadings, this Court must invoke the  
summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

27 <sup>2</sup> The parties named the following parties: Plaintiffs, Nicole and Joseph Folino (hereinafter the "Plaintiffs" or the  
28 "Folinos"); and Defendants: Dr. Todd Swanson, an individual; Todd Swanson, Trustee of the Shiraz Trust; Shiraz Trust;  
and Lyons Development, LLC (hereinafter "Defendants" or "Dr. Swanson.").

et seq. (Deceptive Trade Practices); (4) Violation of NRS 113.100 et seq. (Failure to Disclose Known Defects); (5) Civil RICO; and (6) Respondeat Superior.<sup>3</sup>

***Defendants' February 4, 2019 Motion to Dismiss***

On February 4, 2019, the Defendants moved to dismiss the Plaintiffs' Complaint pursuant to NRCP 12(b)(5). At the April 8, 2019 hearing, the Court did not rule on the substance of the Defendants' motion but granted the Plaintiffs' request for leave to amend to cure the pleading deficiencies.

***Plaintiffs' First Amended Complaint***

On April 18, 2019, the Plaintiffs filed their First Amended Complaint, asserting the same claims as in the initial Complaint. The Plaintiffs also asserted a Seventh Cause of Action for Piercing the Corporate Veil/Alter Ego.

***Defendants' May 20, 2019 Motion to Dismiss***

On May 20, 2019, the Defendants moved to dismiss the Plaintiffs' First Amended Complaint, seeking dismissal of each of the Plaintiffs' seven claims. On July 18, 2019, this Court held a hearing on Defendants' Motion to Dismiss. At the hearing, the Court dismissed the Plaintiffs Negligent Misrepresentation, Deceptive Trade Practices, Civil RICO; Respondeat Superior and Piercing the Corporate Veil claims. The Court ruled the Plaintiffs' fraud or NRS Chapter 113 concealment claims survived and ordered the Plaintiffs to file a Second Amended Complaint.

***Plaintiffs' Second Amended Complaint***

On September 4, 2019, the Plaintiffs filed their Second Amended Complaint, alleging concealment in violation of NRS 113 *et seq.* and fraud/intentional misrepresentation. The Plaintiffs

---

<sup>3</sup> The Plaintiffs attached several documents to their Complaint, First Amended Complaint and Second Amended Complaint which, under NRCP 12(b)(5)'s standards, are incorporated into the pleadings. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

1 also sought punitive damages.

2 ***Defendants' September 24, 2019 Motion to Dismiss***

3 Defendants moved for dismissal/summary judgment on September 24, 2019. Defendants  
4 provided evidence in the form of an affidavit from the licensed plumbing company that the February  
5 2017 leak had been repaired, thus negating the Defendants duty to disclose under NRS Chapter 113  
6 and *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007).  
7

8 In their Opposition, the Plaintiffs did not present any facts to rebut the Defendants' evidence  
9 that the February 2017 leak had been repaired, but instead sought sanctions for Defendants filing the  
10 motion.

11 At the November 7, 2019 hearing, because the Plaintiffs failed to rebut the facts in the  
12 Defendants' motion, this Court stated its inclination to grant the Defendants' motion. Instead, to  
13 permit the Plaintiffs to fully present their case, this Court gave Plaintiffs 90 days to conduct discovery  
14 and permitted the Plaintiffs to file a supplemental brief demonstrating a genuine issue of material fact.  
15 Defendants were also permitted to file a supplemental brief in response to the Plaintiffs' supplement.  
16

17 ***The Plaintiffs' Discovery***

18 Between November 7, 2019 and February 13, 2020, the Plaintiffs conducted extensive  
19 discovery, which included serving numerous subpoenas for documents, serving interrogatories,  
20 requests for production of documents and requests for admissions. Plaintiffs took the depositions of  
21 six witnesses.<sup>4</sup> The Defendants produced nearly 1000 pages of documents as supplemental disclosures  
22 and responses to the Plaintiffs' interrogatories and requests for production. The Plaintiffs also  
23 produced over 5000 pages of documents.  
24

25  
26  
27 <sup>4</sup> The Plaintiffs deposed Rakeman principal Aaron Hawley and employee William "Rocky" Gerber, Dr. Swanson (two  
28 separate depositions), Dr. Swanson's assistant Nicky Whitfield, and Defendants'/Sellers' real estate agents, Ivan Sher and  
Kelly Contenda.



On February 13, 2020, the Plaintiffs filed their Supplemental Brief. On February 27, 2020, the Defendants filed their Supplemental Reply in Support of Motion for Summary Judgment. Each party attached voluminous exhibits.

On April 7, 2020, this Court held a hearing regarding the Defendants' motion, and makes the following findings of fact and conclusions of law.

### III.

#### LEGAL STANDARDS

The following legal standards are applicable to this case:

##### **A. Summary Judgment Standards**

Because the parties presented matters outside the pleadings, this Court treats the Defendants' motion "as one for summary judgment and disposed of as provided in Rule 56." *See* NRCP 12(c) and *Kopicko*, 114 Nev. at 1336, 971 P.2d at 790 (1998).

Since *Wood v. Safeway*,<sup>5</sup> the Nevada Supreme Court has followed a gradual trend toward favoring summary judgment as a "valuable tool to weed out meritless cases [which is] no longer a 'disfavored procedural shortcut.'" *Boesiger v. Desert Appraisals, LLC*, 444 P.3d 436, 438-439, 2019 Nev. LEXIS 39, \*4-5 (July 3, 2019) ("[s]ummary judgment is an important procedural tool by which factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources"). *See also Wood*, 121 Nev. at 730, 121 P.3d at 1030 (summary judgment "is an integral part of the [rules of civil procedure] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.")

"Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact

---

<sup>5</sup> *Wood v. Safeway*, 121 Nev. 724, 727, 121 P.3d 1026, 1028 (2005).

remains in dispute and that the moving party is entitled to judgment as a matter of law.” *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 117, 134 Nev. Adv. Rep. 72 (September 13, 2018). “A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party.” *Id.*

**B. NRS Chapter 113 Standards Regarding Pre-Closing Disclosures in Real Estate Transactions**

Plaintiffs’ claims are premised on the Defendants’ purported failure to disclose a February 16, 2017 water leak which, according to the Plaintiffs, was indicative of a systemic plumbing defect. The Plaintiffs’ claims are based on violation of NRS Chapter 113.

NRS §113.140 provides:

Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS §113.130 does not require a seller to disclose a defect in residential property of which the seller is not aware.
2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.
3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself.

In *Nelson v. Heer*, the Nevada Supreme Court defined a seller’s disclosure obligations under NRS 113.130 and NRS 113.140. The Nevada Supreme Court ruled that repairing damage negates a seller’s duty to disclose damage because repaired damage “no longer constitute[s] a condition that materially lessen[s] the value of the property.” *Nelson*, 123 Nev. at 224, 163 P.3d at 425. *Id.* According to the Court, “the seller of residential real property does not have a duty to disclose a defect or condition that ‘materially affects the value or use of residential property in an adverse manner,’ if the seller does not realize, perceive, or have knowledge of that defect or condition.”<sup>6</sup>

---

<sup>6</sup> Further, pursuant to statute, recovery is completely barred “on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:… (b) A contractor, engineer, land

1 NRS §113.150(2) provides:

2 Remedies for seller's delayed disclosure or nondisclosure of defects in property;  
3 waiver.

4 2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent  
5 informs the purchaser or the purchaser's agent, through the disclosure form or another written  
6 notice, of a defect in the property of which the cost of repair or replacement was not limited  
7 by provisions in the agreement to purchase the property, the purchaser may:

8 (a) Rescind the agreement to purchase the property at any time before the conveyance  
9 of the property to the purchaser; or

10 (b) Close escrow and accept the property with the defect as revealed by the seller or  
11 the seller's agent without further recourse.

#### 12 IV.

#### 13 SUMMARY OF FINDINGS OF FACT

14 The Court finds the following facts are undisputed and supported by the evidence presented  
15 by the parties:

- 16 • In 2015, Rakeman Plumbing installed the plumbing system manufactured by Uponor at  
17 property located at 42 Meadowhawk Lane, Las Vegas, Nevada.
- 18 • The 42 Meadowhawk Lane property is the subject of the Plaintiffs' lawsuit.
- 19 • There was a leak in the Uponor plumbing system on February 16, 2017;
- 20 • Plaintiffs' action is premised on the Defendants' failure to disclose the February 16, 2017 leak;
- 21 • A licensed plumbing contractor, Rakeman Plumbing, completely repaired the February 16,  
22 2017 leak;<sup>7</sup>
- 23 • Because Rakeman repaired the February 16, 2017 leak, Defendants did not disclose it on the  
24

25 \_\_\_\_\_  
26 surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that  
27 profession in this State at the time the information was provided." NRS 113.150(5).

28 <sup>7</sup> The Court notes that the Rakeman invoice relating to the February 2017 leak has a May 23, 2017 date. However, the  
undisputed evidence shows that the invoice was created after the fact when Rakeman submitted its warranty claim to  
Uponor. The evidence is undisputed that invoice with the May 23, 2017 date is for the February 16, 2017 leak and  
documents that Rakeman completely repaired that leak.

October 24, 2017 Sellers' Real Property Disclosure form;

- There was a second leak in the Uponor system on November 7, 2017 during the escrow period of the sale;
- On November 15, 2017, prior to the November 17, 2017 closing date, Defendants disclosed the leak in an addendum;
- Defendants' agent emailed the disclosure to Plaintiffs' agent on November 16, 2017;
- Plaintiffs did a walk-through before closing and knew about the November 7, 2017 leak;
- With knowledge of the November 7, 2017 leak, the Plaintiffs' agent emailed Defendants' agent with proposed options, including an acknowledgment that Plaintiffs could walk away and elect to terminate the contract and not close on the property;
- With knowledge of the November 7, 2017 leak, the Plaintiffs elected to close on the property on November 17, 2017;
- In 2015, an inspection revealed that two recirculating pumps were leaking and the recirculating pumps were replaced. The recirculating pumps failure occurred in a different area of the residence than the February 2017 and November 2017 leaks, and are not related to the claims in Plaintiffs' Second Amended Complaint;
- The same inspection showed a plumbing leak above the ceiling of the basement bathroom, which the report also described as a "drip." The leak/drip occurred in a different area of the residence than the February 2017 and November 2017 leaks, and are not related to the claims in Plaintiffs' Second Amended Complaint. Neither Rakeman nor the Defendants could identify a source of the drip, and there is no evidence that the leak/drip persisted after the date of the report, May 11, 2015;
- On November 17, 2017, the day of the closing, Infinity Environmental Services conducted

1 mold tests at the property;

- 2 • Infinity tested for possible fungal levels in the master bathroom and master closet, which is the
- 3 area where the February 2017 and November 7, 2017 leaks occurred;
- 4 • Infinity provided results of their mold testing on November 24, 2017, seven (7) days after the
- 5 Plaintiffs closed on the property;
- 6 • Plaintiffs knew Infinity was conducting the tests on November 17, 2017.
- 7 • Plaintiffs closed on the property on November 17, 2017 before the Infinity results were
- 8 reported;
- 9 • After closing, the mold was fully remediated and a subsequent mold test conducted on
- 10 December 5, 2017 showed the area to be mold-free, as documented in a December 7, 2017
- 11 Infinity Report;
- 12 • The results of the mold test were not provided by Infinity to Defendants because the
- 13 Defendants no longer owned the property and there is no evidence showing that the Defendants
- 14 knew of the results of the mold test on or before the closing date.
- 15
- 16
- 17

18 **V.**

19 **CONCLUSIONS OF LAW**

20 This case centers around the Plaintiffs' claim that the Defendants concealed a February 2017  
21 water leak. Throughout these proceedings, the Defendants have asserted, together with providing  
22 undisputed proof, that the February 2017 water leak was completely repaired by a licensed plumbing  
23 contractor, Rakeman Plumbing. Defendants have always asserted that under *Nelson v. Heer* and NRS  
24 Chapter 113, the repair negated Defendants' duty to disclose.

25 In responding to the Defendants' motion on the Plaintiffs' Second Amended Complaint, the  
26 Plaintiffs did not refute the Defendants' proof that the leak had been repaired. However, rather than  
27 dismiss the action at that time, this Court granted the Plaintiffs' request for discovery to establish facts  
28

1 showing the February 2017 leak was not repaired and that the Defendants knew the leak had not been  
2 repaired, two facts required by *Nelson*.

3 The Defendants cooperated fully with the discovery undertaken by the Plaintiffs. While the  
4 discovery revealed additional facts, none of those additional facts are material to the claims made in  
5 the Plaintiffs' Second Amended Complaint. Rather, the end-result of Plaintiffs' discovery efforts is  
6 that, despite the testimony and the plethora of documents produced, and despite the Plaintiffs' efforts  
7 to cast the evidence in their Supplement as creating genuine issues of material fact, the Plaintiffs' case  
8 still fails as a matter of law.  
9

10 Specifically, through the discovery undertaken and the resulting arguments in Plaintiffs'  
11 Supplemental Brief, Plaintiffs attempted to create a question of fact by asserting that there were "at  
12 least six (6) water losses in a little over two years (April 2015 to November 2017) that [the Defendants]  
13 owned the home." However, the evidence shows that the only relevant "water losses" relate to two  
14 failures in the Uponor plumbing system, one which occurred in February 2017, which the Defendants'  
15 repaired, and one which occurred in November 2017, which the Defendants disclosed prior to the  
16 Plaintiffs' closing on the property.  
17

18 The Plaintiffs have failed to present evidence to establish the one fact that could possibly make  
19 their claims viable: that the February 2017 leak was not repaired. To the contrary, the undisputed facts  
20 establish that the February 2017 leak was repaired, thus abrogating any requirement that it be  
21 disclosed, as fully explained in *Nelson*. The other purported "water losses" complained of by the  
22 Plaintiffs are unrelated to their claims and, further, do not materially affect the value of the property.  
23

24 **A. The Undisputed Evidence Shows that the Allegedly Concealed Leak Was**  
25 **Repaired and that Pursuant to NRS Chapter 113 the Defendants Did Not Conceal**  
26 **the Leak**

27 Plaintiffs lawsuit is predicated on their allegations that the Defendants failed to disclose a  
28

February 16, 2017 water leak in the Uponor plumbing system. The Plaintiffs allege the leak indicated a “systemic” defect “known to the defendants prior to the closing of the transaction.” The Plaintiffs allege that:

Shortly after the closing occurred, the Plaintiffs were made aware of [a] water loss that had occurred at the Subject Property in approximately February of 2017 by the plumbing system manufacturer, Uponor.

The Defendants have always maintained that the February 2017 leak was repaired, and the undisputed evidence shows that indeed it was repaired. The Defendants presented an invoice from Rakeman Plumbing showing that Rakeman repaired the leak in question.

The Rakeman invoice is dated May 23, 2017, thus causing some confusion regarding the date the leak occurred. The documents and testimony, considered in conjunction with one another, clarify any potential confusion.<sup>8</sup> The undisputed evidence shows the following: (1) The Uponor system had two leaks in 2017, one occurring on February 16, 2017 and one occurring on November 7, 2017; (2) the February 16, 2017 leak was completely repaired by Rakeman, and the details of the repair are outlined in the May 23, 2017 Rakeman invoice; and (3) the November 7, 2017 leak was disclosed by the Defendants on November 15, 2017, prior to closing.

The Defendants presented the following testimony showing the leak occurred on February 16, 2017, and that Rakeman repaired that leak:

***Dr. Swanson’s Testimony***

The undisputed evidence shows that early in the case, just prior to the August 2018 mediation, Dr. Swanson recalled a “small pinhole leak” which, to his recollection, occurred in January 2017.

---

<sup>8</sup> The affidavit of Rakeman owner Aaron Hawley, which accompanied the Defendants’ motion for judgment on the Plaintiffs’ Second Amended Complaint, references work done on May 23, 2017. The affidavit was prepared with reference to the May 23, 2017 invoice. The May 23, 2017 document has confused everyone - because there is *no evidence* of a May 23, 2017 leak. However, as discussed herein, the May 23, 2017 date reflects Rakeman’s documentation for seeking payment under the Uponor warranty. The documents and testimony, reviewed together, establish that the leak occurred in February 16, 2017, not May 23, 2017.

1 During his deposition, Dr. Swanson testified that the leak actually occurred in February:

2 Q: So there was another leak in January, 2017?

3 A: No. I think there was a lot of trouble pinning down the date of the February leak,  
4 but the date was February 17<sup>th</sup> or 18<sup>th</sup> or something like that, I think. Or 7<sup>th</sup> or 8<sup>th</sup>.

5 The Defendants' responses to Plaintiffs' interrogatories confirmed the February 16, 2017 date.

6 Dr. Swanson testified in his deposition and when questioned about the May 23, 2017 date on  
7 the Rakeman invoice, cleared up the confusion regarding the date of the leak:  
8

9 Q: [The May 23, 2017 date is] not accurate, is it, Doctor?

10 A: I don't believe so, unless my dates are off. Because I keep seeing this date, but I  
11 think that was the date of the [Rakeman] invoice.

12 Q: Okay. And the actual leak occurred sometime in February of 2017, didn't it Doctor?

13 A: Yeah, to the best of my knowledge.

14 Dr. Swanson also testified as follows:  
15

16 Q: Doctor, were there two leaks in early part of '17? Did it occur in January or February  
17 of 2017 and then there was a subsequent leak in May of 2017.

18 A: No. . . . There was only one leak.

19 Plaintiffs' counsel cleared up the confusion by his own questions:

20 Q: Okay. I — and that's what we don't want to be, is confused about the dates of any  
21 of these leaks occurring. So it's your understanding that the leak occurred somewhere  
22 in the time period of January or February of 2017, correct?

23 A: Yes, I — I saw those dates and I found some documents that were pretty persuasive  
24 that the date was in February, whatever the date was, February 8<sup>th</sup> or whatever.

25 \*\*\*

26 A: All I know is that I kept seeing [the May 23, 2017] date and it didn't make sense,  
27 so I tried to find the correct date. . . . And that's what I came up with.  
28

///

///



***Rakeman Plumbing Testimony***

The Rakeman Plumbing documents and testimony showed that the leak in question occurred in February 2017 and that Rakeman plumbing repaired the leak. The Defendants submitted the affidavit of Aaron Hawley, which establishes that the leak in question was repaired. Clearing up the date “confusion,” Mr. Hawley testified that Rakeman does not always prepare invoices for Rakeman warranty work. According to Mr. Hawley,

if there’s warranty work done behind our new construction, there may not be any papers behind it. It’s not like it’s an invoicable call to where somebody calls up. . . . If this was done under warranty, which I don’t know if it was or wasn’t, there may not be any papers involved.

Mr. Hawley testified that he was very familiar with the 42 Meadowhawk Lane property and that he and his employee, Rocky Gerber, discussed the property on many occasions. Mr. Hawley recalled that there were only two leaks in 2017. He recalled one leak during closing (November) and testified that the other leak occurred in either February or May, but not both.

Rocky Gerber testified that for warranty work covered by the manufacturer, as opposed to work covered under Rakeman’s own warranty, a summary is always prepared “after the fact.” According to Mr. Gerber, a summary to the manufacturer “has to be done after the fact.”<sup>9</sup>

***Uponor Documents***

The Uponor documents are perhaps the most revealing. Uponor records show the “initial claim [was] submitted [by Rakeman Plumbing] to Uponor in February 2017. Uponor documents reference a failure date of February 16, 2017. Uponor sent a check to Rakeman for \$2,496.00 on June 9, 2017 in satisfaction the February 16, 2017 leak. The check and letter reference the \$2,496.00 amount, which

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<sup>9</sup> Consistent with the testimony from Hawley and Gerber, the May 23, 2017 invoice had to be prepared after the fact. Indeed, the attached Rakeman document references April 5, 2017 as “Wanted” and “Promised” which predates the May 23, 2017 invoice date. So, it is impossible that the leak occurred in May.

1 corresponds with the May 23, 2017 Rakeman invoice which was also for \$2,496.00.

2       These documents clearly establish a nexus between the February 16, 2017 “failure date”  
3 documented by Uponor and the Rakeman repair invoice dated May 23, 2017, thereby establishing the  
4 fact that there was only one leak in the first half of 2017, on February 16<sup>th</sup>.

5       ***Nicky Whitfield’s Testimony***

6       At the time Dr. Swanson’s assistant, Nicky Whitfield, began working for Dr. Swanson in  
7 March 2017, Rakeman was in the process of finalizing repairs on the February 16, 2017 leak.  
8 According to Ms. Whitfield’s sworn testimony, “when I started [working for Dr. Swanson] they were  
9 just finishing repairs of the carpet.” Based on this testimony, the repairs could not have been underway  
10 in March if the leak did not occur until May.

11       Viewing the evidence in the light most favorable to the Plaintiffs, it cannot be reasonably  
12 disputed that the first leak in 2017 was in February. Further, the Plaintiff presented no evidence that  
13 more than one leak occurred in the first half of 2017. It cannot be reasonably disputed that the leak  
14 occurring in the first half of 2017, regardless of whether it happened in February or May, was fully  
15 repaired, thus abrogating its disclosure under *Nelson*.

16       This Court finds that the undisputed evidence establishes that the leak which is the subject of  
17 the Plaintiffs’ action occurred on February 16, 2017, not May 23, 2017, which is the date on the  
18 Rakeman invoice.

19       Further, this Court finds that the Rakeman invoice, testimony and Hawley affidavit provide  
20 uncontroverted evidence that the February 16, 2017 leak was completely repaired, thus negating the  
21 Defendants’ duty of disclosure. This Court finds that the Plaintiffs’ allegation the Defendants failed  
22 to disclose a water leak in their October 24, 2017 disclosures is not supported by the evidence and  
23 fails as a matter of law. Thus, summary judgment is warranted under the standards set forth in NRCP  
24 56(a), NRS Chapter 113 and *Nelson v. Heer*.

**B. The Undisputed Evidence Shows that the Plaintiffs Knew About the November 7, 2017 Leak, But Nonetheless Elected to Close**

Plaintiffs Supplement asserted for the first time that Plaintiffs did not know about the November 7, 2017 leak until after the closing. Referencing “Affidavit of Joe Folino and Affidavit of Nicole Folino,” the Plaintiffs’ Supplement asserts they executed the closing documents on November 16, 2017 and “were not notified of any plumbing problems with the Subject Property prior to November 17, 2017.” Plaintiffs’ filed Supplement, however, did not actually include either affidavit.<sup>10</sup>

On February 25, 2020, 12 days after filing their Supplement and 5 days after Defendants’ counsel requested that Plaintiffs provide the affidavits, Plaintiffs’ counsel emailed two un-signed “affidavits,” purportedly made by Joseph Folino and Nicole Folino, to defense counsel. However, the un-signed and unsworn Folino “affidavits” do not support Plaintiffs’ claim that they were unaware of the November 7, 2017 leak prior to closing. Even if they did, under NRCP 56, the “affidavits” are not admissible “facts” for purposes of challenging summary judgment since neither is signed.

The admissible facts, however, refute the Plaintiffs’ claim they did not know about the November 7, 2017 leak before they closed. First, this new allegation *directly* contradicts the allegations in the Plaintiffs’ own pleadings. Plaintiffs asserted the following allegations in their Second Amended Complaint:

24. Prior to the closing of this transaction, the Plaintiffs requested and were given the opportunity to perform their own site inspection of the Subject Property;
25. This pre-closing inspection occurred on or before November 17, 2017;
26. During this inspection, the Plaintiffs uncovered a water leak that was in the process of being repaired by the Defendants;

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<sup>10</sup> The unsigned and unsworn “affidavits” further allege that Defendants requested a lease-back of the property “for the purpose of concealing repairs taking place on a leak that had occurred on or about the first week of 2017.” This contention ignores the undisputed evidence that the lease-back agreement is dated November 6, 2017, which was the day before the November 7, 2017 leak.

1  
2 28. The Plaintiffs' real estate agent, Ashley Lazosky . . . had specific conversations with  
3 the Defendants and the subcontractor hired to make the repairs.

4 These allegations directly contradict the unsupported argument that they did not know about the  
5 November 7, 2017 leak.

6 Second, Plaintiffs' assertion is also contradicted by evidence showing the Defendants  
7 specifically disclosed the leak via Addendum 4-A, emailed to Plaintiffs' agent early in the day, at 8:31  
8 a.m., on November 16, 2017.<sup>11</sup> Addendum 4-A, stated:

9  
10 Seller is disclosing that there was a water leak in the master closet from a water pipe  
11 that broke. The Seller is fully remediating the issue to include new baseboards, carpet,  
etc. and all repair items regarding this leak will be handled prior to closing.

12 The same day, at 1:48 p.m., the parties' agents exchanged texts discussing a \$20,000 hold back  
13 because the buyers "don't want to rely on the plumber and their warranty." This shows that on  
14 November 16, the day prior to closing, the parties' agents were discussing potential remedies for  
15 dealing with the disclosed leak.

16 Again, later that same day, but prior to closing, at 9:00 p.m. on November 16, 2017, the  
17 Plaintiffs' agent, Ashley Oakes-Lazosky, sent a detailed email to Defendants' agent wherein she  
18 acknowledges that "at this point due to the change in circumstances with the last minute issue with  
19 the leak, the buyer's recourse is to walk at this point if they are not comfortable with the  
20 repairs/credits."

21  
22 Finally, Plaintiffs' knowledge of the November 7, 2017 leak is further confirmed by the  
23

24 <sup>11</sup> An agent's knowledge is imputed to the principal. *ARCPE I, LLC v. Paradise Harbor Place Trust*, 2019 Nev. Unpub.  
25 LEXIS 1017, \*2, 448 P.3d 553 (2019); *Strohecker v. Mut. Bldg. & Loan Ass'n of Las Vegas*, 55 Nev. 350, 355, 34 P.2d  
26 1076, 1077 (1934). Under this maxim, the Plaintiffs had at least constructive knowledge of the November 7, 2017 leak.  
27 See e.g. *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196, 214, 252 P.3d 681, 695 (2011).  
28

1 testimony of Nicky Whitfield. Ms. Whitfield testified by affidavit that “[o]n November 16, Mr. &  
2 Mrs. Folino conducted a walk-through of the entire house” and Ms. Whitfield “showed [Ms. Folino]  
3 exactly where the leak had occurred. Ms. Whitfield’s testimony is consistent with the Plaintiffs’ own  
4 allegations and the other evidence.  
5

6 **C. The Plaintiffs’ Election to Close Bars Their Concealment Action**

7  
8 The Plaintiffs’ election to close escrow bars their claims under general waiver principles. *See*  
9 *e.g. Udevco, Inc. v. Wagner*, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984) (discussing elements of  
10 waiver as: (1) voluntary and intentional relinquishment of a known right; and (2) made with  
11 knowledge of all material facts.) Waiver of a known right can be implied by conduct. *Id.* The  
12 Plaintiffs’ conduct shows that they relinquished their rights to refuse to close.

13 NRS 113.150(2) incorporates these waiver principles. Under NRS §113.150(2), the Plaintiffs’  
14 options were to either “rescind the agreement to purchase the property at any time before the  
15 conveyance of the property to the purchaser; or close escrow and accept the property with the defect  
16 as revealed by the seller or the seller’s agent without further recourse.”  
17

18 The evidence is undisputed that prior to closing, the Defendants provided notice to the  
19 Plaintiffs regarding the November 2017 Uponor system leak. The evidence is undisputed that the  
20 Plaintiffs’ agent sent a detailed email to Defendants’ agent acknowledging that the Plaintiffs’ recourse  
21 was to elect to not close. The evidence is undisputed that with knowledge of all the material facts,  
22 Plaintiffs relinquished their right to walk by closing on the property on November 17, 2017.  
23

24 This Court finds that the Plaintiffs’ election to close escrow bars “further recourse,” as a matter  
25 of law.

26 ///

27 ///

**D. The 2015 “Water Losses” are Unrelated to the Plaintiffs’ Allegations that the Defendants Failed to Disclose a Systemic Plumbing Defect**

For the first time in their Supplement, Plaintiffs assert that Defendants wrongfully failed to disclose “water losses” that occurred in 2015. But the Plaintiffs failed to present any evidence showing that the 2015 leaks have anything to do with the Uponor plumbing system, which is the basis of their Second Amended Complaint. In contrast, the undisputed evidence shows that these issues have nothing to do with the Uponor system. Rocky Gerber of Rakeman Plumbing testified that the recirculating pumps and the Uponor piping system are two different systems.

The parties do not dispute that construction of the 42 Meadowhawk property was completed in April 2015. Shortly thereafter, on May 11, 2015, Defendants contracted for a post-construction Home Inspection Report. The evidence shows that Dr. Swanson made notes on the report as the items in the report were repaired, to document the progress of the repairs,<sup>12</sup> rather than to conceal a defect.

Dr. Swanson testified:

Q. What was the reason why you had this report prepared?

A. Because the house was essentially finished being built. I had moved in already, and I wanted to make sure that there were no issues or problems that Blue Heron hadn't finished or there were no problems with their construction.

This Court finds that the Plaintiffs’ failed to present any facts that the 2015 leaks are in any way related to their claims that the Defendants concealed a water leak indicative of a “systemic defect” in the plumbing system, as alleged in their Second Amended Complaint and as such, cannot defeat summary judgment.

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<sup>12</sup> The notes are admissible as “present sense impressions” and thus are not hearsay under NRS 51.085. NRS 51.085 provides that a “present sense impression” is “[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not inadmissible under the hearsay rule.”

**E. The Plaintiffs' Fraud Claim is Derivative of Plaintiffs' Concealment Claim and Fails by Operation of Law**

This Court also finds that the Plaintiffs' fraud claim fails as a matter of law. The Plaintiffs' Second Amended Complaint alleges one wrong: Defendants' failure to disclose a February 2017 water leak, which purportedly concealed a systemic plumbing defect. The Plaintiffs fraud claim is derivative of their NRS Chapter 113 concealment claim.<sup>13</sup>

Because this court finds that summary judgment is warranted regarding the Plaintiffs concealment claim, the Plaintiffs' fraud claim fails as a matter of law.

**VI.**

**ORDER**

Pursuant to the findings of fact and conclusions of law detailed herein, this Court finds that summary judgment is warranted regarding the Plaintiffs' Second Amended Complaint because the Plaintiffs failed to present facts showing disputed issues of material fact which preclude summary judgment under NRCP 56.

The evidence shows that the Defendants' purported concealment relates to a February 16, 2017 water leak and that the leak was completely repaired by licensed plumbing contractor, Rakeman Plumbing. The evidence shows that under *Nelson v. Heer* and NRS §113.130 & 140, the repair and Defendants' knowledge of the repair negated the Defendants' duty to disclose the leak in the October 24, 2017 Sellers Real Property Disclosure Form. Further, the undisputed evidence shows the Plaintiffs knew about the November 2017 leak, but nonetheless elected to close on the property. The Plaintiffs' election to close bars further recourse under NRS §113.150(2).

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<sup>13</sup> NRS Chapter 113 provides plaintiffs with a statutory remedy to redress a seller's failure to disclose a defect or condition in a real estate transaction. The statute preempts the Plaintiffs' fraud claim. *See Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000), citing *Casa Clara v. Charley Toppino and Sons*, 620 So.2d 1244, 1247 (Fla 1993) (noting that home buyers are protected by "statutory remedies, the general warranty of habitability and the duty of sellers to disclose defects, as well as the ability of purchasers to inspect houses for defects.")

1 Accordingly, this Court hereby GRANTS the Defendants' motion regarding Plaintiffs' Second  
2 Amended Complaint, and ORDERS that the Plaintiffs' Second Amended Complaint is hereby  
3 DISMISSED, with prejudice.

4 DATED this 11th day of May 2020.

5  
6  
7   
8 Hon. Jim Crockett  
District Court Judge

9  
10 Respectfully submitted by:

11 /s/ **Jeffrey L. Galliher**  
12 Jeffrey L. Galliher, Esq.  
13 GALLIHER LEGAL P.C.  
14 1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
Attorney for Defendants

15 Approved as to form and content:

16  
17 Risty Graf, Esq.  
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Attorneys for Defendants

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**HEARING REQUESTED**

**DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS**

COME NOW Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee  
of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,  
LLC, (hereinafter referred to as "Defendants") by and through their counsel of record

1 CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of  
2 CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of  
3 GALLIHER LEGAL P.C., and hereby submits their motion for Attorney Fees and Costs pursuant to  
4 NRCP 68 and NRS 18.010. Defendants are the prevailing parties in this matter after Plaintiff's  
5 complaint was dismissed upon motion. Furthermore, Plaintiff's suit was brought without reasonable  
6 grounds, therefore Defendants are entitled to an award of their reasonable attorney's fees pursuant to  
7 NRS 18.010(20(a) and (b).  
8

9 This motion is made and based upon the attached points and authorities, affidavit, and all the  
10 pleadings, papers and files herein.

11 DATED this 22nd day of April 2020.

12 GALLIHER LEGAL P.C.

13 /s/ *Jeffrey L. Galliher*  
14 Jeffrey Galliher, Esq.  
15 Nevada Bar No. 8078  
16 1850 E. Sahara Ave., Suite 107  
17 Las Vegas, NV 89104

18 **POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 This case arises from the sale of a private residence located at 42 Meadowhawk ("The  
22 Property") in Las Vegas. The home was constructed by Blue Heron Homes pursuant to a contract with  
23 Defendant Lyons Development and construction was completed in the spring of 2015. The home was  
24 sold by Defendant Lyons Development to Plaintiffs and escrow closed on November 17, 2017.

25 On October 9, 2018 Plaintiffs filed their Complaint alleging seven separate causes of action  
26 against Defendants. On February 4, 2019 Defendants filed their motion to dismiss Plaintiffs'  
27  
28

1 complaint. In response, Plaintiffs filed a counter motion to amend their complaint which was granted  
2 at a hearing on April 9, 2019.

3 On April 18, 2019 Plaintiffs filed their First Amended Complaint (“FAC”) and Defendants’  
4 filed a motion to dismiss on May 20, 2019. On July 18, 2019 this court held a hearing wherein  
5 Plaintiffs’ 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> causes of action were dismissed. The court ordered Plaintiffs to file  
6 a second amended complaint limited to the two surviving causes of action.  
7

8 On September 3, 2019 Plaintiffs filed their Second Amended Complaint (“SAC”) wherein  
9 Plaintiffs alleged two causes of action. The first alleged Fraud/Intentional Misrepresentation and the  
10 second alleged violation of NRS 113.100 et seq. The gravamen of the SAC was that Defendants failed  
11 to disclose systemic defects in The Property’s plumbing system related to the Uponor piping installed  
12 in The Property. In response the Defendants filed a Motion for Summary Judgment, supported by  
13 indisputable evidence that Rakeman Plumbing completely repaired the water leak, thus negating the  
14 Defendants’ purported “knowing concealment.” EXHIBIT A.  
15

16 On November 7, 2019 this court held a hearing on Defendants’ motion to dismiss. At that time  
17 the court stated its inclination to grant Defendants’ motion. EXHIBIT B.

18 On November 26, 2019, due to the extent of discovery indicated by numerous written  
19 discovery requests and notices of deposition served by Plaintiffs, Defendants associated Mr. Galliher  
20 as counsel. EXHIBIT C.  
21

22 On December 11, 2019 Defendants served an offer of judgment upon the Plaintiffs in the  
23 amount of \$150,000.00 (one-hundred, fifty thousand dollars) inclusive of fees, costs and interests.  
24 EXHIBIT D. The offer of judgment was not accepted and ultimately expired as a function of law.

25 Subsequent to the expiry of the offer of judgment, Plaintiff’s undertook substantial discovery  
26 in a futile effort to manufacture a material issue of fact in the case. That discovery included service  
27 of Interrogatories, Requests for Admissions and Requests for Production of Documents on all  
28

1 Defendants. Additionally, Plaintiff noticed and took the depositions of Dr. Swanson (twice), his  
2 assistant (Nikki Whitfield), two employees of Rakeman Plumbing (Aaron Hawley and William  
3 Gerber) and two of the selling agent's team (Ivan Sher and Kelly Contenta).

4 After a brief stipulated extension Plaintiff's filed their supplemental brief on February 13,  
5 2020. Along with the brief Plaintiffs served more than 5,400 pages of documents upon the Defendants.  
6

7 On February 27, 2020 Defendants filed their response to Plaintiffs' supplement.

8 On March 3, 2020 the court held a hearing on all pending motions. Due to some logistical  
9 confusion the matter was eventually continued to April 7, 2020.

10 On April 7, 2020 this court summarily dismissed this case upon Defendants' motion. EXHIBIT

11 B.

12 Defendants incurred attorney's fees in the amount of since the inception of the case. EXHIBIT

13 C and EXHIBIT D.  
14

## 15 II.

### 16 ARGUMENT

17 Defendants are entitled to an award of their accrued attorney's fees and costs of suit. Plaintiffs  
18 pursued this action out of pure spite based upon the bald assumption that Todd Swanson had  
19 knowledge prior to selling The Property that the Uponor piping system installed during construction  
20 was defective and needed to be replaced. But rather than inquire of Dr. Swanson or the contractor  
21 who had installed and serviced the system – Rakeman Plumbing – about the history of the system, or  
22 Dr. Swanson's potential knowledge of any defects, Plaintiffs instead just filed a lawsuit.  
23

24 Despite subsequently arguing to the contrary, Plaintiffs filed this suit with the full knowledge  
25 of the leak which occurred in early November 2017. See, SAC at ¶¶ 24-26. The leak was disclosed  
26 by Defendants in Addendum 4A to the transaction and Plaintiffs acknowledged their right to "walk  
27 away" prior to closing. As the court correctly pointed out at the hearing where the case was dismissed,  
28

1 this uncontroverted knowledge and action by the Plaintiffs constituted a waiver of the Plaintiffs'  
2 claims.

3 **PURSUANT TO NRCP 68, DEFENDANTS ARE ENTITLED TO THEIR FEES AND**  
4 **COSTS ACCRUED SINCE DECEMBER 11, 2019**

5 On December 11, 2019 Defendants served upon Plaintiffs an Offer of Judgment in the amount  
6 of \$150,000.00. EXHIBIT F. Pursuant to NRCP 68(f)(1)(B) Defendants are entitled to recover their  
7 costs and allowed attorney's fees from the time of the service of the offer as Plaintiffs did not accept  
8 the offer and then failed to obtain a more favorable outcome. See, *Uniroyal Goodrich Tire Co. v.*  
9 *Mercer*, 11 Nev 318, 890 P.2d 785 (1995); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 860 P.2d  
10 720(1993).  
11

12 Defendants have incurred recoverable costs in the amount of \$4,165.26 in defending this  
13 lawsuit since December 11, 2019. See, Declaration of Jeffrey L. Galliher, Esq, attached as EXHIBIT  
14 G and declaration of Christopher M. Young, Esq. attached as EXHIBIT H. These costs were  
15 reasonable and necessary to the defense of this case. Those costs are set forth in Defendants' Verified  
16 Memorandum of Costs and Disbursements filed concurrently herewith and Attached as EXHIBIT I.  
17

18 Defendants have likewise incurred \$39,447.00 in attorney's fees in defending this case from  
19 December 11, 2019 through present. (EXHIBITS C, D, G and H).

20 In total Defendants have incurred \$43,612.26 in recoverable attorney's fees and costs since  
21 serving Plaintiffs with their offer of judgment. Defendants request that these fees and costs be awarded  
22 to Defendants.

23 **THE ATTORNEYS FEES AND COSTS SOUGHT BY DEFENDANTS ARE**  
24 **REASONABLE AND JUSTIFIED AND THE COURT SHOULD AWARD THE FULL**  
25 **AMOUNT REQUESTED.**

26 An award of attorney's fees pursuant to NRCP 68 is discretionary with the court, and the  
27 court's discretion will not be abused absent clear abuse. *Bidart v. American Title Ins. Co.*, 103 Nev.  
28

1 175, 734 P.2d 732 (1987). In determining whether to award fees and costs pursuant to an NRCP 68  
2 offer of judgment the court must evaluate the following factors: 1) whether the plaintiff's claim was  
3 brought in good faith; 2) whether the defendant's offer of judgment was reasonable and in good faith  
4 in both its timing and amount; 3) whether the plaintiff's decision to reject the offer and proceed in the  
5 litigation was grossly unreasonable or in bad faith; and 4) whether the fees sought by the offeror are  
6 reasonable and justified in amount. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790  
7 (1985); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268 (1983). After weighing these factors  
8 the court may award up to the full amount of fees requested. *Id.* at 589.

9  
10 In considering the amount of fees to award the court must also consider the following:

- 11 1) The qualities of the advocate: his ability, training, education, experience, professional  
12 standing and skill;
- 13 2) The character of the work to be done: its difficulty, intricacy, importance, the time and skill  
14 required, the responsibility imposed and the prominence and character of the parties where  
15 they affect the impotence of the litigation;
- 16 3) The work actually performed by the lawyer; the skill, time and attention given to the work;  
17 and  
18 4) The result: whether the attorney was successful and what benefits were derived.

19  
20 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Where the trial  
21 court evaluates the necessary factors, its ruling will not be disturbed on appeal unless its exercise of  
22 discretion is arbitrary or capricious. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786, (1985).

23  
24 In this case, consideration of the *Beattie* and *Bunzell* factors supports an award of the entire  
25 amount of fees and costs requested by Defendants.

26 ///

27 ///

1       ***1) Whether the Plaintiffs' claim was brought in good faith***

2       There is a substantial question of whether Plaintiffs' claims in this case were initially brought in  
3       good faith. Plaintiff's initial complaint was replaced by the First Amended Complaint early on. The  
4       gravamen of the FAC was that Defendants failed to disclose a leak which occurred in February of  
5       2017 on the form Seller's Real Property Disclosure ("SRPD") completed by Dr. Swanson on or about  
6       October 24, 2017. However, attached to the First Amended Complaint itself was an invoice from  
7       Rakeman Plumbing evidencing the fact that the February 2017 leak had, in fact, been repaired by  
8       Rakeman Plumbing, a licensed professional plumbing contractor. The Defendants sought dismissal  
9       of each of the Plaintiffs' seven claims in the FAC. Based on the Rakeman Plumbing invoice and  
10      related documents attached to the Plaintiffs' First Amended Complaint, the Defendants argued the  
11      invoice showed the leak had been repaired, thus negating the duty to disclose under *Nelson v. Heer*,  
12      123 Nev. 217, 223-224, 163 P.3d 420, 425 (2007).  
13  
14

15      On July 18, 2019 at the hearing on Defendants' motion to dismiss the FAC, the court dismissed  
16      Plaintiff's 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> causes of action and directed Plaintiffs to file a second amended  
17      complaint including the surviving claims. EXHIBIT B.

18      On September 4, 2019, the Plaintiffs filed their Second Amended Complaint. In response the  
19      Defendants filed a Motion to Dismiss, supported by undisputed evidence – indeed the same evidence  
20      attached to the Plaintiffs' pleadings - that Rakeman Plumbing completely repaired the water leak,  
21      which thus negated the Defendants' purported "knowing concealment."  
22

23      The Defendants obtained an affidavit from Aaron Hawley, the owner of Rakeman Plumbing,  
24      regarding the adequacy of Rakeman's repair and what was communicated to the Defendants. Mr.  
25      Hawley stated that the water leak was completely repaired and that no further or contradictory  
26      information was conveyed to the Defendants. With these new facts, the Defendants requested a ruling  
27      from this Court that neither of the Plaintiffs' remaining claims could survive summary judgment. The  
28

1 concealment claim fails because under *Nelson* and NRS Chapter 113, the completed repair negates  
2 any duty to disclose. Defendants argued that because the Defendants did not have “knowledge” under  
3 the *Nelson* standard, because the repair had been completed, summary judgment on the Plaintiffs’  
4 fraud claim was also warranted.

5  
6 Plaintiffs’ response was to file an opposition and countermotion for sanctions filled with  
7 personal attacks against defense counsel. The court characterized the motion for sanctions as  
8 “inappropriate” and denied it. EXHIBIT B.

9  
10 At the hearing on November 7, 2019 the court stated its inclination to grant Defendants’ motion  
11 for summary judgment. Plaintiff orally requested NRCP 56(d) relief which was granted in the form  
12 of an order allowing Plaintiffs’ counsel 90 days to conduct discovery in an attempt to “demonstrate a  
13 genuine issue of material fact.” EXHIBIT B.

14  
15 At that point the “good faith” of Plaintiffs was clearly in doubt. Not only had they filed  
16 multiple complaints with seemingly zero factual basis, but had also filed a completely “inappropriate”  
17 motion for sanctions ascribing multiple nefarious acts to defense counsel without basis.

18  
19 **2) *Whether the defendant’s offer of judgment was reasonable and in good faith in both its  
20 timing and amount***

21  
22 Defendants offer was reasonable in time because it was made after the Court expressed its  
23 inclination to dismiss the case, but before the parties had expended substantial time, effort and money  
24 in discovery.

25  
26 On December 11, 2019 Defendants served Plaintiff’s with an offer of judgment in the amount  
27 of \$150,000.00 inclusive of fees and costs. EXHIBIT F. This offer was made in what was obviously  
28 a genuine, even generous, effort to settle the case under the circumstances. To that time, and even



1 now, Plaintiffs have never asserted that they had suffered any measurable special damages. Just as  
2 had been the case when Defendants owned The Property, all repairs to the plumbing system were  
3 handled under warranty by either Rakeman Plumbing or the manufacturer, Uponor. Further, at the  
4 time of the offer of judgment, Plaintiffs had already been advised in open court of the Court's  
5 inclination to grant Defendants' motion to summarily dispose of the case. Nevertheless, in a genuine  
6 attempt to resolve the case in the very spirit of NRCP 68, Defendant's offered the very substantial  
7 amount of \$150,000.00 at a time when Plaintiffs had yet to expend significant amounts of time and  
8 money on what ultimately turned out to be futile discovery efforts.

9  
10 Defendants' offer was reasonable with respect to amount because the offer was for an  
11 objectively substantial amount when compared to Plaintiffs' potential damages.

12 Plaintiffs have never disclosed any special damages which they allege to have suffered.  
13 Instead, Plaintiffs' computation of damages merely claimed "Fraud Damages" of "[a}pproximately  
14 \$300,000.00" and "Bad Faith Damages" of "\$100,000.00." Based upon this paucity of damage  
15 information, and with the knowledge that the court had declared its inclination to dismiss the case,  
16 Defendants calculated their offer with the expectation that it would do what it was intended to do:  
17 settle the case. While Defendants maintain that they did nothing wrong, given the unpredictable nature  
18 of litigation and the potential to accrue substantial costs and fees in a relatively short period of time  
19 they authorized their counsel to offer an exceedingly generous amount of money to resolve the case  
20 once and for all.

21  
22  
23 When no response was forthcoming from Plaintiffs, Defendants and their counsel were  
24 disappointed, but were left with no alternative but to go forward and participate fully in the discovery  
25 propounded by Plaintiffs and to attend the six depositions Plaintiffs noticed.

26 ///

27 ///

1       **3) *Whether the plaintiff's decision to reject the offer and proceed in the litigation was grossly***  
2       ***unreasonable or in bad faith***

3       Under the circumstances at the time Defendants served their offer of judgment: where the court  
4       had already indicated its inclination to dismiss the case; where Plaintiff's had essentially zero special  
5       damages; and where established case law clearly eviscerated Plaintiff's claims, rejection of that  
6       extremely generous offer of judgment was grossly unreasonable. Rather than take what could be  
7       reasonably described as a gift, Plaintiffs instead chose to undertake extensive, ultimately futile,  
8       discovery at great expense to the parties.

9       All indications are that all of the expenses required to re-pipe the house and remediate the  
10       November 2017 leak were borne by Uponor and Rakeman Plumbing. Indeed, Plaintiffs' disclosed  
11       calculation of damages includes zero special damages. Even if Plaintiffs could prove that Defendants  
12       did fail to make all necessary disclosures under NRS 113.150, Plaintiffs' recoverable damages would  
13       be limited to "the amount necessary to repair or replace the defective part of the property". NRS  
14       113.150(4). Plaintiffs have not alleged that they have born any costs to repair or replace the Uponor  
15       system.

16       Further, pursuant to statute, recovery is completely barred "on the basis of an error or omission  
17       in the disclosure form that was caused by the seller's reliance upon information provided to the seller  
18       by:... (b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or  
19       pesticide applicator, who was authorized to practice that profession in this State at the time the  
20       information was provided." NRS 113.150(5). It has been well established that both the leak in  
21       February 2017 and November 2017 were immediately reported to Rakeman Plumbing, a licensed  
22       Nevada plumbing contractor for investigation and repair and that all information relied upon by  
23       Defendants regarding the leaks was provided by Rakeman Plumbing.  
24  
25  
26  
27  
28

As discussed earlier, all indications are that, since the problems with the pipe stemmed from a manufacturing defect, the costs of re-piping the property were covered by the manufacturer warranty provided by Uponor. Based upon the conduct of the Plaintiff during the escrow period, where they sought access to the property for myriad trades and contractors, it is believed that Plaintiffs undertook a substantial remodel of The Property immediately upon taking possession, but before actually moving in. If, as presumed, the re-piping was accomplished commensurate with the remodel it is likely that Plaintiffs did not even suffer any significant inconvenience as a result of the re-pipe. Beyond the bare claims in the calculation of damages listed in Plaintiff's initial disclosures no other information regarding any alleged damages was ever communicated to the Defendants.

Finally, the damages available to Plaintiffs on their second cause of action are fixed by statute. NRS 113.150 provides, in pertinent part:

If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may: **(a)** Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or **(b)** Close escrow and accept the property with the defect as revealed by the seller or the seller's agent **without further recourse.** (emphasis added)

Nev. Rev. Stat. § 113.150(2).

In this case there can be no dispute that the leak occurring in November 2017 was disclosed to Plaintiffs via Addendum 4A to the purchase agreement prior to the close of escrow. Plaintiffs' decision to nevertheless close escrow was their election of remedy and bars "further recourse" as a matter of law. *Id.*

Under the circumstances as they existed in mid-December 2019 – the court had indicated its inclination to dismiss the case, Plaintiffs had suffered essentially zero special damages, the repiping had apparently not created any substantial inconvenience – and in the face of the formidable statutory

1 barriers to any substantial recovery discussed earlier, Plaintiffs' rejection of the \$150,000.00 offer of  
2 judgment was grossly unreasonable.

3 **4) *Whether the fees sought be the offeror are reasonable and justified in amount***

4 When determining whether the fees requested are reasonable and justified in amount the court  
5 is to consider the 4 factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d  
6 31, 33 (1969):  
7

- 8 1) The qualities of the advocate: his ability, training, education, experience, professional standing  
9 and skill;
- 10 2) The character of the work to be done: its difficulty, intricacy, importance, the time and skill  
11 required, the responsibility imposed and the prominence and character of the parties where  
12 they affect the importance of the litigation;
- 13 3) The work actually performed by the lawyer; the skill, time and attention given to the work;  
14 and  
15
- 16 4) The result: whether the attorney was successful and what benefits were derived.

17 As set forth more fully in the attached declarations, the attorneys handling the defense of this  
18 matter have excellent credentials. They have been partnered with and trained by some of the finest trial  
19 lawyers in the state, including the late J. Mitchell "Mitch" Cobeaga and Rex Jemison, among others.  
20 They have substantial litigation and trial experience over many decades of combined admission as  
21 Nevada lawyers in handling lawsuits for both plaintiffs and defendants. They serve as judges pro-tem  
22 and arbitrators in both criminal and civil courts. They are skilled litigators with at least one of them  
23 rated AV/Preeminent in litigation by Martindale-Hubbell, the nation's foremost rating service for  
24 attorneys. All are in good standing with the State Bar of Nevada with no history of discipline.  
25

26 The character of the work to be done was difficult. The range of claims initially brought by the  
27 Plaintiffs combined with the statute heavy nature of these types of cases required close attention to  
28

1 detail and mastery of a litany of important facts. The work performed in a relatively short period of  
2 time was extensive, including six lengthy depositions being taken over just a two week period,  
3 expansive research and writing, including review of over 5,400 documents and multiple oral  
4 arguments. Defense counsel delivered a just result for their client: dismissal of the case. As discussed  
5 herein the case should not have been brought, but Plaintiffs pushed the case and conducted substantial  
6 discovery which had to be dealt with and made myriad arguments which had to be countered.

7  
8 After rejecting the offer of judgment of \$150,000.00, Plaintiffs conducted substantial and wide-  
9 ranging discovery. Plaintiffs' counsel deposed Dr. Swanson (twice), his assistant (Nikki Whitfield),  
10 two employees of Rakeman Plumbing (Aaron Hawley and William Gerber) and two of the selling  
11 agent's team (Ivan Sher and Kelly Contenta). In addition, Plaintiffs served each of the Defendants  
12 with substantive Interrogatories, Requests for Admissions and Requests for Production of Documents  
13 and issued many third-party subpoenas resulting in the production of more than 5,000 pages of  
14 documents. None of this unnecessary work changed the facts which had already been established:  
15 the February 2017 leak had been repaired by a professional, licensed plumbing contractor and the  
16 November 2017 leak was disclosed during escrow via Addendum 4A. When applied to the well-  
17 established case law, these undisputed facts made it clear that there could be no cognizable claim  
18 against the Defendants. Nevertheless, Plaintiff insisted and persisted in engaging in a scorched Earth  
19 discovery plan despite the writing on the wall.  
20  
21

22 Conversely, Defendants' conduct since the offer of judgment has been almost completely reactive  
23 in nature, meaning that the work done by defense counsel was directly necessitated by the actions of  
24 the Plaintiff in undertaking expansive early discovery. These expenses were exactly what Defendants  
25 were seeking to avoid by making an early and substantial, even generous offer to settle the dispute for  
26 real money.  
27  
28

1 But even in a purely reactionary role Defendants accrued \$39,447.00 in attorneys fees and  
2 \$4,189.26 in case costs since service of the offer of judgment on December 11, 2019. The vast  
3 majority of the time spent was making initial disclosures, responding to Plaintiffs' written discovery,  
4 attending depositions and hearings and drafting a response to Plaintiff's supplemental opposition.  
5 Further, the hourly fee of \$270.00 charged to Defendants is exceedingly reasonable given the nature  
6 of the work (real estate litigation) and the experience of counsel involved.  
7

8 These costs and fees could have been avoided had Plaintiffs accepted Defendants' exceedingly  
9 reasonable offer of judgment made on December 11, 2019.

10 **PURSUANT TO NRS 18.010(2)(b) DEFENDANTS ARE ENTITLED TO THEIR FEES**  
11 **AND COSTS ACCRUED SINCE INCEPTION OF SUIT**

12 Defendants should be awarded their attorney's fees and costs in defending this action from its  
13 inception because the case was brought by Plaintiffs without any reasonable factual basis and on  
14 grounds which are directly inapposite to Nevada law.

15 NRS 18.010(2)(b) provides as follows:

16 In addition to the cases where an allowance is authorized by specific statute, the court  
17 may make an allowance of attorney's fees to a prevailing party:

18 ...

19 (b) Without regard to the recovery sought, when the court finds that the claim,  
20 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
21 **was brought or maintained without reasonable ground or to harass the prevailing**  
22 **party. The court shall liberally construe the provisions of this paragraph in favor**  
23 **of awarding attorney's fees in all appropriate situations.** It is the intent of the  
24 Legislature that the court award attorney's fees pursuant to this paragraph and impose  
25 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
26 situations to punish for and deter frivolous or vexatious claims and defenses because  
27 such claims and defenses overburden limited judicial resources, hinder the timely  
28 resolution of meritorious claims and increase the costs of engaging in business and  
providing professional services to the public. (Emphasis added)

26 Since the inception of this case Defendants have accrued \$82,021.50 in attorney's fees and  
27 \$6,939.85 in costs. EXHIBITS C, D, G and H. In this case, Plaintiffs brought suit against the  
28

1 Defendants based upon wholly frivolous grounds. With respect to the November 2017 leak, Plaintiffs’  
2 Second Amended Complaint clearly states that Plaintiffs requested and performed an inspection prior  
3 to close of escrow and that during that inspection they observed the November 2017 leak. *See*, Second  
4 Amended Complaint at paragraphs 24-26. The subsequent determination that the leak was caused by  
5 a manufacturing defect in the Uponor piping was never disclosed by Uponor or Rakeman Plumbing  
6 to Defendants prior to the sale to the Plaintiffs and the Plaintiffs had no evidence that it ever had been  
7 disclosed to Defendants when they initiated this suit. The February 2017 leak was fully repaired as  
8 indicated by documentation the Plaintiff actually attached to their Second Amended Complaint. *See*,  
9 Exhibit 8 to Second Amended Complaint.  
10

11         These facts, alleged within the Second Amended Complaint itself, firmly establish that  
12 Defendants had no liability under Nevada law because they show that 1) the February leak had been  
13 repaired, and 2) Plaintiffs were aware of the November leak prior to closing. These facts, alleged by  
14 Plaintiffs themselves, defeat their claims when applied to clearly established precedent in the form of  
15 the *Nelson* decision.  
16

17         Further, even if the Plaintiffs could establish a prima facie case, they could still not establish  
18 that they had suffered any recoverable damages. The repair to the piping was done under warranty at  
19 no expense to the Plaintiffs and concurrent with other work being done at the Property. Plaintiffs  
20 suffered no monetary damages nor even any significant inconvenience. Plaintiffs’ claimed “Fraud  
21 Damages” of “[a]pproximately \$300,000.00” and “Bad Faith Damages” of “\$100,000.00” have no  
22 basis in reality since they did not have to pay for the re-piping of the property or for the remediation  
23 of the November 2017 leak.  
24

25         The plain language of NRS 18.010(2)(b) unequivocally establishes that attorney’s fees awards  
26 are appropriate in cases like this one: “It is the intent of the Legislature that the court award attorney's  
27 fees pursuant to this paragraph . . . in all appropriate situations to punish for and deter frivolous or  
28

vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.” *See also* NRS 7.085. The reasoning set forth in Defendants’ multiple motions to dismiss and adopted by this Court when granting Defendants’ most recent motion establishes the folly of this case. This court has acknowledged the controlling nature of *Nelson v. Heer* with respect to the issues in this case. Any reasonable reading of *Nelson* must lead to the conclusion that the conduct of the Defendants alleged in this case are not actionable. Likewise, Plaintiffs made no real effort to distinguish this case from *Nelson* nor did they argue that *Nelson* should not otherwise apply. Instead, in pursuing this case Plaintiffs essentially ignored *Nelson* and the clear example it set for actionable conduct. “A claim is groundless if “the allegations in the complaint . . . are not supported by any credible evidence at trial.” [citation omitted] *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996 (Nev. 1993).

**PURSUANT TO NRS 18.020 DEFENDANTS ARE ENTITLED TO THEIR COSTS ACCRUED SINCE INCEPETION OF SUIT**

Pursuant to NRS 18.020, “(c)osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases...(3) In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” (Emphasis added). An award of costs under NRS 18.020 is “mandatory and not subject to the court’s discretion.” *Day v. West Coast Holdings Inc.*, 101 Nev. 260, 264, 699 P.2d 1067, 1070 (1985). Since the inception of this case Defendants have expended \$6,427.26 in recoverable costs. EXHIBIT I.

**CONCLUSION**

Pursuant to NRS 18.020, Defendants must be awarded their costs incurred in the amount of \$6,427.26. Pursuant to NRS 18.010(2)(b) Defendants should be awarded their attorney’s fees incurred

///



1 since the inception of this case in the amount of \$82,021.50. In the alternative, pursuant to NRCP 68  
2 Defendants should be awarded their attorney's fees accrued since December 11, 2019 in the amount  
3 of \$39,447.00.

4 DATED this 22nd day of April 2020.

6 GALLIHER LEGAL P.C.

7 */s/ Jeffrey L. Galliher*  
8 Jeffrey Galliher, Esq.  
9 Nevada Bar No. 8078  
10 1850 E. Sahara Ave., Suite 107  
11 Las Vegas, NV 89104

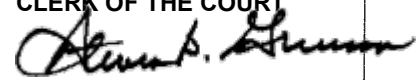
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 23rd day of March 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **MOTION FOR ATTORNEYS FEES AND COSTS** postage prepaid and addressed to the following:

Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3rd Floor  
Las Vegas, Nevada 89135  
rgraf@blacklobello.law  
swilson@blacklobello.law

*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC

# EXHIBIT A



**COMP**  
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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiffs,

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYONS DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for their Second Amended Complaint against Defendants assert, allege and complain as follows:

**I.**

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, JOSEPH FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

1           3.     Upon information and belief, TODD SWANSON, an individual (hereinafter  
2     “SWANSON” or collectively “DEFENDANTS”), Defendant is, and at all times relevant hereto  
3     was, a resident of Clark County, Nevada.

4           4.     Upon information and belief, TODD SWANSON, as Trustee of the SHIRAZ  
5     TRUST (hereinafter “SWANSON” or collectively “DEFENDANTS”), Defendant is, and at all  
6     times relevant hereto was, a resident of Clark County, Nevada.

7           5.     Upon information and belief, SHIRAZ TRUST, (hereinafter “SHIRAZ” or  
8     collectively “DEFENDANTS”), Defendant is, and at all times relevant hereto was a lawful entity  
9     believed to have been formed within the State of Nevada, and licensed to conduct business in  
10    Clark County, Nevada.

11          6.     Upon information and belief, LYONS DEVELOPMENT, LLC, a Nevada limited  
12    liability company (hereinafter “LYONS” or collectively “DEFENDANTS”), Defendant is, and at  
13    all times relevant hereto was a lawful entity formed within the State of Nevada, and licensed to  
14    conduct business in Clark County, Nevada.

15          7.     Defendants designated herein as Does I-X and Roes Entities I-X are individuals  
16    and legal entities that are liable to Plaintiff for the claims set forth herein, including but not  
17    limited to, possible alter egos or successors-in-interest of Defendants. Certain transactions, and  
18    the true capacities of Does and Roes Entities, are presently unknown to the Plaintiffs and,  
19    therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiffs will amend their  
20    Complaint to assert the true names and capacities of such Doe and Roe Entities when more  
21    information has been ascertained.

22          8.     At all relevant times hereto, each Defendant was the agent, servant, employee, co-  
23    adventurer, representative, or co-conspirator of each of the other Defendants, and acted with the  
24    knowledge, consent, ratification, authorization, and at the direction of each Defendant, or is  
25    otherwise responsible in some manner for the occurrences alleged in this Complaint.

26          9.     This Court has personal jurisdiction over all Defendants as, at all times relevant  
27    hereto, a substantial part of the events or omissions giving rise to the claims occurred in whole or  
28    in part in Clark County, Nevada. Further, this suit alleges claims and causes of action arising

1 from the sale of certain real property located within Clark County, Nevada. Thus, jurisdiction  
2 and venue are proper in Clark County, Nevada.

3 **II.**

4 **FACTUAL ALLEGATIONS**

5 10. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 9  
6 inclusive, and incorporate the same as if fully set forth herein.

7 11. On or about October 22, 2017, Joseph Folino and Nicole Folino (Hereinafter,  
8 “Plaintiffs” or “Folinos”) entered into a Residential Purchase Agreement (“RPA”) to purchase  
9 the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, (“Subject Property”) for  
10 the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the  
11 Shiraz Trust, Dr. Todd Swanson, Trustee (collectively “Defendants” or individually “Swanson”)  
12 and Lyons Development, LLC (collectively “Defendants” or individually “Lyons”). *See*, rpa  
13 attached hereto as **Exhibit 1**.

14 12. The house was constructed in 2015 by Lyons, and it is the understanding of the  
15 Plaintiffs, that Swanson and Lyons were the owners since its original construction.

16 13. The transaction was consummated when Counter Offer Number 2 was executed  
17 electronically by both parties on or about that date. *See*, Counter Offer attached hereto as  
18 **Exhibit 2**.

19 14. The parties had previously exchanged prior counteroffers and the original RPA.  
20 *See* attached Exhibits 1, 2 and Counter Offer No. 1 attached hereto as **Exhibit 3**.

21 15. The form of the RPA and the counteroffers are the standard forms used by the  
22 Greater Las Vegas Association of Realtors (“GLVAR”).

23 16. Pursuant to the terms and conditions of the RPA, NRS 113.130 and NRS 113.140,  
24 the Defendants was required to complete and execute a Seller’s Real Property Disclosure form  
25 (“SRPD”), and the Defendants did so execute the SRPD on or about October 24, 2017. *See*,  
26 SRPD attached as **Exhibit 4**.

27 17. The SRPD executed by Swanson does not contain any notification to the  
28 purchasers regarding any problems or defects in the plumbing system, or other related systems

1 that would discuss or reference the plumbing system to supply water. *See*, attached **Exhibit 4**,  
2 pp. 1-3.

3 18. There is no description of any water event, the existence of fungi/mold or  
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss  
5 issues at this Subject Property. *Id.*

6 19. It is the understanding of the Plaintiffs that Swanson had been living in the home  
7 for a period of months and possibly years prior to the sale transaction.

8 20. Prior to the time of closing, the Plaintiffs engaged an inspection company, Caveat  
9 Emptor LV ("Inspector"), to perform an inspection of the Subject Property. *See*, Inspection  
10 Report attached hereto as **Exhibit 5**.

11 21. The home inspection was performed on or about October 27, 2017.

12 22. Pursuant to the inspection report, the Plaintiffs utilized a Request for Repair form  
13 from their realtor to make a formal request to remediate any and all issues identified in the  
14 inspection report. *See*, Request attached hereto as **Exhibit 6**.

15 23. Every item identified in the inspection report was included in the Request for  
16 Repair. *See*, **Exhibit 5** and **Exhibit 6**.

17 24. Prior to the time of closing the transaction, the Plaintiffs requested and were given  
18 the opportunity to perform their own site inspection of the Subject Property.

19 25. This pre-closing inspection occurred on or before November 17, 2017.

20 26. During this inspection, the Plaintiffs uncovered a water leak that was in the  
21 process of being repaired by the Defendants.

22 27. The Defendants had not previously communicated the existence of the water leak,  
23 prior to the Plaintiffs observing the repairs during the pre-closing inspection by the Plaintiffs.

24 28. The Plaintiffs' real estate agent, Ashley Lazosky, ("Plaintiff's Agent") had  
25 specific conversations with the Defendants and the subcontractor hired to make the repairs.

26 29. The Defendants stated that there was an isolated water loss, drywall damage and  
27 other repairs that were being completed to the Plaintiff's Agent.  
28

1           30.     The Plaintiffs' Agent was not told about any previous or other water losses, and  
2     certainly was not told about any plumbing failures, such as defects requiring the complete  
3     replacement of the water supply/plumbing system as a result of a warranty claim having been  
4     made to Uponor, the manufacturer of the plumbing/pipe supply system.

5           31.     On or about November 17, 2017, the Plaintiffs effectuated the closing of the real  
6     estate transaction for the Subject Property. *See*, Grant Bargain and Sale Deed attached hereto as  
7     **Exhibit 7**.

8           32.     Shortly after the closing occurred, the Plaintiffs were made aware of an additional  
9     water loss that had occurred at the Subject Property in approximately February of 2017 by the  
10    plumbing system manufacturer: Uponor.

11          33.     After learning of the earlier water loss, the Plaintiffs obtained an additional  
12    inspection report of the plumbing system, water supply pipe system and any related drainage  
13    system.

14          34.     The Plaintiffs have been made aware by the plumbing manufacturer, Uponor, that  
15    the Defendants had previously made a warranty claim that was accepted by Uponor.

16          35.     The payment to conduct the warranty repairs to the plumbing system was made to  
17    the Defendant's subcontractor, Rakeman Plumbing, on or about June 9, 2017, well before the  
18    date of the SRPD, October 24, 2017. *See*, Rakeman Plumbing Invoice attached hereto as  
19    **Exhibit 8** and June 9, 2017, Uponor letter attached hereto as **Exhibit 9**.

20          36.     The Plaintiffs contacted Uponor directly and were informed of the past water  
21    losses that had occurred at the Subject Property. In addition to the water loss that occurred in  
22    November 2017, at or near the time of the closing, the Plaintiffs were informed by Uponor of the  
23    February 2017 water loss. *See*, Uponor email with attachments attached hereto as **Exhibit 10**.

24          37.     Uponor provided the warranty claim information for the plumbing system in  
25    response to an email from the Plaintiffs. *See*, Uponor email with Warranty attached hereto as  
26    **Exhibit 11**.

27          38.     The plumbing defects in the house were systemic and known to the Defendants  
28    prior to the closing of the transaction.



### III.

**FIRST CAUSE OF ACTION**

**(Fraud/Intentional Misrepresentation)**

42. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41,  
inclusive, and incorporate the same as if fully set forth herein.

43. Defendants, and each of them, communicated, by and through themselves and their employees and/or agents, on or about October 24, 2017, to the Plaintiffs that there were no defects in the house, the systems or the structure.

44. The Defendants, and each of them, coerced the Plaintiff into closing on the sale of the Subject Property by concealing, hiding and affirmatively omitting known facts, to wit: that the house was built with defects known to the Defendants, whether repaired or not.

45. The Defendants purposefully, and with the intent to deceive the Plaintiffs, failed to identify the known defects, prior water losses, prior warranty repairs and other material misrepresentations or omissions contained on the SRPD.

46. The Defendants made these intentional misrepresentations on the SRPD form in an effort to induce the Plaintiffs to purchase the Subject Property.

47. Defendants, and each of them, intended by their false representations to induce the Plaintiffs into entering into said transaction.

48. Plaintiffs would not have completed the transaction had they known of the facts alleged herein and withheld from the Plaintiffs by the Defendants.



58. The Nevada Revised Statutes create a separate duty from any contractual duty to disclose the requested information by the Defendants, and this separate duty requires these Defendants to have been candid, honest and forthcoming as to the topics of information, defects and general condition of the property as requested on the SRPD form.

59. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

60. As a direct and proximate result of the Defendants' violations, and each of them, and pursuant to violation of the Nevada Revised Statutes, Plaintiff is entitled to recover treble damages.

61. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

1. For general damages in an amount in excess of \$15,000.00;
2. For special damages in an amount in excess of \$15,000.00;
3. For punitive damages in an amount in excess of \$15,000.00;
4. For reasonable attorney's fees;
5. For costs incurred in the pursuit of this action; and

6. For such ~~other~~ further relief as the court deems proper.

DATED this 2 day of September 2019.

**BLACK & LOBELLO**

Rusty Graf, Esq.  
Nevada Bar No. 6322  
Shannon M. Wilson, Esq.  
Nevada Bar No. 13988  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
[swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
*Attorneys for Plaintiffs*

**BLACK & LOBELLO**  
10777 W. Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that  
on the 3<sup>rd</sup> day of September 2019, I caused the above and foregoing document *Plaintiffs'*

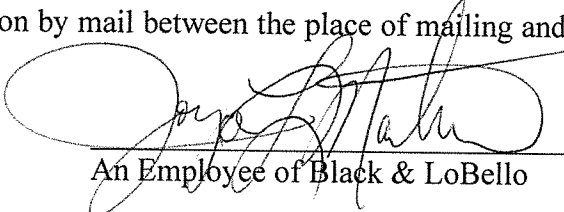
*Amend the Complaint* to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

# EXHIBIT B

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal](#)  
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

CASE NO. A-18-782494-C

Joseph Folino, Plaintiff(s) vs. Todd Swanson, Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: Other Tort  
 Date Filed: 10/09/2018  
 Location: Department 24  
 Cross-Reference Case Number: A782494

### PARTY INFORMATION

Defendant Lyons Development, LLC

Lead Attorneys  
 Christopher M. Young  
 Retained  
 702-240-2499(W)

Defendant Shiraz Trust

Christopher M. Young  
 Retained  
 702-240-2499(W)

Defendant Swanson, Todd

Christopher M. Young  
 Retained  
 702-240-2499(W)

Plaintiff Folino, Joseph

J. Rusty Graf  
 Retained  
 702-869-8801(W)

Plaintiff Folino, Nicole

J. Rusty Graf  
 Retained  
 702-869-8801(W)

### EVENTS & ORDERS OF THE COURT

11/07/2019 | Motion to Dismiss (9:00 AM) (Judicial Officer Crockett, Jim)  
 11/07/2019, 03/03/2020, 04/07/2020  
 Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint

#### Minutes

11/07/2019 9:00 AM

- Court stated its inclination as to the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint noting an affidavit was required seeking 56 (d) relief. Further, there were two questions of fact. Moreover, the Court was inclined to grant the motion for summary judgment and to deny to inappropriately filed counter motion for sanctions. Arguments by counsel. Colloquy regarding affidavits, discovery, and conducting depositions. Court GRANTED counsel ninety (90) days to demonstrate a genuine issue of material fact by February 6th; Defendant's Reply February 20th. COURT ORDERED, matter CONTINUED. Counsel to adhere to compliance with the rules. Additionally, the parties could conduct their 16.1 even in advance of their answers or bring the answers to the 16.1. Moreover, Defendants need to file supplemental affidavits as to the two technicians. CONTINUED TO: 02/27/20 9:00 AM

02/27/2020 9:00 AM

03/03/2020 9:00 AM

- COURT NOTED, there was a Motion to Dismiss heard back in November; at that time the Court stated its inclination to the

Defendants Motion to Dismiss Plaintiffs second amended Complaint noting that an affidavit was required seeking 56(d) relief, further there were two questions of fact, the Court was inclined to GRANT the Motion for Summary Judgment and to DENY the inappropriate filed countermotion for sanctions. Court further stated there is no affidavit to contradict the affidavit of Mr. Holly, Plaintiff was to demonstrate a genuine dispute as a material issue of fact. Mr. Graf stated he did have a thumb drive dropped off with all of the documents attached. The documents that are attached are also referenced in the Supplemental Brief. Mr. Graf further stated included in those documents is the deposition transcript of Mr. Holly and deposition transcript of Mr. Gerber. Following further arguments of counsel. COURT ORDERED, MATTER CONTINUED 4-07-20 9:00 AM DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

04/07/2020 9:00 AM

- Mr. Graf argued mold and leaks and that Dr. Swanson had knowledge of the defects. Opposition by Mr. Galiher. Argument that the Defendant was no longer the owner at the time of the results. Court finds that Plaintiff was aware of the leaks and elected to close escrow. COURT ORDERED, motion GRANTED as a Summary Judgment. Matter SET for status check for filing of the order 5/5/20 9:00am.

Parties Present

Return to Register of Actions



# EXHIBIT C

**Christopher M. Young, PC**

2460 Professional Court, #200

Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

June 14, 2018

**Attention:** Todd Swanson

File #: 0300.003

Inv #: 1121

**RE:** Folino v. Lyons Development, LLC

| DATE      | DESCRIPTION  | HOURS | AMOUNT | LAWYER |
|-----------|--|-------|--------|--------|
| Feb-12-18 | Review/analyze correspondence from client regarding new litigation including litigation hold letter from Plaintiff's counsel for analysis.   | 0.40  | 110.00 | CMY    |
|           | Draft/revise correspondence to client Swanson regarding instructions.  | 0.30  | 82.50  | CMY    |
| Mar-08-18 | Draft/revise correspondence to client regarding requested documents, policy and meeting.   | 0.30  | 82.50  | CMY    |
| Mar-12-18 | Review/analyze correspondence from Todd Swanson regarding meeting to discuss homeowner's claim regarding seller's misrepresentation.   | 0.10  | 27.50  | CMY    |
|           | Review/analyze Seller's Disclosure Statement and Purchase/Sales Agreement.   | 0.30  | 82.50  | CMY    |
| Mar-16-18 | Appear for/attend meeting with client Todd Swanson to discuss facts and circumstances and litigation strategy.   | 1.50  | 412.50 | CMY    |
| Mar-21-18 | Review/analyze correspondence from client, review and analyze of Plaintiff's demand with attached Seller's disclosures, review and analyze client's homeowner's policy draft representation letter to Plaintiff's counsel. | 1.20  | 330.00 | CMY    |
| Mar-22-18 | Communicate (with client) extended Teleconference with attorney Mike Stoberski   | 0.50  | 137.50 | CMY    |

regarding background facts, possible association, experts and mediator recommendations.

|           |   |      |            |     |
|-----------|---|------|------------|-----|
| Apr-05-18 | Review/analyze Plaintiff's counsel's reply to our response with attached documentation regarding plumbing repairs.                  | 0.40 | 110.00     | CMY |
|           | Draft/revise correspondence to client with attached plaintiff's counsel reply and attachments.                                      | 0.10 | 27.50      | CMY |
| Apr-24-18 | Communicate (with client) teleconference with client - case discussion.   | 0.10 | 27.50      | CMY |
| Apr-25-18 | Communicate (with client) extended teleconference with Plaintiff's lawyer regarding case status and potential early case mediation. | 0.40 | 110.00     | CMY |
| May-17-18 | Teleconference with Dr. Swanson; case strategy.   | 0.30 | 82.50      | CMY |
| Jun-05-18 | Communicate (other outside counsel) with Plaintiff's counsel Rusty Graf regarding proposed early case mediation.                    | 0.30 | 82.50      | CMY |
| Jun-06-18 | Review/analyze request for early litigation mediation.  | 0.10 | 27.50      | CMY |
|           | Draft/revise correspondence to client.  | 0.10 | 27.50      | CMY |
|           | Draft/revise correspondence to opposing counsel.  | 0.10 | 27.50      | CMY |
| Jun-12-18 | Communicate (with client) - Teleconference with client regarding pre-litigation mediation, mediator selection, dates and strategy   | 0.30 | 82.50      | CMY |
|           | Draft/revise correspondence to Plaintiff's counsel regarding client's approval pre-litigation mediation.                            | 0.20 | 55.00      | CMY |
|           | Totals  | 7.00 | \$1,925.00 |     |

#### DISBURSEMENTS

|           |   |      |
|-----------|---|------|
| Feb-12-18 | Copying - 42 MH Farmer's Insurance Policy 9-22-15 8 @ .25             | 2.00 |
|           | Copying - 42 MH Farmer's Insurance Umbrella Liability 9-22-15 5 @ .25 | 1.25 |

Totals

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\$3.25**Total Fee & Disbursements**

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**\$1,928.25****Balance Now Due**

---

**\$1,928.25**

TAX ID Number 82-1847362

**Christopher M. Young, PC**  
2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

October 26, 2018

**Attention:** Todd Swanson

**File #:** 0300.003

**Inv #:** 1150

**RE:** Folino v. Lyons Development, LLC

| DATE      | DESCRIPTION  | HOURS | AMOUNT | LAWYER |
|-----------|--|-------|--------|--------|
| Jun-29-18 | Review/analyze correspondence with voluminous attachments from client, and respond to client.  | 0.20  | 55.00  | CMY    |
| Jul-05-18 | Appear for/attend meeting with client to discuss mediation strategy including review of all document.  | 0.50  | 137.50 | CMY    |
|           | Appear for/attend meeting with client to discuss strategy and review of case documents.  | 1.50  | 375.00 | JTH    |
| Jul-06-18 | Review/analyze letter from Realtor Ivan Sher regarding valuation of property after the plumbing was replaced, to accompany Mediation Brief on diminution of value issue. | 0.20  | 50.00  | JTH    |
| Jul-09-18 | Review/analyze e-mail from Folinos' counsel requesting August 17, 2018 JAMS mediation with Floyd Hale.   | 0.20  | 50.00  | JTH    |
| Jul-12-18 | Review/analyze JAMS Notice 8/17/18 Mediation.  | 0.10  | 25.00  | JTH    |
| Jul-13-18 | Review/analyze the Ridges' gate logs for updating time-line of Folino's visits to residence prior to closing.  | 0.30  | 75.00  | JTH    |
| Jul-16-18 | Review/analyze correspondence and backup documents regarding Folino's presence at 42 Meadowhawk.   | 0.30  | 82.50  | CMY    |

|           |   |      |          |     |
|-----------|---|------|----------|-----|
| Jul-17-18 | Review/analyze and execute JAMS agreement, and forward to client.   | 0.20 | 55.00    | CMY |
| Jul-20-18 | Appear for/attend conference with JAMS representative regarding format and parameters for Confidential Mediation Brief.   | 0.20 | 50.00    | JTH |
| Aug-01-18 | Review/analyze detailed review of documents provided by Dr. Swanson/Nicky Whitfield.  | 3.10 | 775.00   | JTH |
|           | Draft/revise chronology for Mediation Brief.  | 5.50 | 1,375.00 | JTH |
| Aug-02-18 | Draft/revise affidavits for Dr. Swanson and Nicky Whitfield to accompany Confidential Mediation Brief.  | 1.40 | 350.00   | JTH |
|           | Communicate (with client) Communicate by telephone with Nicky Whitfield regarding chronology and additional documentation from Rakeman Plumbing to assist in confirming the Folinos' knowledge regarding November 7, 2017 water leak. | 0.30 | 75.00    | JTH |
| Aug-03-18 | Review/analyze e-mail to and from Nicky Whitfield regarding revising affidavits.  | 0.30 | 75.00    | JTH |
| Aug-04-18 | Review/analyze e-mail from Dr. Swanson regarding revising affidavits.   | 0.10 | 25.00    | JTH |
|           | Review/analyze affidavits following input from for Dr. Swanson and Nicky Whitfield and supplementing affidavits with additional information.  | 1.40 | 350.00   | JTH |
| Aug-06-18 | Review/analyze factual/chronology sections of Confidential Mediation Brief, and drafting argument section, including analysis of N.R.S. Chapter 113 and related cases, including Nelson v Heer.                                       | 6.80 | 1,700.00 | JTH |
|           | Analysis of Nelson v. Heer case and progeny and drafting argument that repair of defect/condition negates duty to disclose.   | 3.80 | 950.00   | JTH |
| Aug-10-18 | Revising affidavits following input from for Dr. Swanson and Nicky Whitfield and supplementing affidavits with additional information.  | 0.60 | 150.00   | JTH |
| Aug-13-18 | Revising and finalizing Confidential Mediation Brief.   | 4.10 | 1,025.00 | JTH |

|           |   |       |                    |     |
|-----------|---|-------|--------------------|-----|
|           | Coordinating with staff to prepare Confidential Mediation Brief for service.  | 0.30  | 75.00              | JTH |
| Aug-15-18 | Communicate (with client) Communicate with client Swanson regarding mediation preparation.  | 0.30  | 82.50              | CMY |
| Aug-17-18 | Plan and prepare for and meet with client to review for Mediation hearing.  | 0.50  | 137.50             | CMY |
|           | Appear for/attend Mediation hearing with client. no travel  | 2.50  | 687.50             | CMY |
|           | Plan and prepare for and attend Mediation.  | 7.00  | 1,750.00           | JTH |
| Aug-19-18 | E-mail from Dr. Swanson Folinos' request for mold inspection prior to closing, showing knowledge of potential condition affecting closing date.                 | 0.10  | 25.00              | JTH |
| Aug-20-18 | E-mail from Dr. Swanson regarding application of Nevada Supreme Court's ruling in Nelson v. Heer.   | 0.10  | 25.00              | JTH |
| Aug-21-18 | E-mail from Dr. Swanson and post-mediation conference to discuss importance of Nelson ruling and strategy for limited discover and moving for summary judgment. | 0.20  | 50.00              | JTH |
| Aug-28-18 | Review/analyze correspondence from Arbitrator.  | 0.10  | 27.50              | CMY |
| Sep-04-18 | Communicate (with client) Communicate - teleconference with client Dr. Swanson regarding post mediation letter and future litigation strategy.                  | 0.40  | 110.00             | CMY |
| Sep-18-18 | Communicate (other outside counsel) Communicate with mediator Floyd Hale regarding settlement negotiations.   | 0.30  | 82.50              | CMY |
| Oct-05-18 | Communicate (with client) Communicate - teleconference with Plaintiff's counsel Rusty Graf regarding settlement negotiations, filing suit.                      | 0.30  | 82.50              | CMY |
|           | Totals  | 43.20 | <u>\$10,940.00</u> |     |

**DISBURSEMENTS**

|           |  |        |
|-----------|--|--------|
| Aug-01-18 | 0300.003 Mediator's Final Bill                                       | 164.75 |
| Aug-14-18 | Copying - Confidential Mediation Brief. 98 @<br>.25                  | 24.50  |
| Sep-27-18 | Copying - Amended Notice of Early<br>Arbitration Conference. 3 @ .25 | 0.75   |

|        |          |
|--------|----------|
| Totals | \$190.00 |
|--------|----------|

|                                      |                    |
|--------------------------------------|--------------------|
| <b>Total Fee &amp; Disbursements</b> | <b>\$11,130.00</b> |
|--------------------------------------|--------------------|

|                  |          |
|------------------|----------|
| Previous Balance | 1,928.25 |
|------------------|----------|

|                   |          |
|-------------------|----------|
| Previous Payments | 1,928.25 |
|-------------------|----------|

|                        |                    |
|------------------------|--------------------|
| <b>Balance Now Due</b> | <b>\$11,130.00</b> |
|------------------------|--------------------|

TAX ID Number 82-1847362

#### PAYMENT DETAILS

|           |                                    |          |
|-----------|------------------------------------|----------|
| Jul-02-18 | Final Payment for Inv1121 - Chk#22 | 1,928.25 |
|-----------|------------------------------------|----------|

|                       |                   |
|-----------------------|-------------------|
| <b>Total Payments</b> | <b>\$1,928.25</b> |
|-----------------------|-------------------|



**Christopher M. Young, PC**  
2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

April 8, 2019

**Attention:** Todd Swanson

File #: 0300.003  
Inv #: 1195

**RE:** Folino v. Lyons Development, LLC

| DATE      | DESCRIPTION  | HOURS | AMOUNT | LAWYER |
|-----------|--|-------|--------|--------|
| Nov-06-18 | Teleconference with Mediator Floyd Hale regarding settlement.  | 0.20  | 55.00  | CMY    |
| Dec-20-18 | Review/analyze Notice from Plaintiff's counsel regarding service of process on Lyons, including correspondence.                            | 0.30  | 82.50  | CMY    |
|           | Communicate - teleconference with Plaintiff's counsel regarding Answer and request to accept service on client Swanson.                    | 0.30  | 82.50  | CMY    |
| Jan-04-19 | Review/analyze correspondence from Plaintiff's counsel regarding request to Accept Service with Affidavit of Service on Lyons Development. | 0.20  | 55.00  | CMY    |
|           | Communicate - teleconference with client regarding acceptance of services and status of case, future activity.                             | 0.30  | 82.50  | CMY    |
| Jan-07-19 | Communicate - Teleconference with client regarding current status, intent to Answer lawsuit, and acceptance of service.                    | 0.40  | 110.00 | CMY    |
| Jan-10-19 | Review and execute Acceptance of Affidavit of Service.   | 0.20  | 55.00  | CMY    |
| Jan-23-19 | Review Plaintiffs' Complaint for pleading deficiencies and preparing preliminary outline   | 1.80  | 495.00 | CMY    |

for drafting Motion to Dismiss or for a More Definite Statement under N.R.C.P. 12(b)(5).

|           |   |      |          |     |
|-----------|---|------|----------|-----|
|           | Research and drafting argument supporting Motion to Dismiss regarding failure to plead fraud with specificity pursuant to N.R.C.P. 9(b) and related cases.                                | 4.10 | 1,025.00 | JTH |
|           | Review/analyze Plaintiff's Complaint for pleading deficiencies and preparing preliminary outline for drafting Motion to Dismiss or for a More Definite Statement Under N.R.C.P. 12(b)(5). | 1.80 | 450.00   | JTH |
|           | Research and drafting argument supporting Motion to Dismiss regarding failure to plead fraud with specificity pursuant to N.R.C.P. 9(b) and related cases.                                | 4.10 | 1,025.00 | JTH |
| Jan-24-19 | Research regarding standards and elements for pleading claim under the Nevada Deceptive Trade Practices Act.  | 1.50 | 375.00   | JTH |
|           | Research regarding elements to plead cause of action for Civil RICO.  | 2.30 | 575.00   | JTH |
|           | Drafting argument regarding pleading deficiencies in Plaintiffs' Deceptive Trade Practice Act and Civil RICO claims.  | 3.40 | 850.00   | JTH |
|           | Research regarding standards and elements for pleading claim under the Nevada Deceptive Trade Practices Act.  | 1.50 | 375.00   | JTH |
|           | Research regarding elements to plead cause of action for Civil RICO.  | 2.30 | 575.00   | JTH |
|           | Draft/revise argument regarding pleading deficiencies in Plaintiffs' DTPA and Civil RICO claims.  | 3.40 | 850.00   | JTH |
| Jan-25-19 | Research and drafting argument that Todd Swanson, individually, is not a proper defendant because transaction was between the Folinos and Lyons Development, LLC.                         | 1.70 | 425.00   | JTH |
|           | Drafting argument that Plaintiffs' punitive damages prayer is not supported by the pleadings.   | 1.60 | 400.00   | JTH |
|           | Review, revise and finalize brief for filing.   | 1.50 | 375.00   | JTH |

|           |   |       |             |     |
|-----------|---|-------|-------------|-----|
|           | Research and drafting argument that Todd Swanson, individually, is not a proper defendant transaction was between the Folinis and Lyons Development, LLC. | 1.70  | 425.00      | JTH |
|           | Draft/revise argument that Plaintiff's punitive damages prayer is not supported by the pleadings.   | 1.60  | 400.00      | JTH |
|           | Review/analyze and finalize brief for filing.   | 1.50  | 375.00      | JTH |
| Feb-25-19 | Review/analyze correspondence from client, draft reply to client regarding hearing strategy.  | 0.30  | 82.50       | CMY |
| Mar-18-19 | Communicate - teleconference with client Dr. Swanson regarding Motion to Dismiss, continuance and strategy.   | 0.40  | 110.00      | CMY |
| Mar-25-19 | Communicate with Court regarding continue of Motion to Dismiss; draft Notice of Rehearing.  | 0.30  | 82.50       | CMY |
| Apr-01-19 | Review/analyze Plaintiff's Proposed Amended Complaint.  | 0.50  | 137.50      | CMY |
|           | Review/analyze Plaintiff's Opposition to Motion to Dismiss and Counter-Motion to Amend Pleadings. Prepare outline for drafting Reply.                     | 1.60  | 400.00      | JTH |
|           | Draft/revise Reply regarding fraud and punitive damages.  | 5.10  | 1,275.00    | JTH |
| Apr-02-19 | Review/analyze Plaintiff's Request for Exemption.   | 0.20  | 50.00       | JTH |
|           | Research regarding Nevada standards for asserting alter ego and piercing the corporate veil.  | 1.50  | 375.00      | JTH |
|           | Draft/revise argument regarding alter ego and finalizing Reply for filing and delivery to Judge Crockett.   | 2.10  | 525.00      | JTH |
|           | Totals  | 49.70 | \$12,555.00 |     |

**DISBURSEMENTS**

|           |   |      |
|-----------|---|------|
| Feb-07-19 | Copying - Request for Exemption from Arbitration. 6 @ .25 | 1.50 |
|-----------|---|------|

Totals

---

\$1.50**Total Fee & Disbursements**

---

**\$12,556.50**

Previous Balance

11,130.00

Previous Payments

11,130.00

**Balance Now Due**

---

**\$12,556.50**

TAX ID Number 82-1847362

**PAYMENT DETAILS**

Nov-08-18 Payment for Inv#1150 - 0300.003

11,130.00

**Total Payments**

---

**\$11,130.00**

***Christopher M. Young, PC***

2460 Professional Court, #200

Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

September 13, 2019

**Attention:** Todd Swanson

File #: 0300.003

Inv #: 1230

**RE:** Folino v. Lyons Development, LLC

| DATE      | DESCRIPTION   | HOURS | AMOUNT | LAWYER |
|-----------|---|-------|--------|--------|
| Apr-08-19 | Communicate - Teleconference with client regarding attendance at Motion to Dismiss hearing.   | 0.10  | 27.50  | CMY    |
| Apr-09-19 | Plan and prepare for and attend Defendant Swanson's motion to Dismiss, Countermotion to Amend Complaint at Regional Justice Center.             | 3.00  | 825.00 | CMY    |
| Apr-10-19 | Review/analyze Proposed Order regarding Motion to Dismiss and Countermotion.  | 0.10  | 27.50  | CMY    |
|           | Communicate - teleconference with Plaintiff's counsel regarding revisions to Order.   | 0.10  | 27.50  | CMY    |
| Apr-18-19 | Review/analyze Notice of Entry of Order on Motion to Dismiss.   | 0.20  | 55.00  | CMY    |
| May-15-19 | Review/analyze Plaintiffs' filed First Amended Complaint for drafting Renewed Motion to Dismiss.  | 0.90  | 225.00 | JTH    |
|           | Research regarding economic loss doctrine.  | 2.70  | 675.00 | JTH    |
|           | Draft/revise argument regarding dismissal of second claim for negligent misrepresentation based on bar on tort claims for purely economic loss. | 3.10  | 775.00 | JTH    |

|           |  |      |          |     |
|-----------|--|------|----------|-----|
|           | Research regarding dismissal pursuant to N.R.S. Chapter 113.   | 1.90 | 475.00   | JTH |
|           | Draft/revise argument that Plaintiff's Fourth Claim for failure to disclose pursuant to N.R.S. Chapter 113.                          | 2.90 | 725.00   | JTH |
| May-20-19 | Review/analyze and finalize Motion to Dismiss for filing.  | 0.70 | 175.00   | JTH |
| May-21-19 | Review/analyze Notice of Hearing for July 11, 2019 from Department 24.   | 0.10 | 25.00    | JTH |
| May-23-19 | Draft/revise correspondence to client regarding Motion to Dismiss, and review of Notice of Hearing.                                  | 0.30 | 82.50    | CMY |
| Jun-24-19 | Review/analyze Plaintiff's Opposition to Motion to Dismiss and framing argument for Reply.   | 1.90 | 475.00   | JTH |
|           | Review/analyze cases cited by Plaintiffs' regarding applicability of economic loss doctrine and drafting reply regarding same.       | 4.30 | 1,075.00 | JTH |
|           | Review/analyze Plaintiffs' argument that Defendants violated N.R.S. Chapter 113 disclosure requirements and analysis of cited cases. | 2.10 | 525.00   | JTH |
|           | Draft/revise reply argument that N.R.S. Chapter 113 and related cases warrant dismissal of Plaintiffs' Fourth Claim.                 | 3.30 | 825.00   | JTH |
| Jul-03-19 | Review/analyze and finalize reply for filing.  | 0.30 | 75.00    | JTH |
| Jul-18-19 | Plan and prepare for and attend motion to dismiss hearing at the Regional Justice Center, with travel.                               | 4.00 | 1,100.00 | CMY |
| Jul-29-19 | Communicate - teleconference with Department 24, Clerk regarding status of Minute Order from July 18, 2019.                          | 0.20 | 50.00    | JTH |
| Jul-30-19 | Draft/revise Order granting Defendant's Motion to Dismiss Plaintiff's Second, Third, Fifth, Sixth, and Seventh Causes of Action.     | 2.70 | 675.00   | JTH |
| Aug-05-19 | Communicate - Teleconference with Floyd Hale regarding settlement status.  | 0.20 | 55.00    | CMY |

|           |   |       |            |     |
|-----------|---|-------|------------|-----|
|           | Review/analyze Order and Findings of Fact.                  | 0.60  | 165.00     | CMY |
| Aug-15-19 | Draft/revise Notice of Entry of Order on Motion to Dismiss. | 0.20  | 55.00      | CMY |
|           | Totals  | 35.90 | \$9,195.00 |     |

**DISBURSEMENTS**

|           |   |          |                   |
|-----------|---|----------|-------------------|
| Apr-10-19 | Other - Parking   | 24.00    |                   |
| Apr-18-19 | Copying - First Amended Complaint. 75 @ .25   | 18.75    |                   |
| Apr-24-19 | Lewis St. Garage - Parking  | 21.00    |                   |
| Apr-30-19 | Payment for Inv# Inv# 37022860  | 63.56    |                   |
| Jun-05-19 | Copying - Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint. 13 @ .25 | 3.25     |                   |
| Jul-01-19 | Copying - CLS Documents 555 @ .15   | 83.25    |                   |
| Jul-19-19 | Other - Parking   | 18.00    |                   |
| Jul-31-19 | Swanson - Drop Motion Binder off for Hearing  | 35.03    |                   |
| Sep-13-19 | Lewis St Garage Las Vegas   | 18.00    |                   |
|           | Totals  | \$284.84 |                   |
|           | <b>Total Fee &amp; Disbursements</b>  |          | <b>\$9,479.84</b> |
|           | Previous Balance  |          | 12,556.50         |
|           | Previous Payments   |          | 12,556.50         |
|           | <b>Balance Now Due</b>  |          | <b>\$9,479.84</b> |

TAX ID Number 82-1847362

**PAYMENT DETAILS**

|           |                                 |                    |
|-----------|---------------------------------|--------------------|
| Apr-19-19 | Payment for Inv#1195 - 0030.003 | 12,556.50          |
|           | <b>Total Payments</b>           | <b>\$12,556.50</b> |

***Christopher M. Young, PC***

2460 Professional Court, #200

Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

March 23, 2020

**Attention:** Todd Swanson

**File #:** 0300.003

**Inv #:** 1277

**RE:** Folino v. Lyons Development, LLC

| DATE      | DESCRIPTION   | HOURS | AMOUNT | LAWYER |
|-----------|---|-------|--------|--------|
| Sep-20-19 | Review/analyze Affidavit of Aaron Hawley, with Rakeman Plumbing, make edits, revisions and discuss with Jay Motion to Dismiss.      | 0.60  | 165.00 | CMY    |
| Sep-24-19 | Review/analyze Motion to Dismiss, including final revisions, and edits by lead counsel, and finalize Motion for Filing.             | 1.50  | 412.50 | CMY    |
| Oct-02-19 | Review/analyze Notice of Hearing.   | 0.10  | 27.50  | CMY    |
| Oct-04-19 | Review/analyze Plaintiff's Opposition to Defendant's Motion to Dismiss with analysis and discussion with associates for response.   | 0.50  | 137.50 | CMY    |
| Nov-06-19 | Plan and prepare for summary judgment hearing including review of all briefs and prepare outline of oral argument.                  | 1.50  | 412.50 | CMY    |
| Nov-07-19 | Appear for/attend Oral hearing on Defendant Swanson's Motion to Dismiss Summary Judgment at the Regional Justice Center.            | 2.00  | 550.00 | CMY    |
| Nov-08-19 | Communicate - teleconference with client regarding Motion for Summary Judgment Hearing, case status and future litigation activity. | 0.30  | 82.50  | CMY    |
| Nov-26-19 | Review/analyze Plaintiff's N.R.C.P. 16.1 List of Witnesses and Production of Documents.   | 0.20  | 55.00  | CMY    |



|           |  |      |            |     |
|-----------|--|------|------------|-----|
| Dec-10-19 | Communicate - extended teleconference with client regarding case status, strategy and Offer of Judgment. | 0.30 | 82.50      | CMY |
| Dec-11-19 | Communicate - teleconference with associate regarding Discovery responses.                               | 0.20 | 55.00      | CMY |
| Dec-23-19 | Review/analyze of Request for Production and Interrogatory answers to client before serving.             | 0.60 | 165.00     | CMY |
|           | Communicate - teleconference with Jeff Galliher regarding discovery responses.                           | 0.10 | 27.50      | CMY |
| Mar-03-20 | Attend defendant Swanson's motion to dismiss hearing at Regional Justice Center                          | 1.50 | 412.50     | CMY |
|           | Telephone call with Client regarding outcome of hearing  | 0.30 | 82.50      | CMY |
|           | Totals   | 9.70 | \$2,667.50 |     |

**DISBURSEMENTS**

|           |   |       |
|-----------|---|-------|
| Aug-31-19 | Runner Services - 7-23-19 - Pick Up Minute Order  | 29.10 |
|           | Runner Services - 8-6-19 - Submit Order to Chambers   | 36.44 |
| Sep-15-19 | Filing Fee  | 3.50  |
|           | Filing Fee  | 3.50  |
| Oct-15-19 | NVEfile   | 3.50  |
| Nov-07-19 | Final Invoice for Mediation Services - 0300.003   | 49.50 |
| Nov-20-19 | Copying - Plaintiff's Initial List of Witnesses. 63 @ .25   | 15.75 |
| Nov-22-19 | Copying - Plaintiff's First Set of Interrogatories to Todd Swanson - Trustee 9 @ .25                                  | 0.90  |
|           | Copying - Plaintiff's First Set of Request for Admissions to Todd Swanson - Trustee 9 @ .25                           | 2.25  |
|           | Copying - Plaintiff's First Set of Request for Production of Documents to Todd Swanson - Trustee 10 @ .25             | 2.50  |
|           | Copying - Plaintiff's First set of Request for Admission - Todd Swanson and Lyon Developement. 20 @ .25               | 5.00  |
|           | Copying - Plaintiff's First Set of Request for Production of Documents - Todd Swanson and Lyon Developement. 20 @ .25 | 5.00  |
| Nov-30-19 | Runner Service for November 2019  | 35.03 |

|           |                                       |                   |
|-----------|---------------------------------------|-------------------|
|           | Courier Expense                       | 35.03             |
| Dec-09-19 | Parking @ court house                 | 9.00              |
| Dec-16-19 | Lewis Street Garage Las Vegas, Nevada | 15.00             |
| Mar-03-20 | Parking                               | 9.00              |
|           |                                       |                   |
|           | Totals                                | \$260.00          |
|           |                                       |                   |
|           | <b>Total Fee &amp; Disbursements</b>  | <b>\$2,927.50</b> |
|           | Previous Balance                      | 9,479.84          |
|           | Previous Payments                     | 9,479.84          |
|           |                                       |                   |
|           | <b>Balance Now Due</b>                | <b>\$2,927.50</b> |

TAX ID Number 82-1847362

#### PAYMENT DETAILS

|           |   |                   |
|-----------|---|-------------------|
| Oct-07-19 | Payment for Inv#1230 - 0030.003 - CK#26 | 9,479.84          |
|           |   |                   |
|           | <b>Total Payments</b>                   | <b>\$9,479.84</b> |

# EXHIBIT D

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Todd Swanson, M.D.

*Via Electronic Mail*

Through 02/05/20

**Re: Swanson, et al. adv. Folino**

|          |     |   |     |         |
|----------|-----|---|-----|---------|
| 9/6/19   | JTH | Emails (2x) to and from Nicky Whitfield regarding Rakeman Plumbing interactions prior to closing  | 0.3 | 81.00   |
| 9/17/19  | JTH | Emails (3x) to and from Todd Swanson regarding Aaron Hawley (Rakeman Plumbing) affidavit to accompany Motion to Dismiss/Motion for Summary Judgment regarding Folino's Second Amended Complaint   | 0.4 | 108.00  |
| 9/19/19  | JTH | Meeting with Aaron Hawley and Rocky Gerber (Rakeman Plumbing) regarding February service and repair of water leak and May 23, 2017 invoice, for drafting affidavit to accompany Motion to Dismiss/Motion for Summary Judgment regarding Folino's Second Amended Complaint | 1.4 | 378.00  |
| 9/20/19  | JTH | Further communication with Aaron Hawley, drafting and revising affidavit to accompany MTD/MSJ Folino's Second Amended Complaint   | 1.1 | 297.00  |
| 9/26/19  | JTH | Draft and revise MTD/MSJ Folino's Second Amended Complaint regarding Folino's claims for fraud and violation of NRS Chapter 113   | 6.3 | 1701.00 |
| 10/28/19 | JTH | Review Folino's Opposition. Outline issues for Reply  | 1.8 | 486.00  |
| 10/29/19 | JTH | Research NRCP 11 and NRS 18.010 regarding Folino's Motion for Sanctions   | 1.5 | 405.00  |

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

|          |     |  |     |         |
|----------|-----|--|-----|---------|
| 10/29/19 | JTH | Draft Reply in support of MTD/MSJ and Opposition to Motion for Sanctions   | 3.7 | 999.00  |
| 10/30/19 | JTH | Final revisions to Reply and Opposition for filing and hand-delivery to Judge Crockett   | 0.9 | 243.00  |
| 11/7/19  | JTH | Preparation for and attend hearing on our Motion to Dismiss Plaintiffs' Second Amended Complaint                                       | 2.2 | 594.00  |
| 11/26/19 | JLG | Meeting with CMY re: facts of case, current status and future handling;  | 1.0 | 270.00  |
| 11/27/19 | JLG | Prepare for and attend Early Case Conference with opposing counsel   | 1.0 | 270.00  |
| 12/3/19  | JLG | TCW Jay Hopkins re: status of case and future handling;  | 0.3 | 81.00   |
| 12/9/19  | JTH | Telephone call to Dr. Swanson regarding Plaintiffs' discovery requests   | 0.2 | 54.00   |
| 12/19/19 | JLG | Multiple communications with OC re: consolidation of depositions of TS, Shiraz Trust and Lyons development. E-mail to client re: same. | 0.5 | 135.00  |
| 12/20/19 | JLG | Draft and finalize Defendants initial list of witnesses and documents pursuant to NRCP 16.1  | 5.5 | 1485.00 |
| 12/23/19 | JLG | Finalize responses to Interrogatories and Requests for Admissions served on all 3 defendants. Serve same upon Plaintiff's counsel      | 6.0 | 1620.00 |
| 1/6/20   | JTH | Pre-deposition meeting with Dr. Swanson and JLG  | 2.5 | 675.00  |
| 1/6/20   | JLG | Prep client for deposition   | 2.5 | 675.00  |
| 1/7/20   | JLG | Multiple e-mail communications with OC re: rescheduling of witness depositions   | 0.5 | 135.00  |
| 1/14/20  | JLG | Receipt and review of multiple declarations of service of various notices of deposition.   | 0.4 | N/C     |
| 1/14/20  | JLG | Receipt of documents and telephone conversation with Dr. Swanson re: SDT served upon Nicky Whitfield                                   | 0.4 | 108.00  |

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

|         |     |   |      |          |
|---------|-----|---|------|----------|
| 1/14/20 | JLG | Receipt and review of correspondence form Darren Welsh, counsel for Sher and Contenta re: deposition scheduling                               | 0.3  | N/C      |
| 1/14/20 | JLG | Receipt and review of Plaintiffs 2 <sup>nd</sup> supplement to NRCP 16.1 production (Berkshire Hathaway docs)                                 | 2.0  | 540.00   |
| 1/15/20 | JLG | Receipt and review of Plaintiffs 3 <sup>rd</sup> supplement to NRCP 16.1 production (The Ridges Community Association docs)                   | 1.8  | 486.00   |
| 1/21/20 | JLG | Receipt and review of Plaintiffs 4 <sup>th</sup> supplement to NRCP 16.1 production   | 1.5  | 405.00   |
| 1/23/20 | JLG | Prepare and serve Defendant's First Supplement to NRCP 16.1 disclosure  | 1.2  | 324.00   |
| 1/24/20 | JLG | Defend deposition of Todd Swanson   | 8.0  | 2160.00  |
| 1/27/20 | JLG | Receipt and review of Plaintiffs 5 <sup>th</sup> supplement to NRCP 16.1 production (Uponor docs)   | 2.0  | 540.00   |
| 1/27/20 | JLG | Receipt and review of additional documents from client re: Blue Heron. Prepare and file Defendants' Second Supplement to NRCP 16.1 disclosure | 3.5  | 945.00   |
| 1/28/20 | JLG | Telephone conference with OC and counsel for Berkshire Hathaway re: depositions of Ivan Sher and Kelly Contenta                               | 0.4  | 108.00   |
| 1/28/20 | JLG | Receipt and review of notices of deposition for Ivan Sher and Kelly Contenta  | 0.2  | 54.00    |
| 1/29/20 | JLG | Prepare for and defend deposition of Nicky Whitfield  | 4.0  | 1080.00  |
| 1/31/20 | JLG | Prepare for and attend deposition of William "Rocky" Gerber   | 2.0  | 540.00   |
| 1/31/20 | JLG | Prepare for and attend deposition of Aaron Hawley   | 3.0  | 810.00   |
|         |     |   |      |          |
| TOTAL   |     |   | 70.3 | 18792.00 |

Total: 18792.00

Retainer on deposit: 0.00

**Total due this bill: 18792.00**

Please make checks payable to "GALLIHER LEGAL PC" Tax ID # 82-2688661

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104  
Tel: 702-735-0049 Fax: 702-735-0204

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Todd Swanson, M.D.

*Via Electronic Mail*

Through 03/10/20

**Re: Swanson, et al. adv. Folino**

|         |     |  |     |        |
|---------|-----|--|-----|--------|
| 2/4/20  | JLG | Receipt and review of request for extension from OC. Forward same to client and co-counsel.  | .04 | N/C    |
| 2/6/20  | JLG | Prepare for and defend continued deposition of Dr. Swanson. TCW client re: same.   | 3.5 | 945.00 |
| 2/7/20  | JLG | Receipt and review of stipulation regarding extension of time for supplemental briefs and hearing. Execute same for filing with the court.             | 0.3 | 81.00  |
| 2/14/20 | JLG | Receipt and review of Plaintiff's Supplemental Brief and list of exhibits.   | 2.1 | 567.00 |
| 2/14/20 | JLG | Review of deposition transcripts of A. Hawley and W. Gerber, for relevance to Plaintiff's Supplemental Brief and Defendant's Reply;                    | 1.9 | 513.00 |
| 2/17/20 | JLG | Review of deposition transcripts of K. Contenta, N. Whitfield and T. Swanson for relevance to Plaintiff's Supplemental Brief and Defendant's Reply;    | 1.5 | 405.00 |
| 2/14/20 | JTH | Detailed analysis of Plaintiffs' Supplemental Brief and prepare outline of potential arguments in response   | 3.1 | 837.00 |
| 2/18/20 | JTH | Begin detailed review of Plaintiffs' Supplemental List of Witnesses and Production of Documents (5429 pp) for preparing Defendants' Supplemental Reply | 2.7 | 729.00 |
| 2/18/20 | JTH | Strategy meeting with JLG regarding structure of Supplemental Reply in light of Plaintiffs' arguments and mis-stated recitation of facts               | 3.0 | 810.00 |
| 2/20/20 | JLG | Meeting with JTH regarding contents of Plaintiff's Supplemental Brief and strategy for our Reply.  | 3.0 | 810.00 |

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

|              |     |   |             |                 |
|--------------|-----|---|-------------|-----------------|
| 2/20/20      | JTH | Continued analysis of Plaintiffs' Supplemental Production and all discovery, including depositions of Dr. Swanson, Aaron Hawley, Rocky Gerber, Nicky Whitfield and Ivan Sher, for deposition excerpts to support Defendants' Supplemental Reply | 2.0         | 540.00          |
| 2/24/20      | JTH | Continued drafting and revising Defendants' Supplemental Brief  | 4.9         | 1323.00         |
| 2/25/20      | JTH | Continued drafting and revising Defendants' Supplemental Brief  | 5.5         | 1485.00         |
| 2/28/20      | JLG | Receipt and review of text message printout from N. Whitfield.  | 0.9         | 243.00          |
| 2/27/20      | JLG | Draft and finalize supplemental brief to final form with JTH; File and serve brief and deliver courtesy copy to Dept. 24;   | 7.0         | 1890.00         |
| 2/27/20      | JTH | Final strategy meeting w/ JLG regarding Supplemental reply  | 5.0         | 1350.00         |
| 2/28/20      | JLG | Receipt and review of text message printout from N. Whitfield.  | 0.9         | 243.00          |
| 3/3/20       | JTH | Preparation with JLG and attend Hearing on Motion for Summary Judgment  | 1.5         | 405.00          |
| 3/3/20       | JLG | Prepare for and attend hearing on Defendants' Motion to Dismiss. Meeting with JTH re: same.   | 1.5         | 405.00          |
| 3/10/20      | JLG | Receipt and review of acceptance of service of amended deposition subpoena for Ashley Oakes-Lazosky. Draft correspondence to R. Graf re: same.  | 0.8         | 216.00          |
| <b>TOTAL</b> |     | <b>FEES</b>   | <b>51.5</b> | <b>13797.00</b> |
| 1/24/20      |     | Deposition transcript – Todd Swanson Vol I  |             | 1,404.30        |
| 1/29/20      |     | Deposition Transcript – Nicole Whitfield  |             | 908.10          |
| 1/31/20      |     | Deposition Transcript – Aaron Hawley  |             | 586.85          |
| 1/31/20      |     | Deposition Transcript – William Gerber  |             | 641.49          |
| 2/6/20       |     | Deposition Transcript - Todd Swanson Vol II   |             | 587.02          |
| 2/27/20      |     | Copies – Courtesy binder for court  | .15         | 37.50           |
| <b>TOTAL</b> |     | <b>COSTS</b>  |             | <b>4165.26</b>  |

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104  
Tel: 702-735-0049 Fax: 702-735-0204



# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

|                             |                 |
|-----------------------------|-----------------|
| Total Fees:                 | 13797.00        |
| Total Costs:                | 4165.26         |
| Retainer on Deposit:        | 0.00            |
| Balance Forward:            | 0.00            |
| <b>Total due this bill:</b> | <b>17962.26</b> |

Please make checks payable to “**GALLIHER LEGAL PC**”    **Tax ID # 82-2688661**

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Todd Swanson, M.D.

*Via Electronic Mail*

Through 04/15/20

**Re: Swanson, et al. adv. Folino**

|         |     |   |     |         |
|---------|-----|---|-----|---------|
| 2/20/20 | JTH | Begin drafting Defendants' Supplemental Reply   | 5.3 | 1431.00 |
| 2/26/20 | JTH | Finalize drafting and revising Defendants' Supplemental Reply   | 4.7 | 1269.00 |
| 4/6/20  | JLG | Review of file materials in preparation for scheduled hearing.  | 0.8 | 216.00  |
| 4/7/20  | JLG | Prepare for and attend continued hearing on Defendant's motion for summary judgment; TCW client re: same.   | 3.0 | 810.00  |
| 4/7/20  | JTH | Attend hearing on Defendants' Motion for Summary Judgment   | 2.5 | 675.00  |
| 4/9/20  | JTH | Drafting Findings of Fact and Conclusions of Law as directed by Judge Crockett  | 6.5 | 1755.00 |
| 4/10/20 | JLG | Begin draft of motion for attorney's fees and costs.  | 3.0 | 810.00  |
| 4/10/20 | JTH | Revising Findings of Fact and Conclusions of Law. Supplemental research regarding fraud claims being derivative of concealment claims under NRS Chapter 113 | 5.3 | 1431.00 |
| 4/14/20 | JLG | Legal research re: availability of fees from inception of suit for inclusion in motion for fees and costs.  | 1.1 | 297.00  |
| 4/14/20 | JLG | Continue drafting of motion for attorney's fees and costs including review of record and filed papers.  | 3.6 | 972.00  |

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

|              |     |   |             |                 |
|--------------|-----|---|-------------|-----------------|
| 4/15/20      | JTH | Finalizing Findings of Fact and Conclusions of Law  | 3.4         | 918.00          |
| 4/15/20      | JLG | Make edits to motion for attorney's fees and costs;<br>Forward same to JTH for review and comment.                                      | 2.5         | 675.00          |
| 4/17/20      | JLG | Revise and edit Order Dismissing Suit and forward<br>same to Plaintiffs' counsel for review.  | 1.2         | 324.00          |
| 4/17/20      | JLG | Assemble declaration and exhibits and revise and<br>edit motion for attorney's fees and costs to final<br>form and file and serve same. | 2.1         | 567.00          |
| <b>TOTAL</b> |     | <b>FEES</b>   | <b>45.0</b> | <b>12150.00</b> |

Total Fees: 12150.00

Retainer on Deposit: 0.00

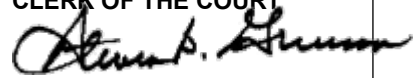
Balance Forward: 0.00

**Total due this bill: 12150.00**

Please make checks payable to "GALLIHER LEGAL PC" Tax ID # 82-2688661

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104  
Tel: 702-735-0049 Fax: 702-735-0204

# EXHIBIT E



1 **NOAC**  
2 GALLIHER LEGAL P.C.  
3 Jeffrey L. Galliher, Esq.  
4 Nevada Bar No. 8078  
5 1850 East Sahara Avenue, Suite 107  
6 Las Vegas, Nevada 89104  
7 Telephone: (702) 735-0049  
8 Facsimile: (702) 735-0204  
9 jgalliher@galliherlawfirm.com  
10 Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 JOSEPH FOLINO, an individual, and ) CASE NO.: A-18-782494-C  
10 NICOLE FOLINO, an individual; ) DEPT. NO.: XXIV  
11 )

11 Plaintiffs, )

12 v. )

13 TODD SWANSON, an individual; )  
14 TODD SWANSON, Trustee of the )  
15 SHIRAZ TRUST, a Trust of unknown )  
16 origin; LYONS DEVELOPMENT, )  
17 LLC, a Nevada limited liability )  
18 company; DOES I-X and ROES I-X, )

17 Defendants. )  
18 \_\_\_\_\_ )

19 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

20 PLEASE TAKE NOTICE that JEFFREY L. GALLIHER, ESQ. of GALLIHER LEGAL P.C.  
21 has associated with CHRISTOPHER M. YOUNG and JAY T. HOPKINS, ESQ. of CHRISTOPHER  
22 M. YOUNG, PC, as counsel for defendants herein.

23 ///

24 ///

25 ///

26 ///

1 It is respectfully requested that a copy of all future documents in this action be served upon each of  
2 the undersigned counsel.

3 DATED this 26th day of November 2019.  
4

5 CHRISTOPHER M. YOUNG, PC

GALLIHER LEGAL, P.C.

6  
7 /s/ Christopher M. Young  
8 Christopher M. Young, Esq.  
9 Nevada Bar Number 7961  
10 Jay T. Hopkins, Esq.  
11 Nevada Bar Number 3223  
12 2640 Professional Court, #200  
13 Las Vegas, Nevada 89128  
14 Attorney for Defendants  
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/s/ Jeffrey L. Galliher  
Jeffrey L. Galliher, Esq.  
Nevada Bar Number 8078  
1850 E. Sahara Avenue, Ste. 107  
Las Vegas, Nevada 89104  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of CHRISTOPHER M. YOUNG PC, and that service of a true and correct copy of the above and foregoing **NOTICE OF ASSOCIATION OF COUNSEL** was served on the 26th day of November 2019, to the following addressed parties by:

\_\_\_\_\_ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

\_\_\_\_\_ Facsimile, pursuant to EDCR 7.26 (as amended)

\_\_\_\_\_ Electronic Mail/Electronic Transmission

\_\_\_\_\_ Hand Delivered to the addressee(s) indicated

\_\_\_\_\_ Receipt of Copy on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, acknowledged by,

\_\_\_\_\_  
Rusty Graf, Esq.  
Black & Lobello  
10777 W. Twain Ave., 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
*Attorneys for Plaintiffs*

/s/Myra Hyde

An employee of CHRISTOPHER M. YOUNG PC

# EXHIBIT F



CHRISTOPHER M. YOUNG, ESQ.  
Nevada Bar No. 7961  
JAY T. HOPKINS, ESQ.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Defendants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**OFFER OF JUDGMENT**

TO: JOSEPH FOLINO and NICOLE FOLINO, Plaintiffs

TO: RUSTY J. GRAF, ESQ., Attorney for Plaintiffs

PLEASE TAKE NOTICE that pursuant to the provisions of NRCP 68 and Chapter 17  
of the Nevada Revised Statutes, Defendants, TODD SWANSON, individually, TODD

1 SWANSON as Trustee of the SHIRAZ TRUST, the SHIRAZ TRUST, and LYON  
2 DEVELOPMENT, LLC, by and through their attorneys of record, CHRISTOPHER M.  
3 YOUNG, ESQ., JAY T. HOPKINS, ESQ. and JEFFREY L. GALLIHER, ESQ., hereby offers  
4 to have judgment taken against them in the total sum of ONE HUNDRED FIFTY  
5 THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00). This offer is inclusive of costs,  
6 fees and interest.  
7

8 DATED this 11th day of December, 2019.  
9

10  
11 */s/ Jeffrey L. Galliher*

12 CHRISTOPHER M. YOUNG, ESQ.  
13 Nevada Bar No. 7961  
14 JAY T. HOPKINS, ESQ.  
15 Nevada Bar No. 3223  
16 CHRISTOPHER M. YOUNG, PC  
17 2460 Professional Court, #200  
18 Las Vegas, Nevada 89128  
19 Tel: (702) 240-2499  
20 Fax: (702) 240-2489  
21 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
22 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

18 Jeffrey L. Galliher, Esq.  
19 Nevada Bar No. 8078  
20 GALLIHER LEGAL P.C.  
21 1850 East Sahara Avenue, Suite 107  
22 Las Vegas, Nevada 89104  
23 Telephone: (702) 735-0049  
24 Facsimile: (702) 735-0204  
25 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

26 *Attorneys for Defendants*  
27  
28

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Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
[swilson@blacklobello.law](mailto:swilson@blacklobello.law)

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# EXHIBIT G

## **DECLARATION OF JEFFREY L. GALLIHER**


I, Jeffrey L. Galliher, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am the principal of Galliher Legal P.C., Of Counsel to the Galliher Law Firm and counsel for all Defendants herein.
2. This Declaration is made in support of Defendants' Motion for Attorney's Fees and Costs. I have personal knowledge of the attorney fees incurred by my firm in defense of Defendants in this case. The amount of attorney's fees incurred by Defendants is \$44,739.00. This amount is true and correct to the best of my knowledge and belief. These attorney's fees have been necessarily and actually incurred and paid in this action. True and correct copies of the billings are attached hereto as Exhibit A.
3. My educational and professional background is as follows: I am a solo practitioner Of Counsel to The Galliher Law Firm. I was previously a partner in the law firms of Cobeaga Tomlinson, LLP, Ham Galliher, LLP and Buckley King, LLP. I graduated from the Sandra Day O'Connor College of Law at Arizona State University. I have been admitted in Nevada since 2003 and was admitted in Indiana from 2010-2013. I have served as an Alternate Municipal Court Judge for the City of Las Vegas and as a court-appointed Arbitrator for the Eighth Judicial District Court since 2015. I have tried approximately 30 cases to verdict, including two with this very court. I am rated AV/Preeminent in Litigation by Martindale-Hubbell.
4. I was retained to represent defendants as lead counsel in December of 2020. Since that time I have performed legal work relevant to this case, including, but not limited to responding to all of Plaintiff's propounded written discovery, making Defendants'

initial disclosures pursuant to NRCP 16.1 and all supplements thereto, preparing for and defending or otherwise participating in the depositions of Dr. Swanson (twice), his assistant (Nikki Whitfield), two employees of Rakeman Plumbing (Aaron Hawley and William Gerber) and two of the selling agent's team (Ivan Sher and Kelly Contenta), preparation of Defendants' response to Plaintiffs' supplemental brief and preparing for and appearing at two motion hearings.

5. In addition, I have contracted for the services of attorney Jay T. Hopkins, Esq. to assist in the defense of this case. Mr. Hopkins' time is billed though my firm or through CHRISTOPHER M. YOUNG P.C., as appropriate to the timing and circumstances
6. Attached to the motion for fees and costs are copies of my firm's invoices, including time entries, incurred in the defense of this case.
7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 17 day of April 2020.

  
\_\_\_\_\_  
Jeffrey L. Galliher

# EXHIBIT H

## **DECLARATION OF CHRISTOPHER M. YOUNG**

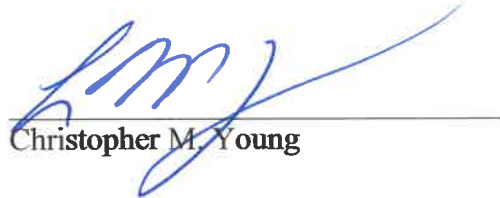
I, Christopher M. Young, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am the principal of Christopher M. Young P.C., and counsel for all Defendants herein.
2. This Declaration is made in support of Defendants' Motion for Attorney's Fees and Costs. I have personal knowledge of the attorney fees incurred by my firm in defense of Defendants in this case. The amount of attorney's fees paid to my firm and incurred by Defendants is \$37,282.50. Costs incurred are \$739.59 (disbursements on invoices) plus \$2,035.00 (pre-litigation mediation). This amount is true and correct to the best of my knowledge and belief. These attorney's fees have been necessarily and actually incurred and paid in this action. True and correct copies of the billings are attached hereto as Exhibit A (Invoice #s 1121, 1150, 1195, 1230,1277) between February 2018 to present) .
3. My educational and professional background is as follows: I am a solo practitioner for Christopher M. Young, PC. I began my Nevada career with Beckley, Singleton Jemison, Cobeaga & List. Thereafter I was a partner in the law firms of Cobeaga Tomlinson and The Cobeaga Firm from 2003-2017. I graduated from Stanford University A.B., The University of Houston Law Center J.D, and Temple University Beasley School of Law L.L.M. I have been admitted in Texas since 1994 and Nevada since 2001. I have served as an as a court-appointed Arbitrator and Short Trial Judge since 2005 for the Eighth Judicial District Court.
4. I was retained to represent defendants in January of 2018.



5. Since that time, I have performed legal work relevant to this case, including, but not limited to a pre-litigation mediation with Floyd Hale, and the filing of three motions to dismiss.
6. Attached to the motion for fees and costs are copies of my invoices, including time entries, incurred in the defense of this case.
7. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 14<sup>th</sup> day of April 2020.

  
\_\_\_\_\_  
Christopher M. Young

# EXHIBIT I

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
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Tel: (702) 240-2499  
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[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
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Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Defendants

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**DEFENDANTS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS**

Pursuant to NRS 18.020, NRS 18.005, NRS 18.110 and NRCP 68 Defendants, TODD  
SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST,  
a Trust of unknown origin; LYON DEVELOPMENT, LLC, (hereinafter referred to as

“Defendants”) by and through their counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., hereby moves this court to recover costs of suit. These costs were actually incurred and are reasonable in amount.

Defendants are entitled to recover statutory interest on the above costs from the date the costs were incurred through the date of entry of judgment pursuant to NRS 17.130 and *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of the calculation of prejudgment interest, the actual date or latest date each reasonable cost was incurred is set forth. Further, Defendants are entitled to post-judgment statutory interest from the date of entry of judgment.

| COST                        | DATE     | TOTAL      |
|-----------------------------|----------|------------|
| 1. Mediation deposit        | 7/16/18  | \$2,035.00 |
| 2. Runner                   | 7/23/19  | 29.10      |
| 3. Runner                   | 8/6/19   | 36.44      |
| 4. Filing fees              | 9/15/19  | 7.00       |
| 5. NVEFile                  | 10/15/19 | 3.50       |
| 6. Mediation final bill     | 11/7/19  | 49.50      |
| 7. Copies                   | 11/20/19 | 15.75      |
| 8. Copies                   | 11/22/19 | 15.65      |
| 9. Runner                   | 11/30/19 | 70.06      |
| 10. Deposition (Swanson I)  | 1/24/20  | 1404.30    |
| 11. Deposition (Whitfield)  | 1/29/20  | 908.10     |
| 12. Deposition (Gerber)     | 1/31/20  | 641.49     |
| 13. Deposition (Swanson II) | 2/6/20   | 587.02     |

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14. Copies

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**TOTAL COSTS**

**\$5840.41**

DATED this 22nd day of April 2020.

GALLIHER LEGAL P.C.

*/s/ Jeffrey L. Galliher*

Jeffrey Galliher, Esq.

Nevada Bar No. 8078

1850 E. Sahara Ave., Suite 107

Las Vegas, NV 89104

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 22<sup>nd</sup> day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** postage prepaid and addressed to the following:

Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3rd Floor  
Las Vegas, Nevada 89135  
rgraf@blacklobello.law  
swilson@blacklobello.law

*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC



1 MRTX  
2 Rusty Graf, Esq.  
3 Nevada Bar No. 6322  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
6 Las Vegas, Nevada 89135  
7 Telephone: (702) 869-8801  
8 Facsimile: (702) 869-2669  
9 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
10 *Attorneys for Plaintiffs*

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 JOSEPH FOLINO, an individual and NICOLE  
10 FOLINO, an individual,

11 Plaintiff,

12 v.

13 TODD SWANSON, an individual; TODD  
14 SWANSON, Trustee of the SHIRAZ TRUST;  
15 SHIRAZ TRUST, a Trust of unknown origin;  
16 LYONS DEVELOPMENT, LLC, a Nevada  
17 limited liability company; DOES I through X;  
18 and ROES I through X,

19 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

PLAINTIFFS' MOTION TO RETAX  
COSTS

HEARING REQUESTED

18 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
19 their attorney of record Rusty Graf, Esq., of Black & LoBello. hereby moves the Court to Retax  
20 the Costs sought by Defendants in their Memorandum of Costs and Disbursements, filed with  
21 this Court on April 22, 2020.

22 ///

23 ///

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1 This Motion is based upon the pleadings and papers on file in this action, the Points and  
2 Authorities set forth herein, and argument to be made by counsel at the time of the hearing.

3 DATED this 26 day of April 2020.

4 **BLACK & LOBELLO**

5  
6 Rusty Graf, Esq.  
7 Nevada Bar No. 6322  
8 10777 W. Twain Ave., Suite 300  
9 Las Vegas, NV 89135  
10 rrgraf@blacklobello.law  
11 Attorney for Plaintiffs

12 **NOTICE OF MOTION**

13 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

14 PLEASE TAKE NOTICE that the undersigned will bring the foregoing PLAINTIFFS'  
15 MOTION TO RETAX FEES AND COSTS for hearing before the above entitled Court on the  
16 \_\_\_\_ day of \_\_\_\_, 2020, at the hour of \_\_\_\_ a.m./p.m. in Department No. XXIV, or as soon  
17 thereafter as Plaintiffs can be heard.

18 DATED this 26 day of April 2020.

19 **BLACK & LOBELLO**

20  
21 RUSTY GRAF, ESQ.  
22 Nevada Bar No. 6322  
23 10777 W. Twain Ave., 3<sup>rd</sup> Fl.  
24 Las Vegas, Nevada 89135  
25 (702) 869-8801  
26 (702) 869-2669 (fax)  
27 rrgraf@blacklobello.law.com  
28 Attorney for Plaintiffs

///

///



I.

FACTUAL AND PROCEDURAL BACKGROUND

On August 17, 2018 Plaintiffs and Defendants conducted a mediation conference which was unsuccessful in reaching a settlement agreement. On October 19, 2018, Plaintiffs filed their initial Complaint. On February 4, 2019 Defendants filed their first Motion to Dismiss which was denied, and the Court granted Plaintiffs leave to amend. On May 20, 2019, Defendants filed their Motion to Dismiss Plaintiffs' Amended Complaint. On July 18, 2019, the Court dismissed several of Plaintiffs' claims, but denied Defendants' Motion to Dismiss as to Plaintiffs' claims of Fraud and Concealment in violation of NRS 113.

On September 4, 2019 Plaintiffs filed their Second Amended Complaint. Defendants' Motion to Dismiss the Second Amended Complaint was heard by the Court on November 7, 2019, and the matter was ordered continued for this supplemental brief and production of documents. The hearing was held on April 7, 2020 and the Court granted Defendants' Motion to Dismiss the Second Amended Complaint. Thereafter, on April 22, 2020, Defendants filed a Memorandum of Costs and Disbursements ("Memorandum"), requesting this Court award \$5,840.41 in costs they claim were incurred in this matter. However, many of the costs listed in Defendants' Memorandum are not compensable under Nevada law.

II.

LEGAL ARGUMENT

A. Legal Authority for Motion to Retax Costs

An adverse party who disputes the costs contained in a verified memorandum may request the court determine the costs pursuant to NRS 18.110(4), which provides:

Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing

1 party claiming costs. Upon the hearing of the motion the court or judge  
2 shall settle the costs.

3 *See NRS 18.110(4).*

4 **B. Legal Authority for Awarding Costs.**

5 Costs may properly be recovered by a prevailing party pursuant to NRS 18.020, which  
6 provides that Costs be allowed to the prevailing party in the following cases:

- 7 1. In an action for the recovery of real property or a possessory right  
8 thereto.
- 9 2. In an action to recover the possession of personal property, where the  
10 value of the property amounts to more than \$2,500. The value must be  
11 determined by the jury, court or master by whom the action is tried.
- 12 3. In an action for the recovery of money or damages, where the plaintiff  
13 seeks to recover more than \$2,500.
- 14 4. In a special proceeding, except a special proceeding conducted  
15 pursuant to NRS 306.040.
- 16 5. In an action which involves the title or boundaries of real estate, or the  
17 legality of any tax, impost, assessment, toll or municipal fine,  
18 including the costs accrued in the action if originally commenced in a  
19 Justice Court.

20 *See NRS 18.020.*

21 Neither costs nor attorney fees incurred incident to litigation may be recovered unless  
22 authorized by statute or rule. *Sun Realty v. Eighth Judicial Dist. Ct.*, 91 Nev. 774, 776, 542 P.2d  
23 1072, 1074 (1975). Even in instances where a party is entitled to request its costs, the trial court  
24 still retains discretion when determining the reasonableness of the individual costs to be  
25 awarded. *See U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458,  
26 50 P.3d 170 (2002); *See also Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). "This  
27 discretion should be sparingly exercised when considering whether or not to allow expenses not  
28 specifically allowed by statute and precedent." *Bergmann v. Boyce*, 109 Nev. at 679. As such, the  
trial court should exercise restraint because "statutes permitting recovery of costs, being in  
derogation of the common law, must be strictly construed." *Id.* A strict construction of the statute  
"requires that the phrase 'reasonable costs' be interpreted to mean actual costs that are reasonable,

1 rather than a reasonable estimate or calculation of such costs based upon administrative  
2 convenience." *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540 (1994).

3 NRS 18.005 enumerates compensable costs as follows:

- 4 1. Clerks' fees.
- 5 2. Reporters' fees for depositions, including a reporter's fee for one copy of  
6 each deposition.
- 7 3. Jurors' fees and expenses, together with reasonable compensation of an  
8 officer appointed to act in accordance with NRS 16.120.
- 9 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless  
10 the court finds that the witness was called at the instance of the prevailing  
11 party without reason or necessity.
- 12 5. Reasonable fees of not more than five expert witnesses in an amount of  
13 not more than \$1,500 for each witness, unless the court allows a larger fee  
14 after determining that the circumstances surrounding the expert's  
15 testimony were of such necessity as to require the larger fee.
- 16 6. Reasonable fees of necessary interpreters.
- 17 7. The fee of any sheriff or licensed process server for the delivery or service  
18 of any summons or subpoena used in the action, unless the court  
19 determines that the service was not necessary.
- 20 8. Compensation for the official reporter or reporter pro tempore.
- 21 9. Reasonable costs for any bond or undertaking required as part of the  
22 action.
- 23 10. Fees of a court bailiff or deputy marshal who was required to work  
24 overtime.
- 25 11. Reasonable costs for telecopies.
- 26 12. Reasonable costs for photocopies.
- 27 13. Reasonable costs for long distance telephone calls.
- 28 14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and  
conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with  
the action, including reasonable and necessary expenses for computerized  
services for legal research.

See NRS 18.005.

23 The Nevada Supreme Court has held that this statute must be strictly construed to allow  
24 only the costs specifically enumerated therein, and only under the circumstances provided for in  
25 the statute. See *Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals*, 114 Nev.  
26 1348, 1352-53, 971 P.2d 383 (1998). Applying these principles to the instant matter, Plaintiffs  
27 respectfully submit that this Court should grant the Motion to Relax, as some of the costs  
28

1 delineated in Defendants' Memorandum of Costs and Disbursements are not recoverable under  
2 applicable and relevant authority.

3 C. The Requested Costs Are Not Compensable Under NRS 18.005.

4 Here, the following costs are not compensable under NRS 18.005 and therefore should be  
5 retaxed as non-recoverable:

6 i. Mediation Costs

7 Defendants' Verified Memorandum of Costs and Disbursements ask the Court to tax  
8 Plaintiffs \$2,084.50 for costs described as follows:

- |    |           |                        |            |
|----|-----------|------------------------|------------|
| 10 | • 7/16/18 | "Mediation deposit"    | \$2,035.00 |
| 11 | • 11/7/19 | "Mediation final bill" | \$49.50    |

12 Here, these Mediation costs should be retaxed because (1) they are not enumerated under  
13 NRS 18.005 or any other relevant statute and the Nevada Supreme Court has held that only the  
14 fees and costs specifically enumerated by statute are compensable; (2) the Nevada Mediation  
15 Rules suggest that mediation costs are intended to be split between the parties unless otherwise  
16 stipulated; and (3) any argument by Defendants that these costs do fall under one of the  
17 categories enumerated by NRS 18.005 is inapplicable as they were incurred prior to the litigation  
18 of the matter. Further, Defendants do not cite any legal authority authorizing the taxing of such  
19 costs, and Court is to use its discretion sparingly "when considering whether or not to allow  
20 expenses not specifically allowed by statute and precedent". See *Bergmann*, 109 Nev. at 679, 856  
21 P.2d at 565-566.  
22

23 First, Plaintiffs would reiterate that mediation costs are not specifically enumerated under  
24 NRS 18.005. Therefore, Defendants' only potential argument as to the validity of these costs is  
25 that they fall under NRS 18.005(17) which states "any other reasonable and necessary expense  
26 incurred in connection with the action" are compensable. (emphasis added) See NRS  
27  
28

1 18.005(17). As stated above, mediation costs are not mentioned specifically by any provision of  
2 NRS 18.005 and thus the Court is to use any discretion as to awarding these fees and costs  
3 "sparingly". These facts, combined with Defendants' failure to cite any statutes or authority to  
4 the contrary, are sufficient for the mediation costs to be retaxed. Arguendo, even if the Court did  
5 determine that NRS 18.005(17) could potentially encompass some mediation costs, it would not  
6 still not be applicable to the instant mediation costs because they were not a "necessary expense"  
7 and they were not "incurred in connection with the action" as required by the statute. *Id.*

9 The mediation costs were not a "necessary expense" as required by NRS 18.005(17)  
10 because mediation is an optional process that occurs prior to the commencement of litigation.  
11 Neither Plaintiffs or Defendants were compelled to conduct a mediation, they freely determined  
12 that they wished to do so. Therefore, the costs cannot be considered "necessary" as Defendants  
13 could have declined to participate in mediation without forfeiting any rights or impacting the  
14 subsequent litigation process in any manner.

16 Further, the mediation costs were not "incurred in connection with the action" as is also  
17 required by NRS 18.005(17). *Id.* NRCP 3 states that "A civil action is commenced by filing a  
18 complaint with the court." *See NRCP 3.* In the instant action, Plaintiffs filed their Complaint on  
19 October 19, 2018. *See attached Exhibit 1, Plaintiffs' First Complaint.* This is over two (2)  
20 months after the Parties conducted the mediation conference, which occurred on August 17,  
21 2018. Therefore, as the instant action was not commenced until October 19, 2018, mediation  
22 costs incurred on August 17, 2018 cannot be "incurred in connection with the action" as required  
23 to be compensable under NRS 18.005(17). The action did not exist at the time these expenses  
24 were incurred. This is further validated by a letter that was sent by the mediator, Floyd A. Hale,  
25 to both Plaintiffs and Defendants following the mediation conference. The letter summarized  
26 what occurred during the conference and stated, "Since I anticipate that litigation will

1 commence soon if there is no settlement. let me know your responses by September 4, 2018."  
2 (emphasis added) *See attached Exhibit 2, August 20, 2018 Letter from Floyd A. Hale.* Defendants  
3 cannot rationally argue that the mediation costs were "necessary expense" which were "incurred  
4 in connection with the action", and therefore compensable under NRS 18.005, when the action  
5 and thus the litigation process had not yet commenced.  
6

7 Finally, though it is clear that the mediation expenses are not compensable under NRS  
8 18.005, Plaintiffs would also note that consideration of this Court's own Nevada Mediation  
9 Rules weighs heavily against Plaintiffs' being taxed for these costs. Specifically, NMR 10(C)  
10 states that the "fees and costs of the mediator are paid equally by the parties unless otherwise  
11 stipulated". *See NMR 10(C).* This demonstrates that the Court's intention is for pre-litigation  
12 mediation costs to be borne by both parties equally. There was no stipulation by the Parties as to  
13 the mediation costs. Therefore, these costs should be retaxed.  
14

15 ii. Runner Costs  
16

17 Defendants' Verified Memorandum of Costs and Disbursements ask the Court to tax  
18 Plaintiffs \$135.60 for costs described as follows:

|    |            |          |         |
|----|------------|----------|---------|
| 19 | • 7/23/19  | "Runner" | \$29.10 |
| 20 | • 8/6/19   | "Runner" | \$36.44 |
| 21 | • 11/30/19 | "Runner" | \$70.06 |

22 The costs Defendants seek to recover for the use of Runners should also be retaxed  
23 because (1) these costs are also not specifically enumerated by NRS 18.005; (2) the Court is to  
24 use any discretion as to unenumerated costs "sparingly" and Defendants again do not cite any  
25 legal authority authorizing the taxing of such costs; and (3) there is persuasive legal authority  
26 which suggests that such costs are not compensable.  
27  
28

1 Federal courts have consistently held that overhead costs, such as administrative fees,  
2 supplies and the use of runners are not properly taxable. *See, e.g., Warner Chilcott Labs. Ireland*  
3 *Ltd. v. Impax Labs., Inc.*, 2013 WL 1876441, at \*12 (D. N.J. April 18, 2013) (holding costs slip  
4 sheets, tabs, binders, folders, redweld file pockets and labels. . . .constitute[d] attorney's overhead  
5 and as such, [was] not taxable"); *N.J. Mfrs. Ins. Group v. Electrolux, Inc.*, 2013 WL 5817161, at  
6 \*12 (D. N.J. Oct. 21, 2013) (holding costs "for labels and binders, which constitute attorney's  
7 overhead and as such, are not taxable"); *J-Way Leasing, Ltd. v. Am. Bridge Co.*, 2010 WL  
8 816439, at \*4 (N.D. Ohio March 4, 2010) ("[C]osts for marking exhibits are overhead expenses  
9 and not taxable . . . ."); *Butler v. Wright*, 2010 WL 599387, at \*8 (M.D. Fl. Feb 16, 2010)  
10 (holding "operating overhead is not taxable"); *Osorio v. Dole Food Co.*, 2010 WL 3212065, at \*7  
11 (S.D. Fl. July 7, 2010) ("Courts have held that costs for tabs and binders are not taxable costs  
12 because they are subsumed within operating overhead."); *Van Voorhis v. Hillsborough Bd. of*  
13 *County Comm'rs*, 2008 WL 2790244, at \*5 (M.D. Fl. July 18, 2008) (finding cost of supplies  
14 movant purchased from Staples was "subsumed within operating overhead and . . . not taxable.").

15 Again, as runner costs are not specifically mentioned under any of the provisions of NRS  
16 18.005, Defendants' only reasonable argument regarding these costs is that they fall under NRS  
17 18.005(17). It's implicit in both the language of the statute and its application in relevant case  
18 law, that the Court analyzes whether non-specifically enumerated costs and fees are compensable  
19 under NRS 18.005(17) by putting the burden on the party seeking to tax the costs to demonstrate  
20 that those costs are reasonable and necessary (in addition to being incurred in connection with  
21 the action). *See Bergmann v. Boyce*, 109 Nev. at 679; *See U.S. Design & Const. Corp. v.*  
22 *International Broth. of Elec. Workers*, 118 Nev. 458, 50 P.3d 170 (2002); *See Bobby Berosini,*  
23 *Ltd v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352-53, 971 P.2d 383  
24 (1998); *See also NRS 18.005(17)*. The demonstration that unenumerated costs are reasonable and  
25  
26  
27  
28

1 necessary must be sufficiently compelling as to persuade the Court that it is appropriate to  
2 exercise discretion that the Nevada Supreme Court has directly stated should only be used  
3 "sparingly" and deem the costs compensable. *Id.* Here, runner fees is an unenumerated cost and  
4 Defendants do not cite any legal authority which would either compel or reasonably persuade the  
5 Court to exercise discretion meant to be used "sparingly". Thus, the costs are not compensable  
6 and should be retaxed.  
7

8 III.

9 CONCLUSION

10 Based on the foregoing reasons, Plaintiffs respectfully request that the Court grant their  
11 Motion, and Retax and deny the costs contained in Defendants' Memorandum of Costs and  
12 Disbursements as outlined herein.

13 DATED this 26<sup>th</sup> day of April 2020.

14 BLACK & LOBELLO

15  
16  
17 Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
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Attorney for Plaintiffs  
18  
19  
20  
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28



**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 27<sup>th</sup> day of April 2020, I caused the above and foregoing document **PLAINTIFFS' MOTION TO RETAX FEES AND COSTS** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

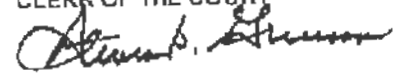
Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128

Jeffrey L. Galliher, Esq.  
Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

## **EXHIBIT 1**



COMP  
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*Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff,

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYONS DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendants.

CASE NO.:  
DEPT. NO.:

A-18-782494-C

Department 24

COMPLAINT

Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for his Complaint against Defendants asserts, alleges and complains as follows:

I.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JOSEPH FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

1           3.       Upon information and belief, TODD SWANSON, an individual (hereinafter  
2       "SWANSON" or collectively "DEFENDANTS"), Defendant is, and at all times relevant hereto  
3       was, a resident of Clark County, Nevada.

4           4.       Upon information and belief, TODD SWANSON, as Trustee of the SHIRAZ  
5       TRUST (hereinafter "SWANSON" or collectively "DEFENDANTS"), Defendant is, and at all  
6       times relevant hereto was, a resident of Clark County, Nevada.

7           5.       Upon information and belief, SHIRAZ TRUST, (hereinafter "SHIRAZ" or  
8       collectively "DEFENDANTS"), Defendant is, and at all times relevant hereto was a lawful entity  
9       believed to have been formed within the State of Nevada, and licensed to conduct business in  
10      Clark County, Nevada.

11          6.       Upon information and belief, LYONS DEVELOPMENT, LLC, a Nevada limited  
12      liability company (hereinafter "LYONS" or collectively "DEFENDANTS"), Defendant is, and at  
13      all times relevant hereto was a lawful entity formed within the State of Nevada, and licensed to  
14      conduct business in Clark County, Nevada.

15          7.       Defendants designated herein as Does I-X and Roes Entities I-X are individuals  
16      and legal entities that are liable to Plaintiff for the claims set forth herein, including but not  
17      limited to, possible alter egos or successors-in-interest of Defendants. Certain transactions, and  
18      the true capacities of Does and Roes Entities, are presently unknown to the Plaintiffs and,  
19      therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiffs will amend their  
20      Complaint to assert the true names and capacities of such Doc and Roe Entities when more  
21      information has been ascertained.

22          8.       At all relevant times hereto, each Defendant was the agent, servant, employee, co-  
23      adventurer, representative, or co-conspirator of each of the other Defendants, and acted with the  
24      knowledge, consent, ratification, authorization, and at the direction of each Defendant, or is  
25      otherwise responsible in some manner for the occurrences alleged in this Complaint.

26          9.       This Court has personal jurisdiction over all Defendants as, at all times relevant  
27      hereto, a substantial part of the events or omissions giving rise to the claims occurred in whole or  
28      in part in Clark County, Nevada. Further, this suit alleges claims and causes of action arising

1 from the sale of certain real property located within Clark County, Nevada. Thus, jurisdiction  
2 and venue are proper in Clark County, Nevada.

3 II.

4 FACTUAL ALLEGATIONS

5 10. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 9  
6 inclusive, and incorporate the same as if fully set forth herein.

7 11. On or about October 22, 2017, Joseph Folino and Nicole Folino (Hereinafter,  
8 "Plaintiffs" or "Folinos") entered into a Residential Purchase Agreement ("RPA") to purchase  
9 the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, ("Subject Property") for  
10 the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the  
11 Shiraz Trust, Dr. Todd Swanson, Trustee (collectively "Defendants" or individually "Swanson")  
12 and Lyons Development, LLC (collectively "Defendants" or individually "Lyons"). See, rpa  
13 attached hereto as Exhibit 1.

14 12. The house was constructed in 2015 by Lyons, and it is the understanding of the  
15 Plaintiffs, that Swanson and Lyons were the owners since its original construction.

16 13. The transaction was consummated when Counter Offer Number 2 was executed  
17 electronically by both parties on or about that date. See, Counter Offer attached hereto as  
18 Exhibit 2.

19 14. The parties had previously exchanged prior counteroffers and the original RPA.  
20 See attached Exhibits 1, 2 and Counter Offer No. 1 attached hereto as Exhibit 3.

21 15. The form of the RPA and the counteroffers are the standard forms used by the  
22 Greater Las Vegas Association of Realtors ("GLVAR").

23 16. Pursuant to the terms and conditions of the RPA, NRS 113.130 and NRS 113.140,  
24 the Defendants was required to complete and execute a Seller's Real Property Disclosure form  
25 ("SRPD"), and the Defendants did so execute the SRPD on or about October 24, 2017. See,  
26 SRPD attached as Exhibit 4.

27 17. The SRPD executed by Swanson does not contain any notification to the  
28 purchasers regarding any problems or defects in the plumbing system, or other related systems

1 that would discuss or reference the plumbing system to supply water. See, attached Exhibit 4,  
2 pp. 1-3.

3 18. There is no description of any water or event, the existence of fungi/mold or  
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss  
5 issues at this Subject Property. *Id.*

6 19. It is the understanding of the Plaintiffs that Swanson had been living in the home  
7 for a period of months and possibly years prior to the sale transaction.

8 20. Prior to the time of closing, the Plaintiffs engaged an inspection company, Caveat  
9 Emptor LV ("Inspector"), to perform an inspection of the Subject Property. See, Inspection  
10 Report attached hereto as Exhibit 5.

11 21. The home inspection was performed on or about October 27, 2017.

12 22. Pursuant to the inspection report, the Plaintiffs utilized a Request for Repair form  
13 from their realtor to make a formal request to remediate any and all issues identified in the  
14 inspection report. See, Request attached hereto as Exhibit 6.

15 23. Every item identified in the inspection report was included in the Request for  
16 Repair. See, Exhibit 5 and Exhibit 6.

17 24. Prior to the time of closing the transaction, the Plaintiffs requested and were given  
18 the opportunity to perform their own site inspection of the Subject Property.

19 25. This pre-closing inspection occurred on or before November 17, 2017.

20 26. During this inspection, the Plaintiffs uncovered a water leak that was in the  
21 process of being repaired by the Defendants.

22 27. The Defendants had not previously communicated the existence of the water leak,  
23 prior to the Plaintiffs observing the repairs during the pre-closing inspection by the Plaintiffs.

24 28. The Plaintiffs' real estate agent, Ashley Lazosky, ("Plaintiff's Agent") had  
25 specific conversations with the Defendants and the subcontractor hired to make the repairs.

26 29. The Defendants stated that there was an isolated water loss, drywall damage and  
27 other repairs that were being completed to the Plaintiff's Agent.  
28

1           30.     The Plaintiffs' Agent was not told about any previous or other water losses, and  
2     certainly was not told about any plumbing failures, such as defects requiring the complete  
3     replacement of the water supply/plumbing system as a result of a warranty claim having been  
4     made to Uponor, the manufacturer of the plumbing/pipe supply system.

5           31.     On or about November 17, 2017, the Plaintiffs effectuated the closing of the real  
6     estate transaction for the Subject Property. *See*, Grant Bargain and Sale Deed attached hereto as  
7     Exhibit 7.

8           32.     Shortly after the closing occurred, the Plaintiffs were made aware of an additional  
9     water loss that had occurred at the Subject Property in approximately February of 2017 by the  
10    plumbing system manufacturer: Uponor.

11          33.     After learning of the earlier water loss, the Plaintiffs obtained an additional  
12    inspection report of the plumbing system, water supply pipe system and any related drainage  
13    system.

14          34.     The Plaintiffs have been made aware by the plumbing manufacturer, Uponor, that  
15    the Defendants had previously made a warranty claim that was accepted by Uponor.

16          35.     The payment to conduct the warranty repairs to the plumbing system was made to  
17    the Defendant's subcontractor, Rakeman Plumbing, on or about June 9, 2017, well before the  
18    date of the SRPD, October 24, 2017. *See*, Rakeman Plumbing Invoice attached hereto as  
19    Exhibit 8 and June 9, 2017, Uponor letter attached hereto as Exhibit 9.

20          36.     The Plaintiffs contacted Uponor directly and were informed of the past water  
21    losses that had occurred at the Subject Property. In addition to the water loss that occurred in  
22    November 2017, at or near the time of the closing, the Plaintiffs were informed by Uponor of the  
23    February 2017 water loss. *See*, Uponor email with attachments attached hereto as Exhibit 10.

24          37.     Uponor provided the warranty claim information for the plumbing system in  
25    response to an email from the Plaintiffs. *See*, Uponor email with Warranty attached hereto as  
26    Exhibit 11.

27          38.     The plumbing defects in the house were systemic and known to the Defendants  
28    prior to the closing of the transaction.

1           39.     The Defendants had previously employed Rakeman Plumbing to make repairs.

2           40.     The Defendants specifically chose not to inform the Plaintiffs of any water losses,  
3 including those that had been repaired.

4           41.     The Defendants knew of or should have known of the duty to inform a purchaser  
5 of real property of plumbing system defect and that failing to disclose known defects such as  
6 those that are alleged to have existed at the Subject Property, as the duties of the Seller are  
7 clearly stated on the SRPD form, on which the Seller/Defendant then signs, initials and thereby  
8 affirms the obligations of the Defendants on several sections on that SRPD form.

9                               III.

10                           FIRST CAUSE OF ACTION

11                               (Fraud/Intentional Misrepresentation)

12           42.     Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41,  
13 inclusive, and incorporate the same as if fully set forth herein.

14           43.     Defendants, and each of them, communicated, by and through themselves and  
15 their employees and/or agents, on or about October 24, 2017, to the Plaintiffs that there were no  
16 defects in the house, the systems or the structure.

17           44.     The Defendants, and each of them, coerced the Plaintiff into closing on the sale of  
18 the Subject Property by concealing, hiding and affirmatively omitting known facts, to wit: that  
19 the house was built with defects known to the Defendants, whether repaired or not.

20           45.     The Defendants purposefully, and with the intent to deceive the Plaintiffs, failed  
21 to identify the known defects, prior water losses, prior warranty repairs and other material  
22 misrepresentations or omissions contained on the SRPD.

23           46.     The Defendants made these intentional misrepresentations on the SRPD form in  
24 an effort to induce the Plaintiffs to purchase the Subject Property.

25           47.     Defendants, and each of them, intended by their false representations to induce  
26 the Plaintiffs into entering into said transaction.

27           48.     Plaintiffs would not have completed the transaction had they known of the facts  
28 alleged herein and withheld from the Plaintiffs by the Defendants.



1 49. Plaintiffs relied to their detriment upon the false representations, when they were  
2 required to complete the transaction in favor of the Defendants.

3 50. Defendants, and each of them, including DOES I-X and ROES I-X, directly  
4 benefited and/or received the funds paid by the Plaintiff based upon the false representations and  
5 Plaintiff's reliance upon those false representations.

6 51. Defendants, and each of them, including DOES I-X and ROES I-X, knew or  
7 should have known that the representations made were false, and that the Defendants knew or  
8 should have known that the representations to the Plaintiffs failed to identify the defects or the  
9 repairs.

10 52. Plaintiffs' reliance on the above representations was justified and reasonable in  
11 light of the facts and circumstances alleged herein.

12 53. As a direct and proximate result of Defendants' fraudulent representations,  
13 Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven  
14 at the time of trial.

15 54. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously,  
16 oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent  
17 to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to  
18 recover punitive damages from the Defendants in an amount to be proven at the time of trial.

19 55. Plaintiffs have been required to retain the services of Black & LoBello to  
20 prosecute this action, and the Court should order the Defendants to pay any reasonable amount of  
21 attorney's fees together with costs of suit incurred herein.

22 IV.

23 SECOND CAUSE OF ACTION

24 (Negligent Misrepresentation)

25 56. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 55  
26 inclusive, and incorporate the same as if fully set forth herein.

27 57. Defendants, and each of them, communicated on or about October 24, 2017, to  
28 the Plaintiff that there were no defects in the house, the systems or the structure

1           58.     The Defendants, and each of them, induced the Plaintiffs into completing the  
2     purchase of the Subject Property, all the while knowing that there were defects in the structure,  
3     house and workmanship of the Subject Property.

4           59.     Defendants, and each of them intended by their negligent representations to  
5     induce the Plaintiff into entering into said transactions.

6           60.     Plaintiffs relied upon the negligent representations when the Plaintiffs completed  
7     the transaction in favor of the Defendants.

8           61.     Plaintiffs would not have completed the transaction had they known of the facts  
9     withheld from them by the Defendants.

10          62.     The Defendants negligently, and with the intent to deceive the Plaintiffs, failed to  
11     identify the defects, prior water losses and other material misrepresentations on the SRPD.

12          63.     Defendants, and each of them, including DOES I-X and ROES I-X, directly  
13     benefited and/or received the funds paid by the Plaintiff based upon the negligent representations  
14     in Plaintiff's reliance upon those false representations.

15          64.     Defendants, and each of them, including DOES I-X and ROES I-X, knew or  
16     should have known that the representations made were false, and that the Defendants knew or  
17     should have known that there was an insufficient basis for making the representations to the  
18     Plaintiff.

19          65.     Plaintiff's reliance on the above representations was justified and reasonable in  
20     light of the facts and circumstances alleged herein.

21          66.     The Defendants, and each of them, in the course of entering into the transaction  
22     referenced above, in which the Defendants, and each of them, had a pecuniary interest, had a  
23     duty to exercise reasonable care or competence in obtaining or communicating information to the  
24     Plaintiffs and in conducting that transaction, and the Defendants failed to do so as alleged herein.

25          67.     That as a direct and proximate result of Defendant's fraudulent representations,  
26     Plaintiffs have been damaged in the sum in excess of \$15,000. an exact amount to be proven at  
27     the time of trial.

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### THIRD CAUSE OF ACTION

(Violation of Nevada Statutes Governing Deceptive Trade Practices –

Violation of NRS 598.010 et seq.)

8            69.     Plaintiffs repeat and reallege the allegations set forth in paragraphs through 68,  
9     inclusive, and incorporate the same as if fully set forth herein.

70. Defendants, and each of them, committed deceptive trade practices in violation of Nevada's Deceptive Trade Practices Act ("DPA"), including, but not limited to, NRS 598.015(14) and (15), NRS 598.092(9) and NRS 598.0923(2), by failing to inform the Plaintiffs that there were known defects in the house being purchased by the Plaintiffs from the Defendants.

71. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

72. As a direct and proximate result of the Defendants' deceptive actions, and each of them, and pursuant to violation of the Nevada DPA, Plaintiffs are entitled to recover treble damages.

73. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

VI.

#### FOURTH CAUSE OF ACTION

26 (Violation of Nevada Statutes Governing Sale of Real Property and Disclosure of Known

### Defects –

**Violation of NRS 113.100 et seq.)**

74. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 73, inclusive, and incorporate the same as if fully set forth herein.

75. Defendants, and each of them, committed violations of Nevada's rules and regulations regarding the Conditions of Residential Property Offered for Sale, and including, but not limited to, NRS 113.100 et seq. and specifically NRS 113.150, by failing to inform the Plaintiff that there were defects known to the Defendants at the time they executed and affirmed compliance with the SRPD regarding the Subject Property, its plumbing system and the structure being purchased by the Plaintiffs from the Defendants.

76. The Nevada Revised Statutes create a separate duty from any contractual duty to disclose the requested information by the Defendants, and this separate duty requires these Defendants to have been candid, honest and forthcoming as to the topics of information, defects and general condition of the property as requested on the SRPD form.

77. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

78. As a direct and proximate result of the Defendants' violations, and each of them, and pursuant to violation of the Nevada Revised Statutes, Plaintiff is entitled to recover treble damages.

79. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

## VII.

### FIFTH CAUSE OF ACTION

#### (Civil RICO Claim)

80. Plaintiffs repeat and realleges the allegations set forth in paragraphs 1 through 79, inclusive, and incorporate the same as if fully set forth herein.

81. Defendants, and each of them, together with their agents, heirs, assigns, employees, managers and or any other persons acting in concert with the defendants, including

DOES I-X and ROES I-X, were parties to an agreement, whether that agreement was explicit or tacit, whose unlawful purpose, aim and/or goal, was to defraud the Plaintiffs out of their money, in an amount in excess of \$15,000.00 by requiring the Plaintiffs to pay for the Subject Property, all the while knowing that the home contained significant defects in its workmanship and structure, and all in violation of the SRPD.

82. The Defendants, and each of them, acted in concert, with the intent to accomplish the unlawful objective of defrauding the Plaintiffs out of their personal property, i.e. lawful money of the United States, when the Defendants, and each of them, using fraudulent and deceptive trade practices, without justification, intentionally defrauded the Plaintiffs out of their personal property, i.e. lawful money of the United States.

83. That as a direct and proximate result of Defendants' actions alleged herein, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

84. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously, oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to recover punitive damages from the Defendants in an amount to be proven at the time of trial.

85. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

#### VIII.

#### SIXTH CAUSE OF ACTION

#### (Respondent Superior)

86. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 85, inclusive, and incorporate the same as if fully set forth herein.

87. At all times relevant hereto, the Defendants, and each of them, including and not limited to DOES I-x and ROES I-X, were agents, servants and/or employees of the Defendants, and each of them, and was acting within the scope of his agency, and/or employment with the

1 knowledge, purpose, permission and consent of his employers, the Defendants, and each of them,  
2 including and not limited to DOES I-x and ROES I-X, who are responsible for the actions of  
3 their agent, servants and/or employees, as described herein under the theory of Respondent  
4 Superior.

5 88. Pursuant to the theory of Respondent Superior, and as a result of the Defendants,  
6 and each of them, including and not limited to DOES I-x and ROES I-X, acted in a willfully,  
7 fraudulently, maliciously, oppressively and/or with a conscious disregard of the Plaintiff's rights  
8 and/or with the intent to vex, annoy or harass Plaintiffs, and either expressly or with a conscious  
9 disregard, affirmed, sanctioned and/or approved of the willful, fraudulent, malicious and or  
10 oppressive actions of their employees, and as such are liable for any and all punitive damages  
11 awarded as a result of those employees, agents, servants or independent contractors.

12 89. That as a direct and proximate result of Defendants' actions alleged herein,  
13 Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven  
14 at the time of trial.

15 90. Plaintiffs have been required to retain the services of Black & LoBello to  
16 prosecute this action, and the Court should order the Defendants to pay any reasonable amount of  
17 attorney's fees together with costs of suit incurred herein.

18 PRAYER

19 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- 20 1. For general damages in an amount in excess of \$15,000.00;  
21 2. For special damages in an amount in excess of \$15,000.00;  
22 3. For punitive damages in an amount in excess of \$15,000.00;

23 ///

24 ///

25 ///

26 ///

27 ///

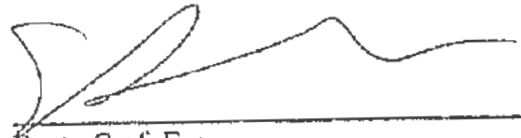
28 ///

4. For treble any damages awarded for Deceptive Trade Practices in an amount in excess of \$15,000.00;
5. For reasonable attorney's fees;
6. For costs incurred in the pursuit of this action; and
7. For such other further relief as the court deems proper.

DATED this \_\_\_\_ day of October, 2018.

BLACK & LOBELLO

#13988



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[swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
*Attorneys for Plaintiffs*

# **EXHIBIT 1**





## RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 10/19/2017

Joseph Folino and Nicole Folino ("Buyer"), hereby offers to purchase  
42 Meadowhawk Lane, Las Vegas, NV 89135 ("Property"), within the  
city or unincorporated area of Las Vegas, County of Clark County, State of Nevada,  
Zip 89135, A.P.N. # \_\_\_\_\_ for the purchase price of \$2,700,000  
(two million seven hundred thousand dollars) ("Purchase Price") on the terms and conditions  
contained herein: BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

### Buyer's Offer

#### 1. FINANCIAL TERMS & CONDITIONS:

\$150,000 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer -OR- ☒ wired to title  
\_\_\_\_\_. Upon Acceptance, Earnest Money to be  
deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2  
business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's  
Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000  
fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ \_\_\_\_\_ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) \_\_\_\_\_. The  
additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional  
deposit should be set forth in Section 28 herein.)

\$2,160,000 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:

☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_

\$ \_\_\_\_\_ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE  
FOLLOWING EXISTING LOAN(S):

☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_

Interest: ☐ Fixed rate, \_\_\_\_\_ years -OR- ☐ Adjustable Rate, \_\_\_\_\_ years. Seller further agrees to  
provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer  
within FIVE (5) calendar days of acceptance of offer.

\$ \_\_\_\_\_ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS  
IN "FINANCING ADDENDUM" which is attached hereto.

\$390,000 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to  
Close of Escrow ("COE").

\$2,700,000 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees  
and costs associated with the purchase of the Property as defined herein.)

#### 2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a  
completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard  
factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

Signature of Buyer: Joseph Folino  
Signature of Seller: Ashley Oakes-Lazosky

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applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

**B. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. If this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 25 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. If this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.

**D. CASH PURCHASE:** Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

**3. SALE OF OTHER PROPERTY:** This Agreement ☒ is not -OR- ☐ is contingent upon the sale (and closing) of another property which address is \_\_\_\_\_  
Said Property ☐ is not currently listed -OR- ☐ is presently in escrow with \_\_\_\_\_  
Escrow Number: \_\_\_\_\_ Proposed Closing Date: \_\_\_\_\_

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

**4. FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: all items per MLS, downstairs bar stools and couch in media room.

**5. ESCROW:**

**A. OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Chicago Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Sandy Moursey ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Polino and Nicole Polino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

|          |          |
|----------|----------|
|          |          |
| 10/20/17 | 10/20/17 |

the Escrow Number.

**B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

**C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before: 30 days after acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

**D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

**6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

**7. BUYER'S DUE DILIGENCE:** Buyer's obligation is ☒ is not ☐ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 12 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

**A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

**B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

**C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

\_\_\_\_\_  
10/20/17 Buyer's Initials \_\_\_\_\_ 10/20/17 Buyer's Initials

Each party acknowledges that he/she has read, understood, and agreed to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

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BUYER(S) INITIALS:

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10/20/17 10/20/17

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**D. INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

| Type                    | Paid By | Type                          | Paid By | Type                                   | Paid By |
|-------------------------|---------|-------------------------------|---------|--|---------|
| Energy Audit            | n/a     | Fungal Contaminant Inspection | n/a     | Well Inspection (Quantity)             | n/a     |
| Home Inspection         | buyer   | Mechanical Inspection         | n/a     | Well Inspection (Quality)              | n/a     |
| Termite/Pest Inspection | buyer   | Pool/Spa Inspection           | buyer   | Wood-Burning Device/Chimney Inspection | n/a     |
| Roof Inspection         | n/a     | Soils Inspection              | n/a     | Septic Inspection                      | n/a     |
| Septic Lid Removal      | n/a     | Septic Pumping                | n/a     | Structural Inspection                  | n/a     |
| Survey (type):          |         | Other:                        |         | Other:                                 |         |

**E. CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

**F. BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

**8. FEES, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

**A. TITLE, ESCROW & APPRAISAL FEES:**

| Type                       | Paid By | Type                  | Paid By | Type                 | Paid By |
|----------------------------|---------|-----------------------|---------|----------------------|---------|
| Escrow Fees                | 50-50   | Lender's Title Policy | buyer   | Owner's Title Policy | seller  |
| Real Property Transfer Tax | seller  | Appraisal             | buyer   | Other: n/a           |         |

**B. PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

**C. PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

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Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:



exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

**D. LENDER AND CLOSING FEES:** In addition to Seller's expenses identified herein, Seller will contribute \$zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

**E. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with TBD. ☒ Seller -OR- ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$1200-. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

**9. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

**10. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

**A. CIC RELATED EXPENSES:** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

| Type       | Paid By | Type                     | Paid By | Type              | Paid By |
|------------|---------|--------------------------|---------|-------------------|---------|
| CIC Demand | seller  | CIC Capital Contribution | seller  | CIC Transfer Fees | seller  |
| Other:     |         |                          |         |                   |         |

**11. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) \_\_\_\_\_

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

JP NF  
10/28/13 10/28/13

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS:

JS  
10/28/13

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12. **FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES:** All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. **WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 2 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.

14. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ COE ☐ OR ☐ . In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

15. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

16. **ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. **CANCELLATION OF AGREEMENT:** In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

18. **DEFAULT:**

A. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS:



SELLER(S) INITIALS:



B. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. **IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Follno and Nicole Follno

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

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SELLER(S) INITIALS:



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## Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

## Brokers

21. **BROKER'S COMPENSATION/FEE:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will -OR- ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

## Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino



Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

Rev. 05/16

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

|   |   |
|---|---|
| <br>10/22/13 | <br>10/22/13 |
|---|---|

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developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

#### 24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicola Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

Rev. 05/16

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BUYER(S) INITIALS:

SELLER(S) INITIALS:



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THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

27. ADDENDUM(S) ATTACHED: \_\_\_\_\_

28. ADDITIONAL TERMS: \_\_\_\_\_

### Buyer's Acknowledgement of Offer

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Ashley Oakes-Lazosky

Company Name: Vegas Homes and Fine Estates LLC

Broker's License Number: B.1000869

Phone: 702-281-1198

Fax: 702-446-4536

Agent's Name: Ashley Oakes-Lazosky

Agent's License Number: B.1000869

Office Address: 1180 N. Town Center Dr Ste 100

City, State, Zip: Las Vegas, NV 89144

Email: ashley@vhfelv.com

**BUYER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ DOES NOT have an interest in a principal to the transaction. -OR-

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship)

Seller must respond by: 5 ☐ AM ☒ PM on (month) October, (day) 21, (year) 2017. Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

*Joseph Folino* datosp verified  
10/19/17 12:34AM EDT  
57832 7300-1040-MN2H

Buyer's Signature

Joseph Folino

Buyer's Printed Name

10/19/2017

Date Time

☐ AM ☒ PM

*Nicole Folino* datosp verified  
10/19/17 12:34AM EDT  
06219 1004-1152-WJ3W

Buyer's Signature

Nicole Folino

Buyer's Printed Name

10/19/2017

Date Time

☐ AM ☒ PM

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

Rev. 05/16

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

*JF* *NF*  
10/19/17 10/19/17

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## Seller's Response

**Confirmation of Representation:** The Seller is represented in this transaction by:

|                                       |  |
|---------------------------------------|--|
| Seller's Broker: <u>Forest Barbee</u> | Agent's Name: <u>Ivan Sher</u>                         |
| Company Name: <u>BHHS Nevada</u>      | Agent's License Number: _____                          |
| Broker's License Number: _____        | Office Address: <u>1215 S. Fort Apache Rd. Ste 210</u> |
| Phone: <u>702-315-0223</u>            | City, State, Zip: <u>Las Vegas, NV 89117</u>           |
| Fax: _____                            | Email: <u>ivan@shapiroandsher.com</u>                  |

**SELLER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☐ DOES NOT have an interest in a principal to the transaction. -OR-

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

**FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at [www.irs.gov](http://www.irs.gov). Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

**SELLER DECLARES** that he/she ☒ is not -OR- ☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding. **SELLER(S) INITIALS:** TS  

☒ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☒ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

☐ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

|   |   |                                     |   |
|---|---|-------------------------------------|---|
| <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div> | <u>Todd V. Swanson</u><br>Seller's Printed Name<br>Co-trustee, the Shiraz Trust,<br>Manager, Lyons Development, LLC | <u>11/21/2017 6:30</u><br>Date Time | <input type="checkbox"/> AM / <input checked="" type="checkbox"/> PM<br><br><input type="checkbox"/> AM / <input type="checkbox"/> PM |
| Seller's Signature  | Seller's Printed Name   | Date Time                           |   |

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Follino and Nicole Follino  
 Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:



## **EXHIBIT 2**



## COUNTER OFFER

NO. 2

ATTENTION: Ivan Sher COMPANY: BHHS Nevada Home Services  
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Lyons Development LLC  
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 42 Meadowhawk Lane Las Vegas, NV 89135  
dated: October 19, 2017 is not accepted in its present form, but the following Counter Offer  
is hereby submitted:

Purchase price to be \$3,000,000.00

All existing electronics to convey with the sale (as indicated in the  
original RPA).

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional  
additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms  
agreed to in Counter Offer(s) No. 1

EXPIRATION: ☐ Buyer ☒ Seller must respond by: 8 ☐ AM ☒ PM on (month) October,  
(day) 23, (year) 2017. Unless this Counter Offer is accepted by execution below  
and delivered to the ☐ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall  
lapse and be of no further force and effect.

Date: 10/22/2017

Joseph Folino  
dotloop verified  
10/22/17 12:05 PM EDT  
550P-2VW-4716-RLWQ

☒ Buyer ☐ Seller

Signature

Time:                     

Nicole Folino  
dotloop verified  
10/22/17 12:02 PM EDT  
4VVC-4VW-6015-DL104

☒ Buyer ☐ Seller

Signature

The undersigned ☐ Buyer ☒ Seller hereby:

X accepts the Counter Offer;

       accepts the terms of this Counter Offer subject to the attached Counter Offer No.       ; or

       rejects the Counter Offer.

Date: 10/22/17

AuthenticSign  
Jedid Swanson, Co-Treasurer

☐ Buyer ☒ Seller

Signature

Time: 11:30 am

☐ Buyer ☐ Seller

Signature

**EXHIBIT 3**





## COUNTER OFFER

NO. 1

ATTENTION: Ashely Oakes-Lazosky COMPANY: Vegas Homes and Fine Estates LLC  
(Agent) (Name)

The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Joseph Folino & Nicole Folino  
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 42 Meadowhawk Lane Las Vegas  
dated: October 19th, 2017 is not accepted in its present form, but the following Counter Offer  
is hereby submitted:

1. Purchase price to be \$3,099,000.00.
2. Buyer Pre-approval to be revised to reflect lower down payment (as indicated in purchase agreement)  
or buyer to put 30% down as indicated in Pre-approval letter.
3. Appraisal to be order within 2 business days of accepted offer.
4. Escrow to be opened with Taci Granlund of Equity Title 702-432-1111, TaciG@equitynv.com
5. No personal property to be included in the sale.
6. Seller time to respond to original offer is hereby to be extended to midnight October 21st, 2017.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No.       .

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 10:00 ☒ AM ☐ PM on (month) October,  
(day) 23rd, (year) 2017. Unless this Counter Offer is accepted by execution below  
and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall  
lapse and be of no further force and effect.

Date: 10/21/2017

Joseph Folino  
Selling Broker, Co-Franchise  
☐ Buyer ☒ Seller Signature

Time: 6:30 PM

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

       accepts the Counter Offer;  
☒        accepts the terms of this Counter Offer subject to the attached Counter Offer No. #2; or  
       rejects the Counter Offer.

Date: 10/22/2017

Joseph Folino  
dotloop verified  
10/22/17 8:37PM EDT  
NHP-4-NEL-930C2FL1  
☒ Buyer ☐ Seller Signature

Time:       

Nicole Folino  
dotloop verified  
10/22/17 8:55PM EDT  
NHP-4-NEL-930C2FL1  
☐ Buyer ☐ Seller Signature

## **EXHIBIT 4**

## SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (see NRS 113.130 and 113.140).

Date 10/24/2017

Do you currently occupy or have you ever occupied this property? **YES** ☒ **NO** ☐

Property address 42 Meadowhawk Lane

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (NRS 113.130(3))

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☒ Owner-occupier; ☐ Other: \_\_\_\_\_

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (see NRS 113.150).

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

|   | YES                      | NO                                  | N/A                                 |   | YES                      | NO                                  | N/A                      |
|---|--------------------------|-------------------------------------|-------------------------------------|---|--------------------------|-------------------------------------|--------------------------|
| Electrical System .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Shower(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Plumbing .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Sink(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sewer System & line .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Sauna / hot tub(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Septic tank & leach field .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Built-in microwave .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Well & pump .....   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Range / oven / hood-fan .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Yard sprinkler system(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Dishwasher .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Fountain(s) .....   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Garbage disposal .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Heating system .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Trash compactor .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Cooling system .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Central vacuum .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Solar heating system .....  | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Alarm system .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Fireplace & chimney .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                          |                                     |                          |
| Wood burning system .....   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Smoke detector .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Garage door opener .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Intercom .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Water treatment system(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Data Communication line(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                          |                                     |                                     | Satellite dish(es) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Water heater .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                          |                                     |                          |
| Toilet(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Other .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Bathtub(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |   |                          |                                     |                          |

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

TS  
Seller(s) Initials

10/27/17  
BUYER'S  
10/27/2017  
Buyer(s) Initials



Property conditions, improvements and additional information: ..... YES NO N/A

Are you aware of any of the following?:

1. Structure:

(a) Previous or current moisture conditions and/or water damage? ..... ☐ YES ☒ NO

(b) Any structural defect? ..... ☐ YES ☒ NO

(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ..... ☐ YES ☒ NO

(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ..... ☐ YES ☒ NO

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

(a) Any of the improvements being located on unstable or expansive soil? ..... ☐ YES ☒ NO

(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ..... ☐ YES ☒ NO

(c) Any drainage, flooding, water seepage, or high water table? ..... ☐ YES ☒ NO

(d) The property being located in a designated flood plain? ..... ☐ YES ☒ NO

(e) Whether the property is located next to or near any known future development? ..... ☐ YES ☒ NO

(f) Any encroachments, easements, zoning violations or nonconforming uses? ..... ☐ YES ☒ NO

(g) Is the property adjacent to "open range" land? ..... ☐ YES ☒ NO

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ..... ☐ YES ☒ NO

4. Pools/spas: Any problems with structure, wall, liner, or equipment? ..... ☐ YES ☒ NO

5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ..... ☐ YES ☒ NO

6. Environmental:

(a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ..... ☐ YES ☒ NO

(b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ..... ☐ YES ☒ NO

7. Fungi / Mold: Any previous or current fungus or mold? ..... ☐ YES ☒ NO

8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ..... ☐ YES ☒ NO

9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowners association which has any authority over the property? ..... ☒ YES ☐ NO

(a) Common Interest Community Declaration and Bylaws available? ..... ☒ YES ☐ NO

(b) Any periodic or recurring association fees? ..... ☒ YES ☐ NO

(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ..... ☐ YES ☒ NO

(d) Any litigation, arbitration, or mediation related to property or common area? ..... ☐ YES ☒ NO

(e) Any assessments associated with the property (excluding property taxes)? ..... ☒ YES ☐ NO (SID or UD)

(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ..... ☐ YES ☒ NO

10. Any problems with water quality or water supply? ..... ☐ YES ☒ NO

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ..... ☐ YES ☒ NO

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ..... ☐ YES ☒ NO

(If yes, additional Federal EPA notification and disclosure documents are required)

13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐

If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐

Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ..... ☐ YES ☒ NO

15. Solar panels: Are any installed on the property? ..... ☐ YES ☒ NO

If yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐

16. Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐

17. This property is subject to a Private Transfer Fee Obligation? ..... ☒ YES ☐ NO

(standard transfer tax)

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form

TS  
Seller(s) Initials

TS  
Buyer(s) Initials

**EXPLANATIONS:** Any "Yes" to questions on pages 1 and 2 must be fully explained here.  
Attach additional pages if needed.

TS  
Seller(s) Initials

AF  
12/12/17  
9:30PM EST  
Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

**CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE**

**NRS 113.100** Definitions. As used in NRS 113.100 to 113.130, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.

(Added to NRS by 1995, 842; A 1999, 1446)

**NRS 113.110** Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.130, inclusive:

1. A "conveyance of property" occurs:
  - (a) Upon the closure of any escrow opened for the conveyance; or
  - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
  - (a) Upon personal delivery of the document to the person being served; or
  - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.

(Added to NRS by 1995, 844)

**NRS 113.120** Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.

2. Provides notice:

- (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.140.
- (b) That the disclosures set forth in the form are made by the seller and not by his agent.
- (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 843)

**NRS 113.130** Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsection 2:

(a) At least 10 days before residential property is conveyed to a purchaser:

- (1) The seller shall complete a disclosure form regarding the residential property; and
- (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.

(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:

- (1) Rescind the agreement to purchase the property; or
- (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

2. Subsection 1 does not apply to a sale or intended sale of residential property:

- (a) By foreclosure pursuant to chapter 117 of NRS.
- (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
- (c) Which is the first sale of a residence that was constructed by a licensed contractor.
- (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.

3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.

4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:

- (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
- (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.

5. As used in this section:

- (a) "Seller" includes, without limitation, a client as defined in NRS 615B.000.
- (b) "Service report" has the meaning ascribed to it in NRS 615B.140.

(Added to NRS by 1995, 842; A 1999, 1449; 2003, 1339; 2005, 508; 2011, 2512)

75  
Seller(s) Initials

11/20/11 1:01PM EST 11/20/11 1:34PM EST  
Buyer(s) Initials

NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 113.131 to 113.139, inclusive, and 113.600 to 113.603, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 3446)

NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2826)

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645.010(4) or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350; 1792)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).

Seller(s): Shiraz V. Sarmah Date: 10/24/2017

Seller(s): Co-trustee, the Shiraz Trust Date: \_\_\_\_\_  
Manager, Lyons Development LLC

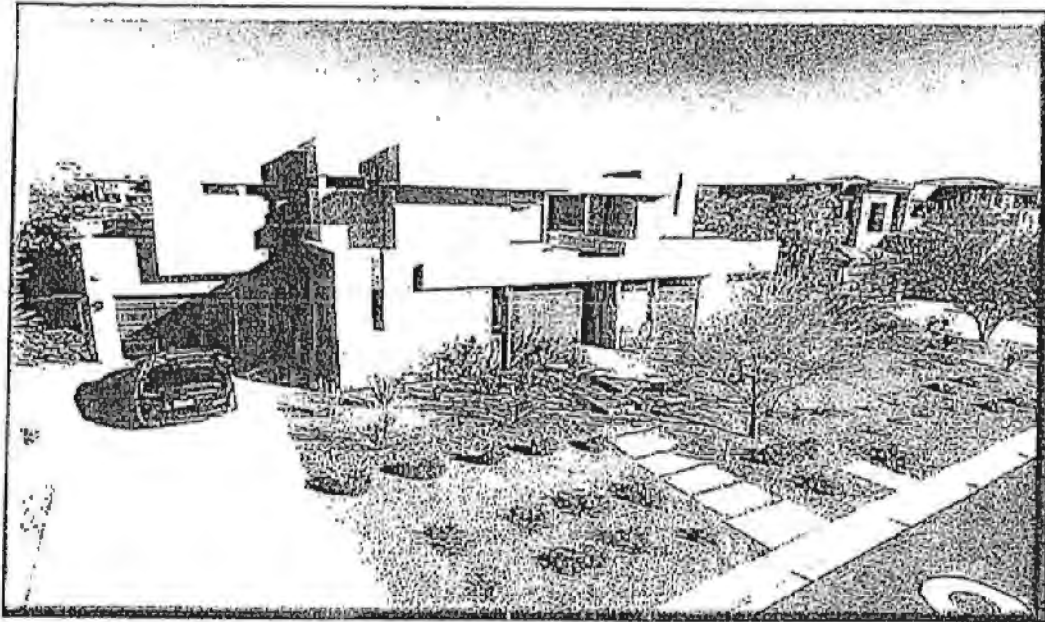
BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.130 to 113.150, including attached forms four (4) and five (5).

Buyer(s): Joseph Folino Date: 10/25/2017

Buyer(s): Nicole Folino Date: 10/25/2017

## **EXHIBIT 5**

## The Uniform Building Inspection Report™ Condensed



**Single Family Residence:**  
42 Meadowhawk Lane, Las Vegas, NV 89135

**Condensed Report Version Prepared for:**  
Joe & Nicole Solino, Client  
Ashley Oakes-Lazosky, Selling Agent  
Ivan Sher, Listing Agent

**Inspection Date:**  
10/27/2017, 9:00:00 AM

**Report Number:**  
1027170900RP

**Inspection Company:**  
Caveat Emptor LV  
Ralph Pane, Lic.# IOS.0002415.RE

Las Vegas, NV 89148  
(702) 210-5333  
[www.caveatemptorlv.com](http://www.caveatemptorlv.com)

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Caveat

Emptor

**Condensed Report Version Prepared For: Joe & Nicole Salino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

**Letter Code Definitions:**

The letter code definitions provide the inspector's professional opinion regarding the finding significance, severity, ramifications, course of action, or path of resolution recommended. If further clarification is desired please contact your inspector.

- (+) The plus sign indicates a plus for the property.
- (A) APPEARANCE This issue is generally perceived to be cosmetic in nature.
- (B) BUILDING STANDARDS This finding does not appear to conform to building standards and practices in effect at the time of construction or installation.
- (C) CAUTION Caution is advised. The finding could be, or could become, hazardous under certain circumstances.
- (D) DAMAGED and/or DAMAGING Damage is observed.
- (E) EFFICIENCY Correction of this issue will generally have a significant impact on efficiency.
- (F) FAILURE The system is not operating as intended.
- (H) HAZARD The finding should be considered hazardous.
- (M) MONITOR Monitor this finding on a regular basis. Corrections by a qualified licensed contractor, if or when necessary, are recommended.
- (N) NOTICE Discretion advised. The significance of the finding is uncertain. Further study is advised.
- (P) PREVENTIVE MAINTENANCE This is generally regarded to be a recurring maintenance issue. Preventive maintenance should be performed to restore the component(s) to proper condition.
- (R) REVIEW BY SPECIALIST The most suitable course of action for addressing this finding is to defer the issue to a licensed and qualified contractor.
- (T) TYPICAL/COMMON This finding appears to be typical and consistent with the age of the structure.
- (U) UPGRADE RECOMMENDED To perform this maintenance action would be considered to be an upgrade.

**IMPORTANT: Findings, Components & Applications Listings:**

Each section of the complete report includes a list of Findings, if any, and a list of Components and Applications noted during the inspection. Some component information contains disclosures. Some Findings information may be far-reaching. To obtain this information would require reading all narratives in the Uniform Building Inspection Report<sup>TM</sup> Reference Manual, referenced by item number. The client is given this manual.

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 12 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

### Condensed Findings:

The condensed version is not the entire report and should not be considered exclusive. In States requiring summary distribution the following listed items are considered by the inspector as (nonoperative, not operating properly or as intended, health and/or safety concerns, warranting further investigation by a specialist, or warranting continued observation by others. In all other States the summary may include all findings regardless of significance.

**Grounds Findings:**

[R] 0303: Irrigation station supply valve(s) possibly leak(s). Observed at the east side of the home. The ground around the irrigation valve box is damp. I did not see the valve leaking but the moisture should be looked into. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0303.

**[R] 0313: Irrigation anti-siphon valve leakage observed**  
Observed at the southeast corner of the home. Active leaking was observed. Anti siphon valve should be replaced. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor. See Photo(s) 0313.

[R] 0323: Irrigation system electric valve control wires amiss. Observed on the east side of the home. The low voltage wire is running on the ground when it should be in conduit or buried. Wire should be correctly ran. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor.  
See Photo(s) 0323.

[R] [R] 0350: Irrigation system needs general repairs, maintenance and adjustments.  
This condition was observed at the front of the property. Small underground leak noticed in the front yard drip system. Leaks only when front station is in operation. Leak should be repaired. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Landscaping Contractor. (rock is pulled back at leak area)  
See Photo(s) 0350.

**Exterior / Roof Findings:**

### HVAC & Fireplace Findings:

**Pool / Spa Findings:**

**Notes:**



**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

**Notes:**

**[R] 3770.02: Filter case leaks.**

This condition was observed in the pool equipment area. Small leak observed at the fitting at the bottom of the filter. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Pool Contractor.  
See Photo(s) 3770.02.

**[R] 3911: Gate(s) allowing direct access to pool or spa not self-closing and self latching.**

Observed on both sides of the home, the gates should be adjusted to allow the gate to close and latch properly on its own. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Pool Contractor.  
See Photo(s) 3911.

**Plumbing Findings:**

**[R] 4684: Tub drains slow.**

This condition was observed in the master bathroom tub. The drain stop may need adjusting to allow faster drainage. It is recommended this finding and all associated components be reviewed and corrected as needed by a licensed and qualified Plumbing Contractor.  
See Photo(s) 4684.

**Electrical Findings:**

**[C] 5645: Electrical faceplate missing.**

Observed in the master bathroom toilet areas. Both outlets are missing the faceplate cover. A missing electrical faceplate can create a potential hazard, especially when small children are present. It is recommended that all missing electrical faceplates be installed as soon as practicable. These products are generally readily available at most major home improvement warehouses such as Lowes or The Home Depot. Caution is advised. The finding could be, or could become, hazardous under certain circumstances.  
See Photo(s) 5645.

**Bathroom(s) Findings:**

**General Interior Findings:**

**[R] 7424: Door dead bolt fails to fully extend in the jamb.**

Observed at the exterior door of the gym in the basement. Deadbolt does not fully lock. Lock should be adjusted. It is recommended this finding and all associated components be reviewed and corrected as

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
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needed by a licensed and qualified Door Contractor.  
See Photo(s) 7424.

**Kitchen / Appliance Findings:**

**Structure Findings:**

**Notes:**

**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

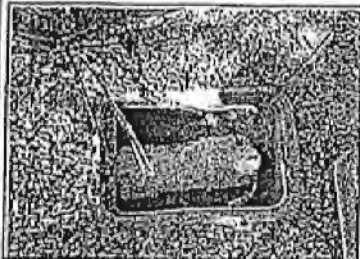


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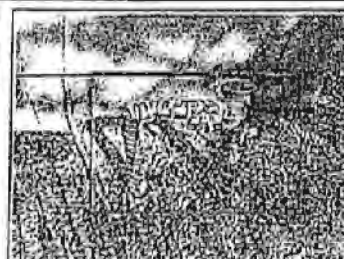


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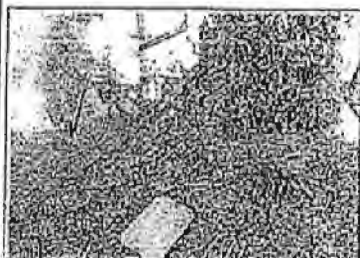


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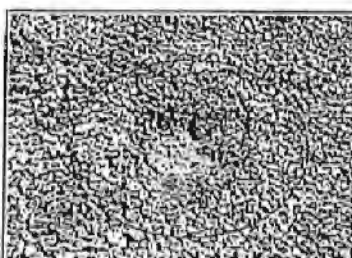


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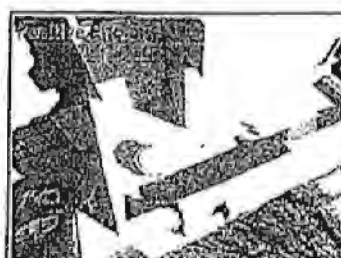


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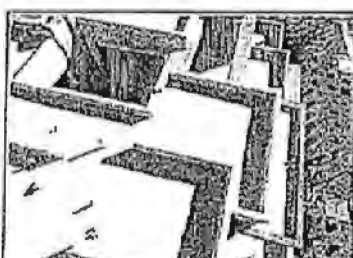


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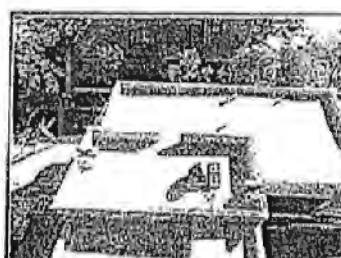


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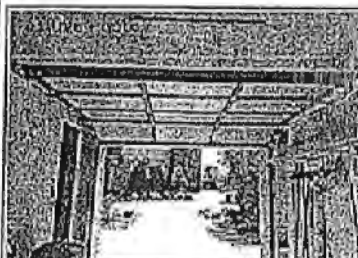


Photo: 1-1 (1)



Photo: 1.2 (1)



Photo: 2.02 (1)

Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170800RP

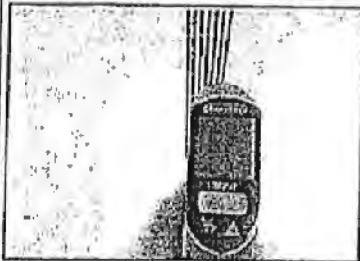


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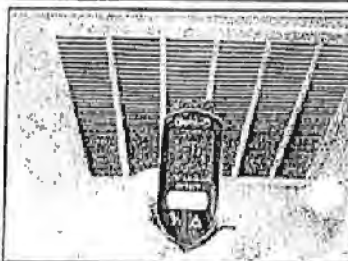


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Photo: 2.02 (4)



Photo: 2.04 (1)



Photo: 2.04 (2)

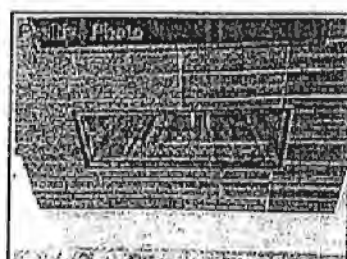


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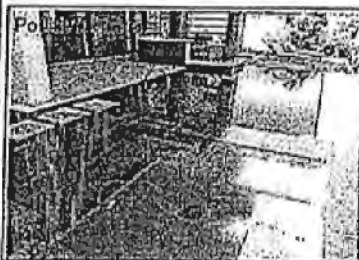


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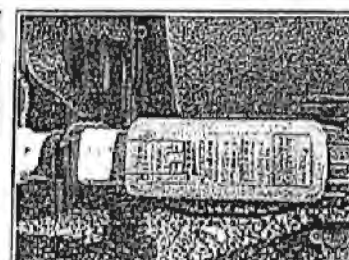


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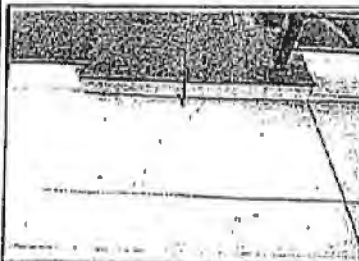


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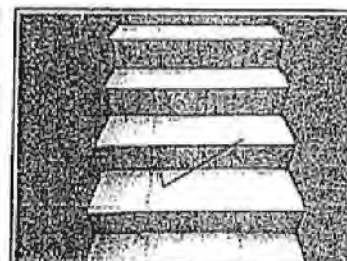


Photo: 3162 (3)

Questions or concerns? Please call (702) 210-5933

Caveat Emptor LV

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**Condensed Report Version Prepared For: Joe & Nicole Solino**

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

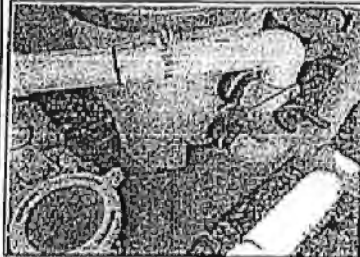


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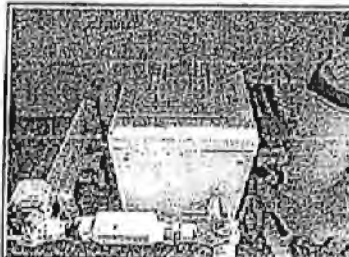


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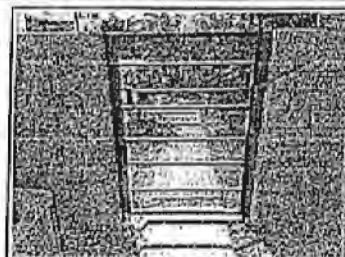


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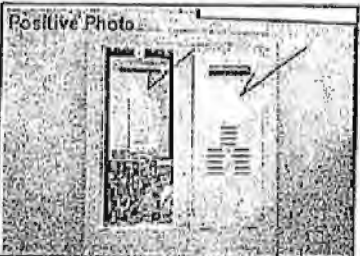


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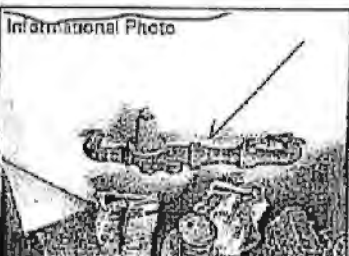


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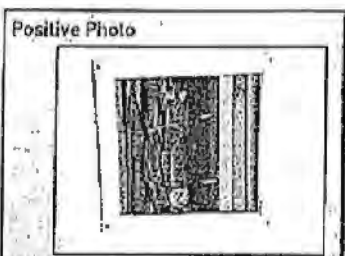


Photo: 4.171 (1)

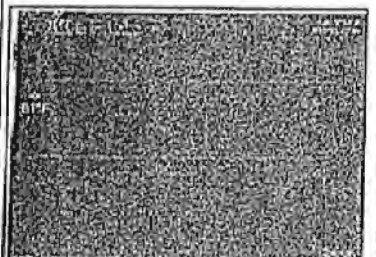


Photo: 4.18 (1)

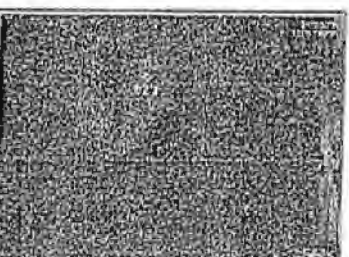


Photo: 4.18 (2)

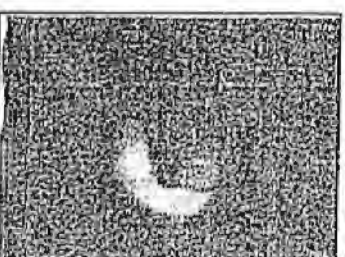


Photo: 4.18 (3)

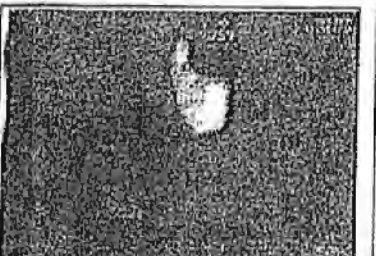


Photo: 4.18 (4)



Photo: 4.21 (1)

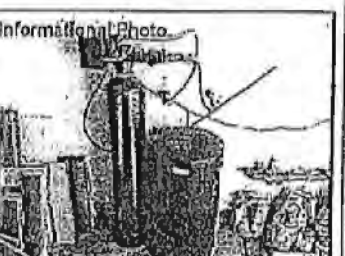


Photo: 4.66 (1)

Questions or concerns? Please call (702) 210-5333

Caveat Emptor LV

Copyright © 2017 Caveat Emptor LV



Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

Positive Photo

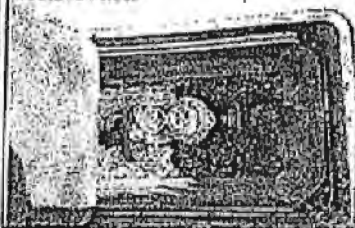


Photo: 4500 (1)

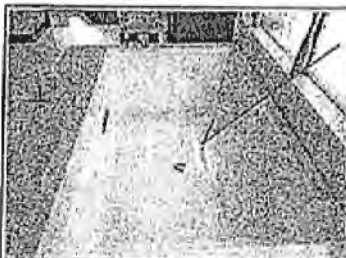


Photo: 4684 (1)

Positive Photo

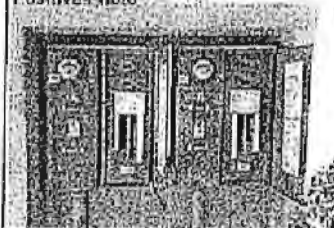


Photo: 5.2 (1)

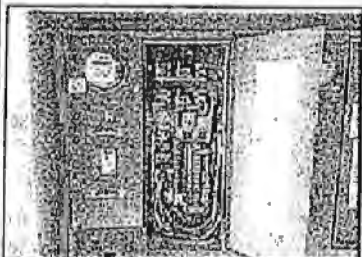


Photo: 5.2 (2)

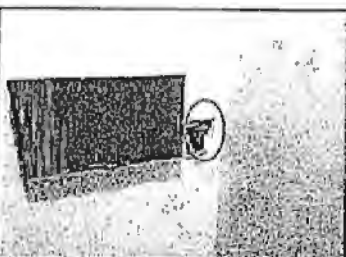


Photo: 5645 (1)

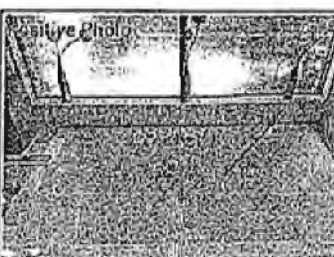


Photo: 6.15 (1)

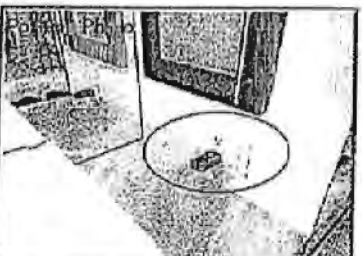


Photo: 6.410 (1)

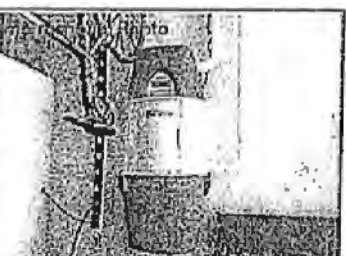


Photo: 7.32 (1)

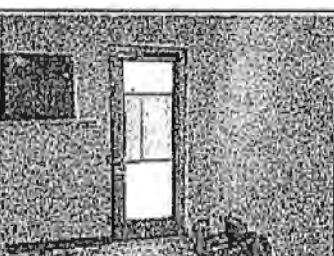


Photo: 7424 (1)



Photo: 8.04 (1)



Photo: 8.04 (2)

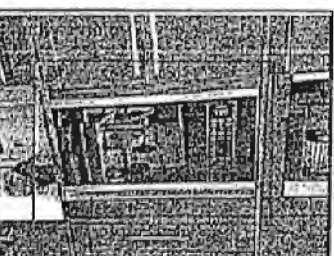


Photo: 8.07 (1)

Condensed Report Version Prepared For: Joe & Nicole Solino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135  
Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170500RP

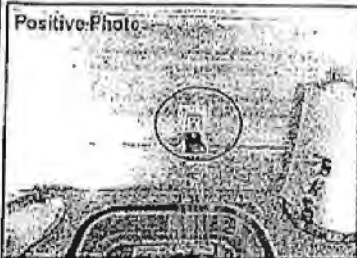


Photo: 8.110 (1)

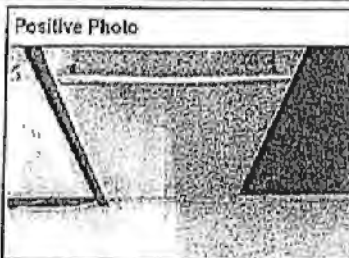


Photo: 8.2003 (1)

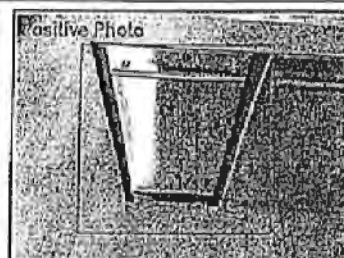


Photo: 8.31 (1)

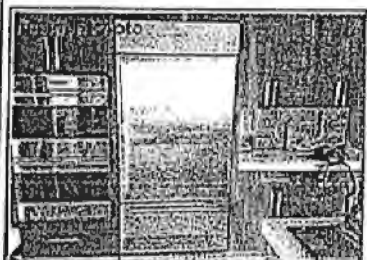


Photo: 8.91 (1)

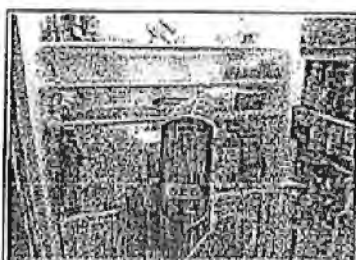


Photo: 8.91 (2)

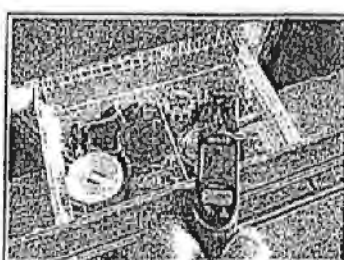


Photo: 8.91 (3)

**EXHIBIT 6**





*Vegas Homes*  
AND FINE ESTATES  
REAL ESTATE SERVICES



REQUEST FOR REPAIR No. 1

In reference to the Residential Purchase Agreement dated 10/23/17 ("Agreement") on property known as 42 Meadowhawk Ln, Las Vegas, NV ("Property")  
executed by Joseph Folino Nicola Folino as Buyer(s) and seller of record  
as Seller(s). The Buyer hereby notifies the Seller of the following response and request for repairs:

1. BUYER'S NOTICE: (Check one)

☐ Buyer has reviewed and approves the Home Inspection Report and removes the home inspection contingency.  
☒ Buyer requests that the Seller perform the following repairs before COE. All repairs (except general home maintenance) are to be done by a licensed Nevada contractor. Buyer reserves the right to approve the repairs at Walk Through Inspection as set forth in the Purchase Agreement. Buyer acknowledges that this Request for Repair does not absolve the Buyer of any obligation under the Residential Purchase Agreement.

All irrigation systems need to be repaired and replaced at the areas of leaking, etc.

(see inspection report for details)

Pool filter case leaks and needs to be repaired/replaced.

Side gate needs to be repaired properly to allow self-latching properly.

Drain stops need to be repaired/replaced since tubs drain slowly

Master bathroom electrical faceplates need to be replaced & installed properly.

Downstairs room door needs the deadbolt repaired/replaced to function properly.

Amended report by Inspector makes 2 additional items added to this request:

(See provided amended report and photos)

1. Pool decking outside the sliding door has a "lip" that is showing either shifting underneath and/or is a trip hazard. Seek further investigation from pool builder and provide buyers with "warranty" or solution.
2. Flat roof line that is right of the Office Patio is coming off in chunks and needs to be repaired (see report with inspectors suggested remedy.) Buyer inquiring on the builders warranty for continued said issues with the stucco on the flat roof lines of home.

*JF*  
11/26/17  
11:55AM EST

*NF*  
11/23/17  
12:17PM EST

Copies of the following reports are attached:

☒ Inspection Report

☐ \_\_\_\_\_

☐ \_\_\_\_\_

☐ \_\_\_\_\_

DocuSigned by:

*Joe Folino*

CO025080FA07491...

Buyer Joseph Folino

10/30/17

Date

DocuSigned by:

*Nicola Folino*

12126776026421...

Buyer Nicola Folino

10/30/17

Date



Docusign Envelope ID: DE635604-47D0-40FC-A25E-662A62C3ED86

2. SELLER'S RESPONSE: (Check one)

- ☒ Seller agrees to correct all of the conditions listed in Section 1 of this Request.  
☐ Seller declines Buyer's Request for Repairs.  
☐ Seller offers to repair or take the other specified corrective action as follows:

1. *Introduction*

2. *Background*

3. *Methodology*

4. *Results*

5. *Discussion*

6. *Conclusion*

7. *References*

8. *Appendix*

9. *Index*

10. *Index*

11. *Index*

12. *Index*

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100. *Index*

 10/30/2017  
Seller Co-trustee, the Shiraz Trust Date  
Manager, Lyons Development, LLC

**Seller** \_\_\_\_\_ **Date** \_\_\_\_\_

## 3. BUYER'S REPLY TO SELLER'S RESPONSE: (Check one)

- ☐ Buyer accepts Seller's response as noted in Section 2 of this Request, withdraws all requests for items Seller has not agreed to correct (if any) and removes the home inspection contingency.
- ☐ Buyer rejects Seller's response and rescinds the Purchase Agreement.
- ☐ Buyer rejects Seller's response as noted in Section 2 of this Request, elects to offer the Seller a new request as set forth in the attached Request for Repair No. \_\_\_\_\_. Buyer further requests a \_\_\_\_\_ calendar day extension of the Due Diligence Period.

☒ See above in section #1 of original requested repairs added issues added to request of repairs. Inspector amended report.

Joseph Folino  
11/09/17 11:55AM EST  
WHL7071 UGUR GRUS

**Date**

*Nicole Folino* d:\loop\ver\ed  
01/13/17 12:31 PM EST  
SINR-21 CG-MATY-R-14

44 loop verified  
 01/13/17 12:13 PM JST  
 51NR-21CG-MATJ-NH

#### 4. SELLER'S RESPONSE TO REQUEST FOR EXTENSION OF THE DUE DILLIGENCE PERIOD

- ☐ Seller **APPROVES** the \_\_\_\_\_ day extension of the due diligence period:

| Seller | Date |
|--------|------|
|--------|------|

Seller \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT 7**

APN NO.: 164-14-414-014

RECORDING REQUESTED BY:  
EQUITY TITLE OF NEVADA

WHEN RECORDED MAIL TO:

Joseph R Folino & Nicole Folino  
42 Meadowhawk Lane  
Las Vegas NV 89135

MAIL TAX STATEMENTS TO:  
SAME AS ABOVE

Affix RPTT: \$\$15,300.00  
ESCROW NO.: 17840471 TGR

Inst #: 20171117-0003032

Fee: \$40.00

RPTT: \$16300.00 Ex#:

11/17/2017 03:21:08 PM

Receipt #: 3262384

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: RYUD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

---

### GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH THAT:

Lyons Development, LLC, a Nevada Limited Liability Company

for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant,  
Bargain Sell and convey to

Joseph R Folino and Nicole M Folino, husband and wife as joint tenants

all that real property situated in the County of Clark, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances  
thereunto belonging to in anywise appertaining.

SUBJECT TO:

1. General and special taxes for the current fiscal year.
2. Covenants, conditions, restrictions, rights of way, easements and reservations  
of record.

SELLER:

Lyons Development, LLC

Todd Swanson, Trustee  
Todd Swanson, Resource Trustee for  
the Shiraz Trust

STATE OF Colorado )  
COUNTY OF Denver ) SS:

On November 11, 2017

personally appeared before me, a Notary Public

Todd Swanson

who acknowledged that he/she/they executed the  
above instrument.

Karen Coffey  
Notary Public

My commission expires: 3/29/18

KAREN COFFEY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20064012153  
MY COMMISSION EXPIRES 03-29-18

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot Fourteen (14) as shown on the FINAL MAP OF SUMMERLIN VILLAGE 18 THE RIDGES  
PARCEL "F" FALCON RIDGE as shown by map thereof on file in Book 126 of Plats, Page  
64, in the Office of the County Recorder, Clark County, Nevada.

RECORDED  
12-10-2003  
CLARK COUNTY, NEVADA

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a. 164-14-414-014  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

- a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Townhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm./Indl  
g. ☐ Agricultural      h. ☐ Mobile Home  
i. Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property: \$ 3,000,000.00  
b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
c. Transfer Tax Value \$ 3,000,000.00  
d. Real Property Transfer Tax Due: \$ 15,300.00

4. If Exemption Claimed

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature \_\_\_\_\_ Capacity agent  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Lyons Development, LLC  
Address: 10120 W Flamingo Road Ste. 4333  
City: Las Vegas  
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Joseph R Folino and Nicole Folino  
Address: 42 Meadowhawk Lane  
City: Las Vegas  
State: NV Zip: 89135

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

Print Name: Equity Title of Nevada Escrow No.: 17840471-084-TGR  
Address: 2475 Village View Dr., Suite 250  
City, State, Zip: Henderson, NV 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

**EXHIBIT 8**



**INVOICE**

Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 398-1410

INVOICE NO  
232808

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

| ACCOUNT NO | INVOICE DATE | TERMS  | DUE DATE  |  | PAGE |
|------------|--------------|--------|-----------|--|------|
| UPONOR     | 5/23/2017    | Net 30 | 6/22/2017 |  | 1    |

ORDER 13382, PO

RESOLUTION RMA # 747000

TECH FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM.

CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER WITH NO FURTHER LEAKS.

RAKEMAN HAD TO REMOVE TOE KICKS ON BUILT IN CABINETS IN CLOSET, CUT OUT WET DRYWALL, CARPET PAD AND PLACE EQUIPMENT TO DRY OUT CLOSET.

AFTER EVERYTHING IS DRY RAKMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THE RESET ALL CARPET.

| ITEM NO      | QUANTITY | DESCRIPTION  | UNIT PRICE | EXTENDED  |
|--------------|----------|--------------|------------|-----------|
| BID ACCEPTED | 1        | BID ACCEPTED | 2496.00    | 2,496.00* |

Your Business is Appreciated!

\* means item is non-taxable



INVOICE

INVOICE NO  
232809

Rakeman Plumbing, Inc.  
4075 Losee Road  
N. Las Vegas, NV 89030  
Phone: (702) 642-8553  
Fax: (702) 399-1410

CUST UPONOR  
5925 148TH ST WEST  
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE  
42 MEADOWHAWK LN  
Las Vegas, NV 89135

| ACCOUNT NO | INVOICE DATE | TERMS  | DUE DATE  |  |  | PAGE |
|------------|--------------|--------|-----------|--|--|------|
| UPONOR     | 5/23/2017    | Net 30 | 6/22/2017 |  |  | 2    |

TOTAL AMOUNT 2,496.00

## **EXHIBIT 9**



June 9, 2017

Rakeman Plumbing  
ATTN: Aaron Hawley  
4075 Losee Rd  
NORTH LAS VEGAS, NV 89030

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

I am responding to the claim you submitted under the above referenced RMA number.

Enclosed please find a check in the amount of \$2,496.00 offered by Uponor in full and complete satisfaction of all claims and damages you have or may have relating to the above referenced claim. Be assured that we take these matters seriously and are working to make sure this does not happen again.

Should you require any other information or have any additional questions, please do not hesitate to contact me at (952) 997-5383. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, reading "Christy Wegner", is written over the typed name.

Christy Wegner  
Claims Coordinator  
Christy.Wegner@uponor.com

Enclosure: Check

Uponor North America

Uponor, Inc.  
5925 148th Street West  
Apple Valley, MN 55124  
Tel: (800) 321-4739  
Fax: (952) 851-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

Uponor Ltd  
2000 Argentia Road  
Plaza 1, Suite 200  
Mississauga, ON L5N 1W1  
Tel: (888) 994-7726  
Fax: (800) 638-9517  
Web: [www.uponor.ca](http://www.uponor.ca)

503097

5925 148TH STREET WEST, APPLE VALLEY, MN 55124

100000 FAKEMAN PLUMBING Jun 7, 2017 14525

TOTAL AMOUNT

**\$2,496.00**

UPONOR

5925 148TH STREET WEST  
APPLE VALLEY, MN 55124

PNC Bank:  
National Association  
Jeannette, PA  
EO-162428

014805

Check Date

07-Jun-2017

Check Amount

**\$2,496.00**

PAY: Two Thousand Four Hundred Ninety-Six Dollars And Zero Cents\*\*\*\*\*

TO  
THE  
ORDER  
OF

RAKEMAN PLUMBING  
4075 LOSEE ROAD  
NORTH LAS VEGAS, NV 89030  
United States

110014805110 1004330162710 1001149485110

**EXHIBIT 10**



## Rusty Graf

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 12:39 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** Uponor Warranty Claim - RMA 746512 (42 Meadowhawk)  
**Attachments:** 746512\_As\_Received\_\_2\_.JPG; Rakeman\_746512\_42\_meadowhawk\_invoice.pdf; 746512\_-\_payout.pdf

Hi Nicole,

I wanted to thank you for taking the time to speak with me today in regards to the Uponor products currently installed in your home. As discussed, Uponor has identified a limited manufacturing related issue with the tubing samples returned to our office for evaluation and are recommending replacement of all red and blue AQUAPEX tubing currently installed in your home with new Uponor AQUAPEX. It is my understanding that you will be discussing this recommendation with your husband and will be following up with me after the 1<sup>st</sup> of the year to begin conversations on how we can work together to accomplish this task.

Per your request, below please find the information associated with the initial claim submitted to Uponor in February 2017.

### Claimant And Jobsite Information

#### Claimant Information

Builder/Contractor  
rakeman plumbing  
aaron hawley  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
aaron@rakeman.com  
Ph 702 642 8553  
Fax 702 399 1410

#### Jobsite Information

Residential  
aaron hawley  
42 meadow hawk ln.  
LAS VEGAS, NV 89131  
US  
aaron@rakeman.com  
Ph 702 642 0553

#### Past Occurrences

#### Estimated Claim Amount

#### Past Occurrences

|                         |                   |
|-------------------------|-------------------|
| Amount                  | \$5000 to \$10000 |
| Preferred Reimbursement | Cash              |
| Repairs Complete        | No                |

**Installation Information****Application****Contractor Information**

**Application** Plumbing  
**Recirculation** Yes  
**Recirc Type** Timed/On Demand  
**Failure Location** Supply  
**Location Detail** master bed room closet

rakeman plumbing  
aaron hawley  
4075 losee rd  
NORTH LAS VEGAS, NV  
US  
aaron@rakeman.com  
Ph 702 642 8553  
Installing? Yes

**Temperature/Pressure****Other Information**

**Temperature** Hot  
**System Temp Hot** 120 F  
**System Pressure** 65 PSI

**Present for destructive**  
**Phase of Construction**  
**Builder**

**Water Source****Customer Comment(s)**

**Water Source** Municipal

tubing split at fitting. Cu

**Dates**

**Est. Installed Date** 19-JUN-2013  
**Failure Date** 16-FEB-2017



## Product Information

| Item Number                      | Description  | Return |
|----------------------------------|--|--------|
| Q4751775                         | ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX |        |
| Problem: tubing split at fitting |  |        |
| Review Result: No Failure        |  |        |
| F2060750                         | 3/4" Uponor AquaPEX Red, 300-ft. coil                |        |
| Problem: tubing split at fitting |  |        |
| Review Result: Manufacturing     |  |        |
| F3060750                         | 3/4" Uponor AquaPEX Blue, 300-ft. coil               |        |
| Problem: tubing split at fitting |  |        |
| Review Result: Manufacturing     |  |        |
| F1041000                         | 1" Uponor AquaPEX White, 100-ft. coil                |        |
| Problem: tubing split at fitting |  |        |
| Review Result: No Failure        |  |        |
| Q4690756                         | ProPEX Ring with Stop, 3/4"                          |        |
| Problem: tubing split at fitting |  |        |
| Review Result: No Failure        |  |        |
| Q4691000                         | ProPEX Ring with Stop, 1"                            |        |
| Problem: tubing split at fitting |  |        |
| Review Result: No Failure        |  |        |

Should you have any questions or concerns with the information supplied, please do not hesitate to reach out. My direct contact information is below.

Thank you  
Stacey

**uponor**

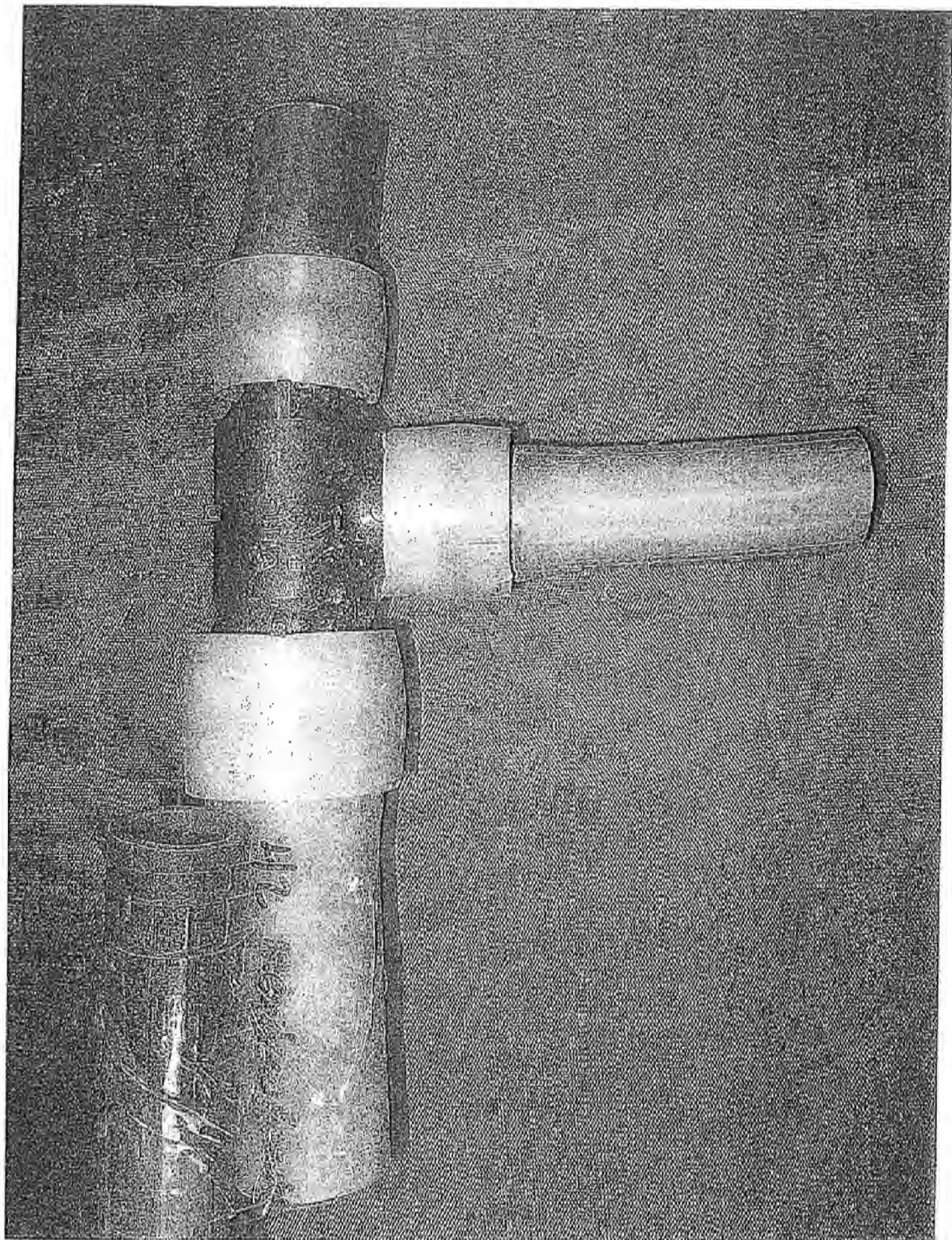
**Stacey Beissel**  
Warranty Manager  
Uponor North America

T +19529878984  
M +16512531956

[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

Uponor, Inc.  
6925 148th St W  
Apple Valley, MN, 55124

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**EXHIBIT 11**



## Rusty Graf

---

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 12:47 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)  
**Attachments:** 748395 As Received (1) (1).JPG; 748395\_As\_Received\_\_2\_ (1).JPG

Hi Nicole,

As requested, the claim information for the most recent claim submitted to Uponor for evaluation (in November 2017) is below:

### Claimant And Jobsite Information

#### Claimant Information

Builder/Contractor  
rakeman plumbing  
alison brooks  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
alison@rakeman.com  
Ph 702 642 8553

#### Jobsite Information

Single Family  
todd watson  
42 meadowhawk ave.  
LAS VEGAS, NV 89135  
US  
alison@rakeman.com  
Ph 702 642 8553

#### Estimated Claim Amount

|                         |                  |
|-------------------------|------------------|
| Amount                  | \$1000 to \$2500 |
| Preferred Reimbursement | Cash             |

#### Past Occurrences

#### Past Occurrences

#### Past Occurrences Ref

## Installation Information

### Application

### Contractor Information

### Application

Plumbing

rakeman plumbing

alison brooks

### Recirculation

No

4075 losee rd

### Location Detail

master bath closet below water heater

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Ph 702 642 8553

### Temperature/Pressure

Installing? Yes

### Temperature

Cold

### Other Information

### System Temp

70 F

### System Pressure

65 PSI

Present for destruction

Phase of Construction

### Water Source

Builder

### Water Source

Municipal

Customer Comment(s)

### Dates

Blue pipe split at fitting

### Est. Installed Date

15-JUL-2013

### Failure Date

07-NOV-2017

## Product Information

| Item Number                           | Description   | Return |
|---------------------------------------|---|--------|
| LF4517576                             | ProPEX LF Brass Sweat Adapter, 3/4" PEX x 3/4" Copper |        |
| Problem: blue tubing split at fitting |   |        |
| Review Result:                        |   |        |
| F3040750                              | 3/4" Uponor AquaPEX Blue, 100-ft. coil                |        |
| Problem: blue tubing split at fitting |   |        |
| Review Result: Manufacturing          |   |        |

Thank you  
Stacey

# Uponor

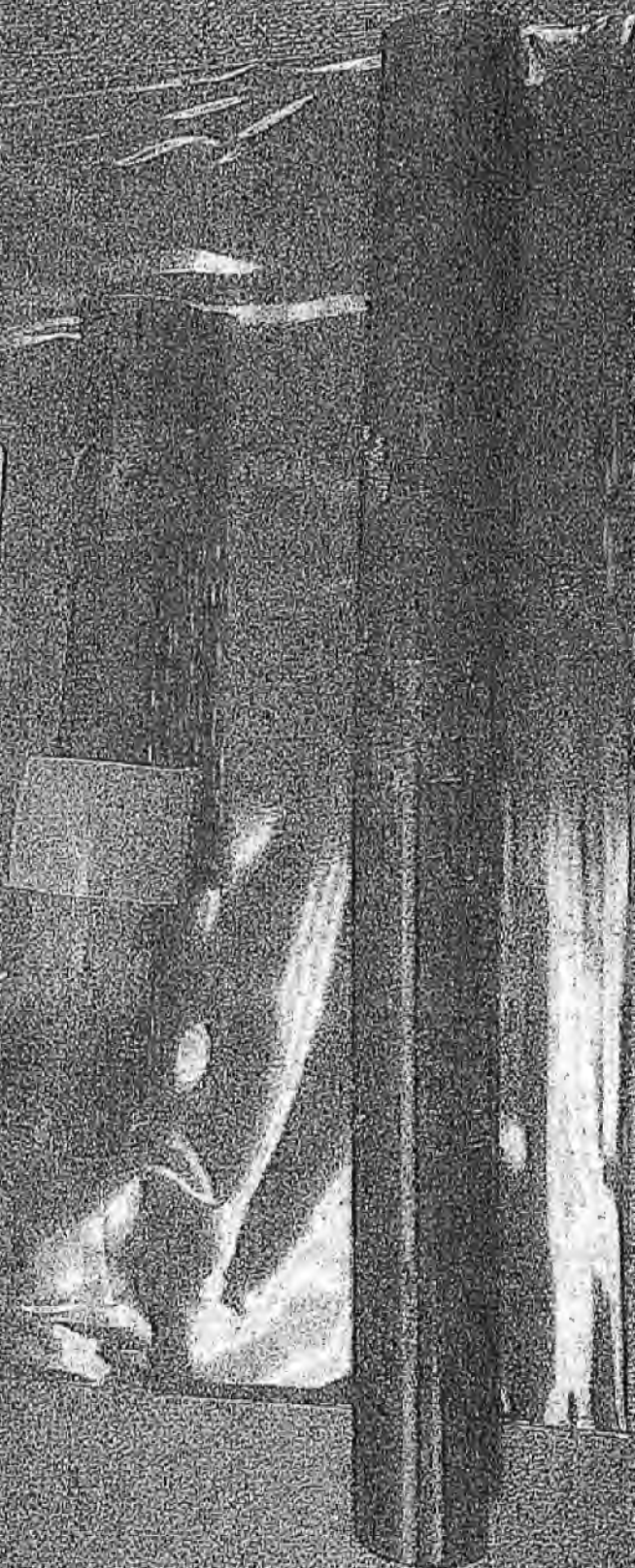
Stacey Beissel  
Warranty Manager  
Uponor North America

T +18529978984  
M +18512531956

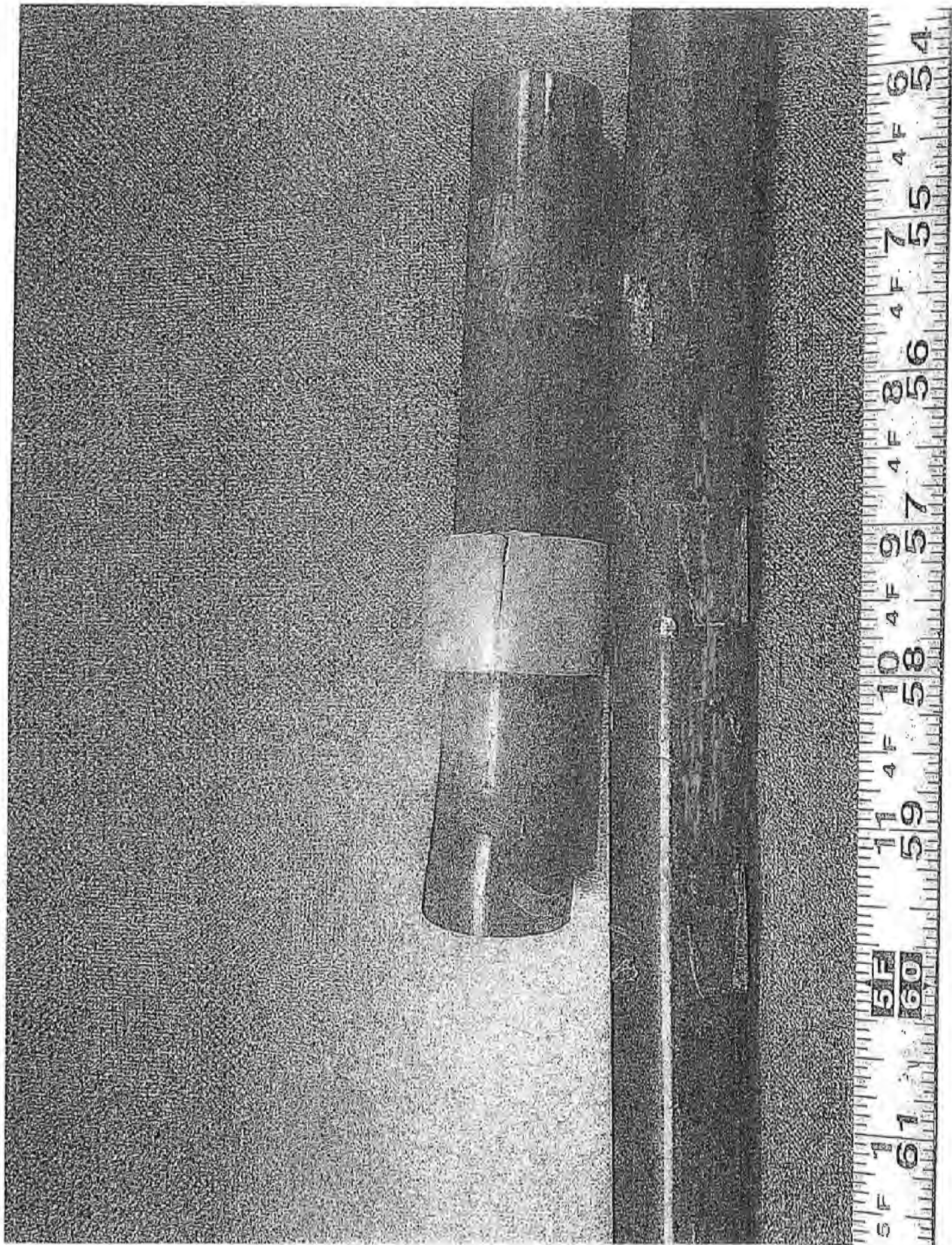
[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

Uponor, Inc.  
5925 148th St W  
Apple Valley, MN, 55124

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Rusty Graf

---

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 1:20 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** RE: Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)  
**Attachments:** 2012 - Plumbing Warranty.pdf

Hi Again,  
I apologize; I just realized I forgot to send the Uponor warranty applicable to your home. I have attached it for your review.

Thanks  
Stacey

**From:** Beissel, Stacey  
**Sent:** Wednesday, December 13, 2017 2:47 PM  
**To:** 'Nicole Folino' <nfolino@sandlerpartners.com>  
**Cc:** Joe Folino <jfolino@switch.com>  
**Subject:** Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)

Hi Nicole,  
As requested, the claim information for the most recent claim submitted to Uponor for evaluation (in November 2017) is below:

## Claimant And Jobsite Information

### Claimant Information

Builder/Contractor  
rakeman plumbing  
alison brooks  
4075 losee rd  
NORTH LAS VEGAS, NV 89030  
US  
allison@rakeman.com  
Ph 702 642 8553

### Estimated Claim Amount:

|                         |                  |
|-------------------------|------------------|
| Amount                  | \$1000 to \$2500 |
| Preferred Reimbursement | Cash             |

### Jobsite Information

Single Family  
todd watson  
42 meadowhawk ave.  
LAS VEGAS, NV 89135  
US  
allison@rakeman.com  
Ph 702 642 8553

### Past Occurrences

### Past Occurrences

### Past Occurrences Refi

## Installation Information

### Application

### Contractor Information

Application

Plumbing

rakeman plumbing

alison brooks

Recirculation

No

4075 losee rd

Location Detail

master bath closet below water heater

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Temperature/Pressure

Ph 702 642 8553

Installing? Yes

Temperature

Cold

Other Information

System Temp

70 F

System Pressure

65 PSI

Present for destructive

Phase of Construction

Water Source

Builder

Water Source

Municipal

Customer Comment(s)

Dates

Blue pipe split at fitting

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017

## Product Information

| Item Number                           | Description   | Return |
|---------------------------------------|---|--------|
| LF4517575                             | ProPEX LF Brass Sweal Adapter, 3/4" PEX x 3/4" Copper |        |
| Problem: blue tubing split at fitting |   |        |
| Review Result:                        |   |        |
| F3040750                              | 3/4" Uponor AquaPEX Blue, 100-ft. coil                |        |
| Problem: blue tubing split at fitting |   |        |
| Review Result: Manufacturing          |   |        |

Thank you  
Stacey

**Uponor**

Stacey Beissel  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

Uponor, Inc.  
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PLUMBING SYSTEMS

**WARRANTY**

**UPONOR, INC. LIMITED WARRANTY** Valid for Uponor AquaPEX-a® Tubing, ProPEX® and Other Select Plumbing Products

**This Warranty is Effective For Installations Made After October 15, 2012**

Subject to the terms and conditions of this Limited Warranty, Uponor, Inc. ("Uponor") warrants to the owner of the applicable real property that the Uponor products listed below shall be free from defects in materials and workmanship, under normal conditions of use when installed as part of a potable water distribution system.

Unless otherwise specified, this Limited Warranty for the applicable Uponor products shall commence on the date the product was installed ("Commencement Date") and will expire after the following number of years:

- (a) Twenty-Five (25) years for Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings when all are installed in combination with each other;
- (b) Ten (10) years for Uponor AquaPEX-a® tubing when installed in combination with non-Uponor fittings;
- (c) Ten (10) years for Uponor EP valves, EP valveless manifolds and Uponor tub elbows, stub elbows, and straight stubs;
- (d) Two (2) years for Uponor metal manifolds, Uponor EP manifolds with valves;
- (e) Five (5) years for the Uponor O'MAND® system;
- (f) Two (2) years for all other components of the Uponor ProPEX® fitting system and all other plumbing items listed in Uponor's catalog as of the effective date of this limited warranty.

For purposes of this warranty, the use of Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings in combination with each other shall constitute an Uponor ProPEX® system.

**Exclusions From Limited Warranty:**

This limited warranty applies only if the applicable Uponor products identified above: (a) are selected, configured and installed by a certified licensed plumbing contractor recognized by Uponor as having successfully completed the Uponor AquaPEX® training course and according to the installation instructions provided by Uponor; (b) are not exposed to temperatures and/or pressures that exceed the limitations printed on the warranted Uponor product or in the applicable Uponor installation manual; (c) remain in their originally installed location; (d) are connected to potable water supplies; (e) show no evidence of misuse, tampering, mishandling, neglect, accidental damage, modification or repair without the approval of Uponor; and (f) are installed in accordance with then-applicable building, mechanical, plumbing, electrical and other code requirements; (g) are installed in combination with Uponor AquaPEX-a® tubing unless otherwise specified below.

Without limiting the foregoing, this limited warranty does not apply if the product failure or resulting damage is caused by: (a) faulty installation; (b) components not manufactured or sold by Uponor; (c) exposure to ultra violet light; (d) external physical or chemical conditions, including, but not limited to chemically corrosive or aggressive water conditions; or (e) any abnormal operating conditions.

The use of non-Uponor termination devices such as tub/shower valves, sill cocks, stops and other similar components that attach at the termination or end-point of a run or branch of Uponor AquaPEX-a® tubing does not disqualify the additional parts of the Uponor ProPEX® fitting system from the terms of this Limited Warranty. Only the non-Uponor termination devices themselves are excluded from the Uponor Limited Warranty.

The use of non-Uponor AquaPEX-a® tubing disqualifies any and all parts of the Uponor ProPEX fitting® system from the terms of this Limited Warranty. This exclusion does not include certain circumstances wherein Uponor AquaPEX-a® tubing is installed in combination with CPVC, copper, PPR, or stainless steel pipe risers as may be required in limited residential and commercial plumbing applications. The use of non-Uponor fittings in combination with Uponor ProPEX® fittings disqualifies Uponor ProPEX fittings® from the terms of this Limited Warranty.

**Warranty Claim Process (for building owners and homeowners only):**

Written notification of an alleged failure of, or defect in, any Uponor part or product identified herein should be sent to Uponor, Attn: Warranty Department, 5925 148th Street West, Apple Valley, Minnesota 55124 or by facsimile to (866) 351-8402, and must be received by Uponor within thirty (30) days after detection of an alleged failure or defect occurring within the applicable warranty period. All products alleged to be defective must be sent to Uponor for inspection and testing for determination of the cause of the alleged failure or defect.

**Exclusive Remedies:**

If Uponor determines that a product identified herein has failed or is defective within the scope of this limited warranty, Uponor's liability is limited, at the option of Uponor, to: issue a refund of the purchase price paid for, or to repair or replace the defective product.

Notwithstanding anything to the contrary in this limited warranty, if Uponor determines that any damages to the real property in which a defective product was installed were the direct result of a leak or failure caused by a manufacturing defect in an Uponor product covered by this limited warranty and occurring within the first ten (10) years after the applicable Commencement Date or during the applicable limited warranty period, whichever is shorter, and if the claimant took reasonable steps to promptly mitigate (i.e., limit or stop) any damage resulting from such failure, then Uponor may at its discretion, reimburse claimant for the reasonable costs of repairing or replacing such damaged real property, including flooring, drywall, painting, and other real property damaged by the leak or failure. Uponor shall not pay for any other additional costs or expenses, including but not limited to, transportation, relocation, labor, repairs or any other work associated with removing and/or returning failed or defective products, installing replacement products, damage to personal property or damage resulting from mold.

**Warranty Claim Dispute Process:**

In the event claimant and Uponor are unable to resolve a claim through informal means, the parties shall submit the dispute to the American Arbitration Association or its successor (the "Association") for arbitration, and any arbitration proceedings shall be conducted before a single arbitrator in the Minneapolis, Minnesota metropolitan area. NOTWITHSTANDING THE FOREGOING, NEITHER THE CLAIMANT NOR UPONOR, INC. SHALL BE ENTITLED TO ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS, AND NEITHER THE CLAIMANT NOR UPONOR SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS WITH ANY OTHER PARTIES IN ARBITRATION OR IN LITIGATION BY CLASS ACTION OR OTHERWISE.

**Transferability:**

This limited warranty may only be assigned by the original owner of the applicable real property and may not be assigned or transferred after the period ending ten (10) years following the Commencement Date.

**Miscellaneous:**

By the mutual agreement of the parties, it is expressly agreed that this limited warranty and any claims arising from breach of contract, breach of warranty, tort, or any other claim arising from the sale or use of Uponor's products shall be governed and construed under the laws of the State of Minnesota. It is expressly understood that authorized Uponor sales representatives, distributors, and plumbing professionals have no express or implied authority to bind Uponor to any agreement or warranty of any kind without the express written consent of Uponor.

THIS LIMITED WARRANTY IS THE FULL EXTENT OF EXPRESS WARRANTIES PROVIDED BY UPONOR, AND UPONOR HEREBY DISCLAIMS ANY WARRANTY NOT EXPRESSLY PROVIDED HEREIN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS COVERED HEREUNDER.

UPONOR FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LIMITED WARRANTY, UPONOR FURTHER DISCLAIMS ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, AND SPECIAL, INDIRECT, SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OR RESULTING IN ANY MANNER FROM THE PRODUCTS COVERED HEREUNDER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THIS LIMITED WARRANTY GIVES THE CLAIMANT SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Revised as of 8/2012

Uponor, Inc.  
5925 148th Street West  
Apple Valley, MN 55124 USA  
Tel: (800) 321-4739  
Fax: (952) 891-2008  
Web: [www.uponor-usa.com](http://www.uponor-usa.com)

**uponor**

## **EXHIBIT 2**



**FLOYD A. HALE**

LAW OFFICE

Practice limited to serving as:

**Special Master, Mediator and Arbitrator**

*services administered and scheduled by JAMS*

3800 Howard Hughes Parkway, 11<sup>th</sup> Floor

Las Vegas, NV 89169

email:

fha1a@floydha1a.com

**JAMS**

Fax (702) 437-5287

Telephone (702) 457-5287

website: www.jamsadr.com

August 20, 2018

*Sent by Email*

Rusty Graf, Esq.  
Black & Lobello  
10777 West Twain Ave., 3<sup>rd</sup> floor  
Las Vegas, NV 89135  
Attorneys for Plaintiffs  
rgraf@blacklobellolaw.com

Christopher Young, Esq.  
Cobeaga Law Firm  
550 East Charleston Blvd. #D  
Las Vegas, NV 89104  
Attorneys for Defendant  
cyoung@cottonlaw.com

Re: Joseph and Nicole Folino v. Todd Swanson; Lyons Development, LLC  
Mediation: August 17, 2018

Dear Counsel:

This letter will confirm that we were not successful in reaching a settlement of this dispute during our August 17, 2018, Mediation conference. The Mediation concluded with the Folino's lowest demand to settle the case in the amount of \$225,000.00. The final settlement offer by Dr. Todd Swanson was \$125,000.00. I appreciate the clients working so hard to move the negotiations to these final figures. I will certainly welcome counsel to contact me if we can finalize this dispute since there was substantial movement toward a settlement figure.

It is my suggestion that the parties agree to settle this dispute for \$200,000.00. Since I anticipate that litigation will commence soon if there is no settlement, let me know your responses by September 4, 2018. Unless an agreement is reached, I will not advise the parties of the responses received to my proposal from the adverse party.

I would like to thank you for retaining me for the handling of this mediation and if I can be of any further service, please do not hesitate to give me a call.

Very truly yours,

  
Floyd A. Hale



1 **OPP**

2 Rusty Graf, Esq.

3 Nevada Bar No. 6322

4 **BLACK & LOBELLO**

5 10777 West Twain Avenue, 3<sup>rd</sup> Floor

6 Las Vegas, Nevada 89135

7 Telephone: (702) 869-8801

8 Facsimile: (702) 869-2669

9 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)

10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JOSEPH FOLINO, an individual and NICOLE  
14 FOLINO, an individual,

15 Plaintiff,

16 v.

17 TODD SWANSON, an individual; TODD  
18 SWANSON, Trustee of the SHIRAZ TRUST;  
19 SHIRAZ TRUST, a Trust of unknown origin;  
20 LYONS DEVELOPMENT, LLC, a Nevada  
21 limited liability company; DOES I through X;  
22 and ROES I through X,

23 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**OPPOSITION TO DEFENDANTS'  
MOTION FOR ATTORNEY'S FEES AND  
COSTS**

24 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
25 their attorney of record Rusty Graf, Esq., of Black & LoBello, hereby submit their Opposition  
26 to Defendants' Motion for Attorney Fees and Costs.

27 ///

28 ///

///

///

///

///

///

1 This Opposition is based upon the pleadings and papers on file in this action, the Points  
2 and Authorities set forth herein, and argument to be made by counsel at the time of the hearing.

3 DATED this 11 day of May 2020.

4 **BLACK & LOBELLO**

5 #15271 

6 Rusty Graf, Esq.  
7 Nevada Bar No. 6322  
8 10777 W. Twain Ave., Suite 300  
9 Las Vegas, NV 89135  
10 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
11 *Attorney for Plaintiffs*

12 **POINTS AND AUTHORITIES**

13 **I.**

14 **PERTINENT PROCEDURAL BACKGROUND**

15 On October 19, 2018, Plaintiffs filed their initial Complaint against Defendants. On  
16 February 4, 2019 Defendants filed their first Motion to Dismiss, which was denied, and the Court  
17 granted Plaintiffs leave to amend. On April 18, 2019, Plaintiffs filed their First Amended  
18 Complaint. On May 20, 2019, Defendants filed their Motion to Dismiss Plaintiffs' First  
19 Amended Complaint. On July 18, 2019, the Court dismissed several of Plaintiffs' claims, but  
20 denied Defendants' Motion to Dismiss for two remaining causes of action. On September 4,  
21 2019 Plaintiffs filed their Second Amended Complaint with the surviving causes of actions: (1)  
22 Fraud/Intentional Misrepresentation; and (2) violation of NRS 113.100 et seq.

23 On September 24, 2019, Defendants filed a Motion to Dismiss the Second Amended  
24 Complaint. The Court held a hearing on Defendants' Motion to Dismiss the Second Amended  
25 Complaint on November 7, 2019, and the matter was ordered continued to permit the parties  
26 time to file a supplemental brief and production of documents. On December 11, 2019,  
27  
28

1 Defendants served Plaintiffs with an Offer to have Judgment entered against them in the amount  
2 of One Hundred and Fifty Thousand Dollars (\$150,000.00) inclusive of costs, fees and interest.  
3 *See Defendants' Motion for Attorney's Fees and Costs, Exhibit F.* The hearing on Defendants'  
4 Motion to Dismiss the Second Amended Complaint was held on April 7, 2020, and the Court  
5 granted the Motion. Thereafter, on April 23, 2020, Defendants filed the instant Motion for  
6 Attorney's Fees and Costs.  
7

## 8 II.

### 9 LEGAL ARGUMENT

#### 10 A. INTRODUCTION

11 The foundational points of Plaintiffs' instant Opposition are (1) that Defendants cannot  
12 meet the statutory requirements for an award of attorney's fees and costs; and (2) that even if  
13 Defendants did meet those requirements, it was objectively reasonable in the given  
14 circumstances for Plaintiffs to bring the lawsuit. Plaintiffs' claims were not frivolous or based  
15 upon spite. Defendants argue to the contrary, and state that they are entitled to their accrued  
16 attorney's fees and costs, by attempting to misconstrue the background of this dispute and paint  
17 Plaintiffs' Complaint as having no factual or legal basis. This is incorrect. Defendants' flawed  
18 assertions do not support an award for fees. The Defendants assert in their motion the following  
19 arguments: (1) evidence of repairs of specific leaks removed any legal uncertainty as to whether  
20 there was a duty to disclose those leaks on the Seller's Real Property Disclosure ("SRPD"); (2)  
21 that evidence of repairs of leaks asserted in the complaint removed any factual uncertainty as to  
22 the existence of additional leaks, and whether the leaks asserted in the complaint had been  
23 repaired (or should have been disclosed); (3) that the factual basis of this dispute was similar  
24 enough to that in *Nelson v. Heer*, such that there was no reasonable legal basis for Plaintiffs to  
25 believe Defendants must disclose the leaks; and (4) that because the Court ultimately granted  
26  
27  
28

1 Defendants' Motion to Dismiss, it was implicitly agreeing that it was unreasonable for Plaintiffs'  
2 to have brought their claims in the first place. *See Defendants' Motion for Attorney's Fees and*  
3 *Costs, Pg. 4-16.* Defendants' use these four assertions in an attempt to support their argument  
4 that "Plaintiffs pursued this action out of "pure spite" and thus validate their request for fees and  
5 costs. *Id. at Pg. 4.*

6  
7 The fundamental problem with Defendants' overall argument and characterization of  
8 Plaintiffs' suit as based on "pure spite" and completely unreasonable, is the procedural history.  
9 More importantly, discovery uncovered numerous leaks, some of which were not repaired. The  
10 Plaintiff asserted that there were no conditions of moisture EVER at this home, and that if there  
11 were conditions of moisture, then they were repaired. This was found to be false. Further, the  
12 Plaintiff asserted that there was never any mold that existed at this residence. This is also false,  
13 as the condition existed at the time of the closing.

14  
15 Further, though Plaintiffs' cannot dispute that the Court did grant the Motion to Dismiss,  
16 it is incorrect for Defendants to argue that Plaintiffs' suit was only based upon a leak, about  
17 which they were fully informed. There were multiple leaks in the house, at least one of which the  
18 Plaintiffs have presented the evidence of the Defendant's own testimony and exhibits was never  
19 repaired or disclosed in violation of the SRPD. The lawsuit was not just about a single leak even  
20 if, arguendo, Defendants did make a full and proper disclosure in that regard. The litigation was  
21 the failure of the Plaintiff to make a full and knowing disclosure of the conditions of moisture or  
22 mold in the residence that existed during the time he owned the residence. The mere fact that  
23 Defendants are forced to characterize the "early November" leak, rather than simply the leak, is  
24 illustrative of this point. There were at least six different leaks presented to the Court. These  
25 multiple leaks in the house over a long period of time were proof of the knowledge of the  
26 Defendant. Dr. Todd Swanson's knowledge of each of those leaks, actions taken by him and  
27  
28

1 vendors at his direction for each of those leaks, and the failure to make subsequent disclosures  
2 were all at issue. Finally, Plaintiffs' have reasonably asserted that the facts of this dispute allow it  
3 to be distinguished from Nelson v. Heer. This is not such a firmly settled and established area of  
4 that Plaintiffs are unreasonable for believing and arguing that, unlike Nelson v. Heer,  
5 Defendants' did have a duty to disclose. More so, the instant facts reveal the existence of mold  
6 never disclosed and another leak in a detailed report with color photos, a report to which the  
7 Defendant annotated and confirmed that the condition was never repaired.

9 Plaintiffs' were not acting out of spite. Spite being an act to deliberately hurt, annoy or  
10 offend someone. These Plaintiffs brought a lawsuit after suffering massive losses due to  
11 systemic flaws in the plumbing system of their brand-new home. The only person in this  
12 transaction that knew of all of the leaks and the failure to repair all of the leaks, was the  
13 Defendant. Plaintiffs are not mind readers. They could not have known of the numerous leaks  
14 Dr. Swanson was aware of, and when he became aware of those leaks. Just because Plaintiffs  
15 had a Motion to Dismiss granted against them, does not mean they acted with the intent to spite  
16 Dr. Swanson. Quite the opposite, had the Defendant notified them of all of the at least six leaks  
17 in the residence, then and only then could the Plaintiffs have made a rational decision as to  
18 whether to close or not.

20 The Court has intimated that the Plaintiffs waived their rights to assert the failures of the  
21 Defendant to provide notice of the prior conditions of moisture and mold by closing. The SRPD  
22 does not have a limit on the time the owner has the knowledge to look back in his mind.  
23 Moreover, the leaks in question was known to the Defendant in August 2015, less than three  
24 years prior to the October 2017 signing of the SRPD. Further, the Defendant produced the May  
25 21, 2015 Criterium report that put Dr. Swanson on notice of the 2015 leaks as opposed to the  
26 2017 leaks upon which the Court based its waiver ruling.

**B. DEFENDANTS' CANNOT BE AWARDED THEIR ATTORNEY'S FEES AND COSTS UNDER ANY OF THE STATUTES THEY CITE**

Plaintiffs' decision to bring a lawsuit against Defendants has a demonstrably reasonable basis, yet Defendants still assert that they are entitled to recover their attorney's fees and costs and cite three different statutes under which they claim they may receive such an award. These include (1) NRCP 68 (under which Defendants' state they are entitled to the fees and costs accrued since December 11, 2019); (2) NRS 18.010(2)(b) (under which Defendants' state they are entitled to the fees and costs accrued since the inception of the suit); and (3) NRS 18.020 (under which Defendants' state they are entitled to the costs accrued since the inception of the suit). Defendants are not entitled to an award of attorney's fees under any of these three statutes, and Plaintiffs will address each in more detail below.<sup>1</sup>

**i. Defendants' Are Not Entitled to Fees and Costs Pursuant to NRCP 68**

Pursuant to NRCP 68, if an offeree rejects an offer and fails to obtain a more favorable judgment, they must pay the reasonable attorney's costs and fees incurred by the offeror post-offer. *See NRCP 68(f)(1)*. However, an award of attorney's fees pursuant to NRCP 68 is discretionary with the court. *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.2d 732 (1987). Further, the Nevada Supreme Court has stated that "while the purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs unfairly to forego legitimate claims." *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983).

Based on these considerations, the Court engages in a two-part analysis when determining the award of fees and costs. First, it is determined whether it is reasonable to award a party fees and costs by weighing the following Beattie factors: (1) whether the plaintiff's claim

---

<sup>1</sup> The propriety of the award of costs has been addressed by a separate Motion to Retax Costs, set to be heard on the same date as the hearing of this Motion for Fees and Costs. This Opposition incorporates by reference any and all argument made in the Motion to Retax Costs.

1 was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in  
2 good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer  
3 and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by  
4 the offeror are reasonable and justified in amount. *Id. at 588-89*. When it is determined that the  
5 first three Beattie factors weigh in favor of the party who rejected the offer of judgment, the  
6 reasonableness of the requested fees becomes irrelevant as the reasonableness of the fees alone  
7 cannot support an attorney fees award. *Frazier v. Drake*, 131 Nev. 632, 641-42, 357 P.3d 365,  
8 372 (Ct. App. 2015).

10 If the Court determines that it is reasonable to make an award of attorney's fees and  
11 costs, it then engages in the second part of the analysis by using the Brunzell Factors to  
12 determine what amount of fees and costs is reasonable to award. The Brunzell Factors include:  
13 (1) the qualities of the advocate: his ability, training, education, experience, professional standing  
14 and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, the time  
15 and skill required, the responsibility imposed and the prominence and character of the parties  
16 when they affect the importance of the litigation; (3) the work actually performed by the lawyer:  
17 the skill, time and attention given to the work; and (4) the result: whether the attorney was  
18 successful and what benefits were derived. *Schouweiler v. Yancy Co.*, 101 Nev. 827, 712 P.2d  
19 786 (1985) (citing *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).

21  
22 ii. Analysis under Beattie and Brunzell Demonstrate Defendants' are not  
23 entitled to an award of fees and costs under NRCP 68.

24 Defendants' served an Offer of Judgment on Plaintiffs on December 11, 2019 which was  
25 ultimately rejected and they now assert that, pursuant to NRCP 68, they are thus entitled to  
26 recover Forty-Three Thousand Six Hundred and Twelve Dollars and Twenty-Six cents  
27 (\$43,612.26) in attorney's fees and costs they subsequently incurred. *See Defendants' Motion for*  
28



1 *Attorney's Fees and Costs*, Pg. 5. The following analysis of the Beattie Factors indicates that an  
2 award of such fees and costs is not reasonable and thus should not be awarded.

3 a. Whether the Plaintiffs' claims were brought in good faith

4 In arguing against Plaintiffs' claims being brought in good faith, Defendants' argument  
5 focuses on three key assertions: (1) that the legal standard for the duty to disclose a repaired leak  
6 is clear from *Nelson v. Heer* and thus there should have been no legal controversy regarding the  
7 failure of Todd Swanson to Disclose the leaks on the SRDP; (2) that Plaintiffs' knowledge of the  
8 receipt evidencing the repair of the February leak and the affidavit of the owner of the plumbing  
9 company stating the repairs had taken place demonstrates bad faith in bringing the claim (in light  
10 of the holding of *Nelson v. Heer*); and (3) that Plaintiffs' Motion for Sanctions against  
11 Defendants' Counsel evidenced Bad Faith. *Id.* at 7-8. Defendants conclude that the good faith of  
12 Plaintiffs is in doubt because "Not only had they filed multiple complaints with seemingly zero  
13 factual basis, but had also filed a completely "inappropriate" motion for sanctions ascribing  
14 multiple nefarious acts to defense counsel without basis." *Id.* at 8.

15 First, Plaintiffs would emphasize that Defendants are mistaken in their belief that the  
16 Motion for Sanctions that they repeatedly deem "inappropriate" has any relevance to analysis of  
17 the first Beattie Factor. Again, the first factor is "whether the plaintiff's claims were brought in  
18 good faith". (Emphasis added) *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983).  
19 The plain language of the Court's holding in *Beattie v. Thomas* makes it clear that this analysis is  
20 not meant to investigate the motive behind every motion filed throughout the litigation process,  
21 only the reasonableness of bringing the claims. *Id.* The complaint was brought in good faith and  
22 the facts presented prove the claims as made.

23 Next, as to Defendants' assertion that Plaintiffs' demonstrated bad faith because they  
24 "filed multiple complaints with seemingly zero factual basis", this is inaccurate to the point "zero  
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1 factual basis". See *Defendants' Motion for Attorney's Fees and Costs*, Pg. 8. Plaintiffs' Initial  
2 Complaint, First Amended Complaint, and Second Amended Complaint were all factually well  
3 based, and the parties agree on the majority of the facts alleged. Defendants' do not dispute that  
4 there were multiple leaks that occurred on the property,<sup>2</sup> they do not dispute that Dr. Swanson  
5 indicated the existence of no leaks on the SRPD,<sup>3</sup> and Defendant Dr. Swanson's own notes  
6 regarding the repairs to leaks in the house demonstrate it was a systemic problem.<sup>4</sup> The  
7 Defendants only dispute the duty to disclose those leaks, and the knowledge of Dr. Swanson as  
8 to the systemic nature of the problem. This is not a matter of Plaintiffs' bringing Complaints that  
9 had no facts or incorrect facts, it's a dispute involving (1) the legal interpretation of the duty to  
10 disclose repaired leaks; and (2) the extent of Dr. Swanson's knowledge of the leaks; and, (3)  
11 whether all of the leaks to which he was aware, were fully repaired.  
12

13 Finally, as to Defendants' argument that the legal standard from Nelson v. Heer  
14 combined with Plaintiffs' knowledge of the February and November repairs evidences bad faith  
15 (as they claim this makes it clear any duty to disclose the leaks was negated), this is a blatant  
16 misinterpretation of the history of all of the leaks at this residence and the arguments made by  
17 Plaintiffs up to this point. Plaintiffs did not merely ignore relevant case law in bringing their  
18 claims, they clearly argued that the instant matter could be distinguished from the situation in  
19 Nelson v. Heer. See attached Exhibit 2, *Plaintiffs' Opposition to Defendants' Motion to Dismiss*  
20 *the Second Amended Complaint*, Pg. 5-6. Plaintiffs' addressed the holding of Nelson v. Heer in  
21 their Opposition to Defendants' Motion to Dismiss the Second Amended Complaint, stating:  
22  
23

24  
25 <sup>2</sup> See Defendants' Motion for Attorney's Fees and Costs, Pg. 4 (referencing the February 2017 leak); Pg.  
26 10 (referencing the November leak); and see also attached Exhibit 1 (Repair notes of Todd Swanson,  
demonstrating knowledge of multiple leaks in the house).

27 <sup>3</sup> See Defendants' Motion for Attorney's Fees and Costs, Pg. 7.

28 <sup>4</sup> See attached Exhibit 1, Repair notes of Todd Swanson.

1 “Defendants argue that under *Nelson v. Heer* and NRS 113.140, they did not  
2 commit concealment because they were not “aware of the defect after they believed it had  
3 been repaired. Defendants then go into an extensive analysis of the Court’s holding in  
4 *Nelson*, and also the word “aware”, and what means to be aware and have knowledge of  
5 something, but this discussion is totally irrelevant. Moreover, this is nonsense!  
6 Defendants are correct that in *Nelson* the Court found it was not concealment for a seller  
7 not to disclose past water damage they believed to have been repaired. *Nelson v. Heer*,  
8 123 Nev. 217, 163 P.3d 420 (2007). However, Defendants ignore a key difference  
9 between the holding in *Nelson* and the current situation. Namely that, unlike in *Nelson*,  
10 Defendants explicitly lied on the SRPD, and this is true regardless of what they were told  
11 about the repairs by Rakeman.

12 At least 10 days before residential property is conveyed to a purchaser the seller  
13 “shall complete a disclosure form regarding the residential property.” See NRS  
14 113.130(1)(a). Here, the SRPD for the sale asked if Defendants were aware of any  
15 “previous or current moisture conditions and/or water damage”. (emphasis added) See  
16 attached Exhibit 1, Seller’s Real Property Disclosure Form. This is explicitly clear. It  
17 does not matter whether Defendants believe that the repair removed their awareness of  
18 the issue, because the question did not only ask about the current issues. It specifically  
19 asked if there were any “previous” moisture conditions or water damage. A repair does  
20 not remove one’s awareness of previous occurrences. Despite this, on the SRPD  
21 Defendants indicated no, that they were not aware of any previous moisture conditions or  
22 water damage. This is concealment, and the Rakeman affidavit has no relevance.

23 It’s not like *Nelson*, where it is unclear what the SRPD form actually asked. The  
24 Court merely held that the seller had no affirmative duty to disclose something they did  
25 not know materially and adversely affected the value of the property. *Nelson v. Heer*, 123  
26 Nev. 217, 163 P.3d 420 (2007). Here the seller was asked an explicit question about past  
27 occurrences, not just whether an issue still existed, and they gave a demonstrably false  
28 and misleading answer.” (footnotes omitted)

19 See attached Exhibit 2 at Pg. 5-7. This demonstrates that there was an actual legal controversy  
20 and Plaintiffs were not acting unreasonably and simply defying the holding of *Nelson v. Heer* out  
21 of spite. The facts of this case are not the same as *Nelson v. Heer*. More importantly, there are  
22 leaks and conditions of moisture to which repairs were not made. In addition, the Plaintiffs  
23 argued that the affidavit of Aaron Hawley was hearsay and should not be considered by the  
24 Court. *Id.* at Pg. 4-5.

25 Therefore, Defendants’ arguments regarding (1) the relevance of the Countermotion for  
26 Sanctions; (2) the factual basis for the Complaints; and (3) the existence of a clear legal standard  
27 from *Nelson v. Heer* which would apply to this dispute. Each and every one of those arguments  
28

1 are all false, and as such they do not demonstrate bad faith on the part of Plaintiffs. To the  
2 contrary, examination of these issues actually reveals the reasonable basis for Plaintiffs' claims.  
3 Just because Plaintiffs' lost does not mean they were unreasonable in their pursuit of these  
4 claims, and it certainly does not mean they acted in bad faith. Thus, this factor should be  
5 weighed in favor of Plaintiffs', as they made a reasonable argument for the Court to distinguish  
6 *Nelson v. Heer* and Defendants' cannot demonstrate the existence of bad faith.  
7

8 b. **Whether Defendants' offer of judgment was brought in good faith in**  
9 **both its timing and amount.**

10 Defendants' brought their Offer of Judgment, in the amount of One Hundred and Fifty  
11 Thousand Dollars (\$150,000.00) inclusive of costs, fees and interest, on December 11, 2019. *See*  
12 *Defendants' Motion for Attorney's Fees and Costs, Exhibit F*. Defendants argue that this was  
13 "generous" and therefore objectively reasonable because they claim "Plaintiffs have never  
14 asserted that they had suffered any measurable special damages", that "all repairs to the  
15 plumbing system were handled under warranty by either Rakeman Plumbing or the  
16 manufacturer, Uponor" and that Plaintiffs had already been advised of the Court's "inclination to  
17 grant Defendants' motion to summarily dispose of the case". *Id.*, at Pg. 8-9. Defendants' claim to  
18 have made this offer due to the "unpredictable nature of litigation and the potential to accrue  
19 substantial costs and fees in a relatively short period of time" but this is inaccurate. *Id.*, at Pg. 8.  
20 Defendants' Offer, both in timing and amount, was not brought in good faith, and was instead an  
21 attempt to avoid the revelation of information and evidence harmful to their position through the  
22 subsequent depositions and discovery.  
23

24 Defendants' claim that "Plaintiff's had essentially zero special damages" is incorrect,  
25 irrelevant, and fails to provide the proper financial context for the situation. As Defendants'  
26 themselves note, Plaintiffs' alleged Fraud damages of approximately Three Hundred Thousand  
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1 Dollars (\$300,000.00) and Bad Faith damages of One Hundred Thousand Dollars (\$100,000.00).  
2 *Id.*, at Pg. 9. These damages were calculated as the result of both (1) the need to complete a re-  
3 pipe of the entire residence due to the systemic issues with the plumbing system; (2) the likely  
4 affect to the value of the home due to the multiple water leaks that will be required to be reported  
5 going forward; and (3) the additional expenses Plaintiffs incurred for additional living expenses  
6 due to their home remaining non-functional for such a significant period of time. Further, as of  
7 November of 2019, Plaintiffs had already incurred attorney's fees and expenses in excess of  
8 Thirty-Two Thousand Dollars (\$32,000.00). *See attached Exhibit 3, Bills Evidencing Plaintiffs'*  
9 *Fees and Costs through October 31, 2019.* This was all in addition to Plaintiffs' alleged Breach  
10 of Contract damages in an amount to be determined.  
11

12 After deducting attorney's fees and costs, Defendants' were ultimately offering a  
13 settlement which would allow Plaintiffs' to recoup less than a third of their alleged damages.  
14 This weighs against considering the offer to be in good faith as to the amount offered. The timing  
15 of the offer also weighs against any finding of reasonableness, as it was offered prior to any  
16 discovery in the litigation process, and immediately after the filing of the third motion to dismiss  
17 the case without ever producing a single document and without even answering.  
18

19 The offer was grossly unreasonable. After spending more than a year of time and effort  
20 bringing the case to this point and immediately before conducting discovery believed to be  
21 essential to Plaintiffs' claims, the Plaintiffs received the instant Offer. Within Weeks of the Offer  
22 expiring, the Plaintiffs received the May 21, 2015 Criterium report from the Plaintiff. *See*  
23 *attached Exhibit 4, Defendants' First Supplemental Production of Documents, dated January 23,*  
24 *2020.* Only after one session of Dr. Swanson's deposition, did the Plaintiffs receive the rest of  
25 the Defendants' documents referencing the tracking of the prior leaks and the lack of repair of  
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28

1 the same. *See attached Exhibit 5, Defendants' Second Supplemental Production of Documents,*  
2 *dated January 31, 2020.*

3 Therefore, it was not grossly unreasonable of Plaintiffs to reject an offer that was (1) only  
4 for a fraction of the amount of losses suffered; and (2) immediately before additional key  
5 discovery would be produced. In fact, the evidence above makes it clear that it was reasonable to  
6 reject the Defendants' Offer. Therefore, this factor too must be weighed in favor of Plaintiffs.  
7

8 c. **Plaintiffs' decision to reject the offer and proceed to trial was not**  
9 **grossly unreasonable or in bad faith.**

10 Defendants next argue that Plaintiffs' decision to reject the offer was "grossly  
11 unreasonable" for three reasons: (1) because "the Court had already indicated its inclination to  
12 dismiss the case"; (2) because "Plaintiff's had essentially zero special damages"; and (3) because  
13 "established case law clearly eviscerated Plaintiff's claims". *See Defendants' Motion for*  
14 *Attorney's Fees and Costs, Pg. 10.* Close consideration of these three issues demonstrates that  
15 Defendants are blatantly incorrect and that it was not either grossly unreasonable or in bad faith  
16 for Plaintiffs' to reject the offer.  
17

18 First, Defendants' argument that it was grossly unreasonable to reject the offer, because  
19 the Court had already indicated its inclination to dismiss the case offers is baseless and should be  
20 completely discounted. The Court was unaware of the facts of the 2015 leaks and the failure to  
21 repair the same. Only the Defendants were aware of those facts. If, as the Defendants imply, the  
22 Court had already determined how it would rule on this matter it would have been ridiculous to  
23 order the matter continued for 90 days for further discovery. Therefore, it must be concluded that  
24 the Court believed that it was still possible at that point for additional evidence to demonstrate  
25 the validity of Plaintiffs' claims. Additional evidence that could only come through discovery.  
26 Further, Plaintiffs' did uncover key evidence after this fact (through depositions and the  
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1 additional subpoena of documents) that supported their claims. This is evidenced by the  
2 voluminous production which accompanied Plaintiffs' Supplemental Brief.

3 Next, as discussed in depth above, it is inaccurate of Defendants to attempt to portray  
4 their Offer as generous to the point that it was unreasonable for Plaintiffs' not to accept.  
5 Plaintiffs had suffered losses and accrued fees and expenses far in excess of what was being  
6 offered, and a risk-reward analysis suggested to Plaintiffs that the wisest decision would be to  
7 continue through litigation. Finally, as is also discussed in more detail above, it is a gross  
8 exaggeration for Defendants to claim that "established case law clearly eviscerated Plaintiff's  
9 claims". Even though the Court ultimately agreed with Defendants' interpretation of the duty to  
10 disclose, Plaintiffs had a reasonable and well supported argument in favor of distinguishing this  
11 situation from Nelson v. Heer.  
12

13 Specifically, Nelson v. Heer was unclear whether the seller of a property had actually  
14 been asked whether any leaks had ever occurred. The Supreme Court's holding in that case  
15 merely established that the seller had no affirmative duty to disclose something they did not  
16 know materially and adversely affected the value of the property. *See attached Exhibit 2,*  
17 *Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint, Pg. 7.*  
18 Here, Plaintiffs argued that the Defendant was required pursuant to the SRPD and NRS 113 et  
19 seq. to provide any information about prior or current conditions of moisture or mold. Not just  
20 whether such an issue still existed. The Defendants gave a false and misleading answer. *Id.*  
21 There was no case law which "eviscerated" this position. More importantly, the Defendants  
22 have yet to address the condition of moisture in the basement bathroom.  
23

24 Therefore, the three arguments that Defendants offering in support of Plaintiffs being  
25 "grossly unreasonable" in rejecting the offer can all be refuted. The Court's "inclination" was not  
26 an actual decision, and the Order granting a continuance demonstrates that the matter was not  
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effectively determined. Plaintiffs did suffer substantial damages, well in excess of the Offer. Finally, the assertion that case law “eviscerated” Plaintiffs’ position is an attempt by Defendants to rewrite history. As Defendants’ offer no other arguments in support of Plaintiffs being “grossly unreasonable” in rejecting the offer, this factor too should weigh in favor of Plaintiffs.

d. **Brunzell factor analysis: whether the fees sought by the offeror are reasonable and justified in amount**

As stated above, when it is determined that the first three Beattie factors weigh in favor of the party who rejected the offer of judgment, the reasonableness of the requested fees becomes irrelevant as the reasonableness of the fees alone cannot support an attorney fees award. *Frazier v. Drake*, 131 Nev. 632, 641-42, 357 P.3d 365, 372 (Ct. App. 2015). Here, the first three Beattie factors all do weigh in favor of Plaintiffs’ and thus an award of fees and costs to Defendants is not reasonable. If the Court does find an award of fees and costs is reasonable, then there would still need to be a second analysis conducted using the Brunzell Factors to determine what amount of fees and costs is reasonable to award. Analysis of these factors indicates that the amount of fees and costs requested by Defendants is not reasonable and should be greatly reduced. In particular, Brunzell factors 2 and 3 weigh heavily in favor of reducing any requested attorneys’ fees award to Defendants.

i. **Brunzell Factor 2: the character of the work to be done: its difficulty, intricacy, importance, the time and skill required**

Defendants’ argue that “The character of the work to be done was difficult. The range of claims initially brought by the Plaintiffs combined with the statute heavy nature of these types of cases required close attention to detail and mastery of a litany of important facts.” *Defendants’ Motion for Attorney’s Fees and Costs*, Pg. 12-13. However, this argument clearly contradicts how Defendants characterize this case throughout the rest of the Motion. Defendants directly



1 state the opposite. The Defendants relied upon this argument throughout the proceedings and  
2 within the instant Motion. This was a simple case that was easily analyzed and argued.

3 Plaintiffs disagree that Nelson v. Heer controlled in this situation. However, the holding  
4 ,which they themselves state had only one “reasonable reading” and ultimately prevailed clearly  
5 undermines Defendants’ arguments as to the difficulty of their work in this matter. Because the  
6 matter was not difficult to handle, this factor should weigh heavily in favor of Plaintiffs in  
7 determining any award of fees.  
8

9 ii. **Brunzell Factor 3: the work actually performed by the lawyer:**  
10 **the skill, time and attention given to the work**

11 After outlining the work Defendants’ attorneys did on this case, they conclude “None of  
12 this unnecessary work changed the facts which had already been established: the February 2017  
13 leak had been repaired by a professional, licensed plumbing contractor and the November 2017  
14 leak was disclosed during escrow via Addendum 4A.” *Id. at 13*. Again, this demonstrates that  
15 much of Defendants’ work was simply resting on the case law and facts already established and  
16 arguing against Plaintiffs’ attempts to distinguish the instant matter from Nelson v. Heer.  
17 Ultimately, Defendants unnecessarily engaged two separate law firms to conduct their defense,  
18 Christopher M. Young, PC., and Galliher Legal PC.  
19

20 As would be expected, the use of two different law firms in conjunction resulted in  
21 numerous duplicative efforts and needlessly increased expenses. For example: (1) on September  
22 19 and September 20, 2019, both firms billed for working on the affidavit of Aaron Hawley; (2)  
23 on October 4 and October 28, 2019, both firms billed for reviewing the same Opposition of  
24 Plaintiff; (3) on November 6 and November 7, 2019, both firms billed for preparation and  
25 appearance at the same hearing; (4) on December 23, 2019, both firms billed for work on the  
26 same discovery responses; and (5) on March 3, 2020, both firms billed for attending the same  
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1 hearing. *Defendants' Motion for Attorney's Fees and Costs, Exhibit C & Exhibit D*. These are  
2 just some examples of the pattern of duplicative work that was unnecessary and could have been  
3 completely avoided by engaging a single law firm instead of having different offices collaborate  
4 on the defense. Therefore, this factor should be weighed heavily in favor of Plaintiffs,  
5 particularly when Defendants admit that the work they conducted was "unnecessary" and  
6 ultimately did not lead to them change any substantive parts of their defense.

7  
8 The invoices further dispel the myth of the necessity of two law firms. First and  
9 foremost, the claim for fees and costs prior to the filing of the complaint are not recoverable  
10 pursuant to any of the Statutes cited by the Defendants. That amount is \$13,058.00 and should  
11 be deducted from the purported total of \$82,021.50 in attorney's fees and \$6,939.85 in costs.  
12 Secondly, Mr. Hopkins cannot possibly work for both Nevada law firms at the same time and be  
13 deemed to have done so reasonably in terms of time and amount. See Affidavit of Jeff Galliher,  
14 para. 5.

15  
16 **iii. Defendants' Are Not Entitled to Fees and Costs Pursuant to NRS**

17 **18.010(2)(b)**

18 Defendants next argue for an award of fees and costs accrued since the inception of the  
19 suit under NRS 18.010(2)(b). NRS 18.010(2)(b) states that the Court "may make an allowance of  
20 attorney's fees to a prevailing party" but only when it finds that "the claim, counterclaim,  
21 cross-claim or third-party complaint or defense of the opposing party was brought or  
22 maintained without reasonable ground or to harass the prevailing party." (Emphasis added)  
23 See NRS 18.010(2)(b). Defendants' incorrectly argue that, under this statute, they are entitled to  
24 the award of "\$82,021.50 in attorney's fees and \$6,939.85 in costs" allegedly incurred since the  
25 inception of the suit. See *Defendants' Motion for Attorney's Fees and Costs, Pg. 14*.  
26 Preliminarily, Plaintiffs would emphasize that NRS 18.010(2)(b) only address attorney's fees, it  
27  
28

1 does not address costs and the costs Defendants assert are not recoverable under this statute. *See*  
2 *NRS 18.010(2)(b)*.

3 Further, Defendants may not recover their attorney's fees under this statute because they  
4 are not the "prevailing party" as required by the statute. In *Singer v. Chase Manhattan Bank*, the  
5 Nevada Supreme Court addressed this very issue. In that case, cardholders filed a complaint  
6 against a credit card issuer which was ultimately dismissed, and the trial court subsequently  
7 awarded attorney fees and costs to credit card issuer pursuant to NRS 18.010. *Singer v. Chase*  
8 *Manhattan Bank*, 111 Nev. 289, 293, 890 P.2d 1305, 1307 (1995). The Court noted that, while it  
9 had previously been possible for a defendant to receive an award of attorney's fees and costs  
10 without having recovered a money judgment, a 1985 amendment of NRS 18.010 "extended to  
11 prevailing defendants the requirement of a money judgment for recovery of attorney's  
12 fees". (Emphasis added) *Id. at 1307-08*.

13 The concurrence of Chief Justice Steffen made this point even more blatantly clear when  
14 he stated that by putting in place the requirement for a money judgment, "we have effectively  
15 written prevailing defendants out of the statute." *Id.* Here, Defendants' did not receive a money  
16 judgment and the Court has directly addressed this issue and noted that Defendants' in this  
17 position are written out of the statute. Therefore, the Court should deny Defendants' Motion as to  
18 the award of any fees and costs pursuant to NRS 18.010(2)(b).

19 Arguendo, even if the Court determined that it wished to extend the definition of  
20 "prevailing party" to encompass Defendants, Defendants still cannot demonstrate that Plaintiffs'  
21 claims were "brought or maintained without reasonable ground" as required by the statute.  
22 Defendants' argue that Plaintiffs brought the lawsuit "upon wholly frivolous grounds" because  
23 (1) the determination that the November leak was caused by a manufacturing defects was "never  
24 disclosed by Uponor or Rakeman Plumbing to Defendants prior to the sale to the Plaintiffs and  
25  
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1 the Plaintiffs had no evidence that it ever had been disclosed to Defendants when they initiated  
2 this suit"; and (2) the February leak "was fully repaired as indicated by documentation the  
3 Plaintiff actually attached to their Second Amended Complaint." *Id.*, at Pg. 15. Both of these  
4 arguments ignore the fact that the evidence uncovered that Dr. Swanson was aware of prior  
5 conditions of moisture and mold, and that he failed to identify them on the SRPD. In support of  
6 these misplaced arguments, Defendants again rely entirely upon their assertion that the holding  
7 of Nelson v. Heer made the lawsuit frivolous because:

9 These facts, alleged within the Second Amended Complaint itself, firmly establish that  
10 Defendants had no liability under Nevada law because they show that 1) the February leak  
11 had been repaired, and 2) Plaintiffs were aware of the November leak prior to closing.  
12 These facts, alleged by Plaintiffs themselves, defeat their claims **when applied to clearly  
established precedent in the form of the Nelson decision.**

13 (*Emphasis added*) *Id.*

14 The problem with this assertion is the same problem with every argument Defendant  
15 makes as to the holding of Nelson v. Heer. It does not in and of itself demonstrate any bad faith  
16 or lack of reasonableness by Plaintiffs'. Namely, Plaintiffs argued for a reasonable way of  
17 distinguishing the instant matter from the holding of that case, and Plaintiffs are not required to  
18 presume that the Court would agree with Defendants.

19 In order to be deemed a "prevailing party" for the purposes of obtaining an award of  
20 attorneys' fees under NRS 18.010, must have first obtained a money judgment against Plaintiffs.<sup>5</sup>

21  
22 <sup>5</sup> NRS 18.010 provides as follows:

23 1. The compensation of an attorney and counselor for his or her services is governed by  
24 agreement, express or implied, which is not restrained by law.

25 2. In addition to the cases where an allowance is authorized by specific statute, the court  
26 may make an allowance of attorney's fees to a prevailing party:

27 (a) When the prevailing party has not recovered more than \$20,000; or  
28 (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim,  
crossclaim or third-party complaint or defense of the opposing party was brought or maintained  
without reasonable ground or to harass the prevailing party. The court shall liberally construe the  
provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is

Dr. Swanson did not do this as evidenced by the Court granting the motion to dismiss. Nevada case law is clear that such an absence of damages precludes an award of attorneys' fees under this statute. As such, this Court cannot use its ruling as a basis for a finding, that the Complaint or the Amended Complaints was frivolous and thus grounds to award Defendants their attorney's fees.

More importantly, the Defendants would have the Court believe just because they prevailed upon a motion to dismiss, they are entitled to the fees. The Nevada Supreme Court has held for years, and recently reaffirmed its thinking in *In re 12067 Oakland Hills, Las Vegas, Nevada* 89141, 134 Nev. 799, 807-808, 435 P.3d 672, 679 (2018), as follows:

Not every unsuccessful defense [claim] is ipso facto "unreasonable," "frivolous," or "vexatious." Merely losing a motion on the merits does not mean that the losing defense [claim] was utterly "without reasonable ground" for purposes of awarding attorney fees. **NRS18.010(2)(b)** does not create an automatic "loser pays" system, of the kind found in England, in which the unsuccessful party always pays fees to the winning party. See *Hensley v. Eckerhart*, 461 U.S. 424, 443 n.2, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (Brennan, J., concurring in part and dissenting in part) (noting that the "English Rule" is one "under which the losing party, whether plaintiff or defendant, pays the winner's fees").

Id.

To reiterate, in *Nelson v. Heer* it was held that a seller did not have a duty to disclose a repair. In *Nelson*, it was unclear whether the seller of a property had actually been asked whether any leaks had ever occurred. *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007).

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the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

1 Plaintiffs argued that the holding in Nelson could be distinguished from this situation where the  
2 seller was asked an explicit question about past occurrences and chose not to disclose those  
3 occurrences due to repair. *See attached Exhibit 2, Plaintiffs' Opposition to Defendants' Motion*  
4 *to Dismiss the Second Amended Complaint, Pg. 7.* This does not address the unrepaired items,  
5 the hearsay nature of the affidavit and the failure to even mention the mold being tested. This  
6 makes it clear that, despite the Court's ultimate determination on this issue, there was not a  
7 "clearly established precedent in the form of the Nelson decision" as Defendants argue.  
8

9 Defendants' next state that "even if the Plaintiffs could establish a prima facie case, they  
10 could still not establish that they had suffered any recoverable damages" but this too is incorrect  
11 and offers no support for the instant Motion. *See Defendants' Motion for Attorney's Fees and*  
12 *Costs, Pg. 15.* Plaintiffs' provided the estimates of damages cited by Defendants in their initial  
13 NRCP 16.1 disclosures. As stated above, Plaintiffs' alleged Fraud damages of approximately  
14 Three Hundred Thousand Dollars (\$300,000.00), Bad Faith damages of One Hundred Thousand  
15 Dollars (\$100,000.00), and Breach of Contract damages in an amount to be determined. At the  
16 point in the litigation process where the case was dismissed, Plaintiffs still were not required to  
17 provide any further substantiation or evidence of their alleged damages. Defendants have no  
18 basis for claiming that Plaintiffs could not establish that they had suffered any recoverable  
19 damages. Further, they provide not evidence themselves or cite to anything in support of this  
20 assertion. Therefore, this part of Defendants' argument should be completely discounted.  
21

22 Defendants conclude that they are entitled to an award of fees and costs under NRS  
23 18.010(2)(b) by reiterating their position on the holding of *Nelson v. Heer* as follows:  
24

25 Any reasonable reading of Nelson must lead to the conclusion that the conduct of the  
26 Defendants alleged in this case are not actionable. Likewise, Plaintiffs **made no real**  
27 **effort to distinguish this case** from Nelson **nor did they argue that Nelson should not**  
28 **otherwise apply.** Instead, in pursuing this case **Plaintiffs essentially ignored Nelson** and  
the clear example it set for actionable conduct. "A claim is groundless if "the allegations

1 in the complaint . . . are not supported by any credible evidence at trial." [citation  
2 omitted] Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 996 (Nev. 1993).

3 (*Emphasis added*) *Id.*, at 16.

4 As discussed in depth above, it is clearly incorrect and blatantly misleading for  
5 Defendants' to argue that Plaintiffs made no real effort to distinguish this case, did not even  
6 argue that Nelson v. Heer should not otherwise apply, and essentially ignored the holding from  
7 that case. All of these assertions are demonstrably false. Throughout the proceedings, Plaintiffs  
8 devoted considerable time and energy specifically to arguing that Nelson v. Heer did not control  
9 in this situation, did not establish clear case law as to affirmative statements that property issues  
10 did not ever exist (because repairs had been conducted), and thus could be distinguished. Further,  
11 even using the definition of a groundless claim provided by Defendants (a claim is groundless if  
12 "not supported by any credible evidence at trial") indicates that Plaintiffs' Claims were not  
13 groundless. It clearly says that the claim is groundless, if the allegations are not supported by  
14 "any credible evidence", not substantial credible evidence, not a preponderance of credible  
15 evidence, just "any credible evidence". The Plaintiffs still put to this Court the fact that there  
16 was a leak in the basement bathroom of the residence in 2015, and the Defendants have provided  
17 not a single piece of evidence showing it was repaired.  
18

19  
20 Plaintiffs met "any credible evidence" standard and provided more than credible evidence  
21 in support of their allegations. At the time Plaintiffs brought their claims, Nelson v. Heer  
22 provides that a seller is asked about the existence of any prior conditions of moisture that may  
23 have been repaired (rather than just choosing not to disclose past repaired issues not specifically  
24 inquired about). Therefore, it was reasonable for the Plaintiffs to believe that the SRPD itself was  
25 substantial and credible evidence which would prevent their claims from being considered  
26 "groundless". In addition to that evidence, the Plaintiffs controverted the affidavit of Aaron  
27 Hawley and was able to garner deposition testimony as to the hearsay nature of the averments  
28

1 within the affidavit. Finally, Plaintiffs also provided the admissible and credible evidence of the  
2 Defendants own statements of the May 21, 2015 Criterium Report, with color photographs  
3 depicting the leak and the annotations from the Defendant himself confirming that the leaks were  
4 never “located” let alone repaired.

5 Arguendo, even if the Court determines that the lack of clarity as to the applicability of  
6 Nelson v. Heer was not sufficient to make the SRPD credible evidence, there is still substantial  
7 additional evidence which could have supported Plaintiffs position. Specifically, the statements  
8 of Todd Swanson in his deposition regarding his knowledge of the leaks and understanding of  
9 when disclosure was necessary and the Criterium Home Inspection Report which identified a  
10 leak in the home which Todd Swanson could provide no repair documentation for. Even though  
11 the Court did not find this sufficient to overcome the Motion to Dismiss, it still meets the bar of  
12 “any credible evidence” and thus Plaintiffs’ claims were not “groundless”. Because the claims  
13 were not “brought or maintained without reasonable grounds or to harass the prevailing party”,  
14 as required by NRS 18.010(2)(b), Defendants cannot recover their fees and costs under this  
15 statute. *See NRS 18.010(2)(b)*.

16  
17  
18 **iv. Defendants’ are not a “prevailing party” and thus cannot receive an award**  
19 **of fees and costs under NRS 18.020.**

20 Finally, Defendants argue that pursuant to NRS 18.020, they are entitled to their costs  
21 accrued since the inception of the suit in the amount of \$6,427.26. *See Defendants’ Motion for*  
22 *Attorney’s Fees and Costs, Pg. 16*. While Defendants are correct that NRS 18.020 allows for the  
23 recovery of costs in an action for the recovery of money or damages when a plaintiff seeks to  
24 recover more than Two Thousand Five Hundred Dollars (\$2,500.00), they are incorrect in  
25 asserting that this statute applies to them. *Id.* Specifically, NRS 18.020 states that costs must be  
26 allowed “to the prevailing party against any adverse party against whom judgment is  
27  
28



1 rendered". (*Emphasis added*) See NRS 18.020. For the purposes of NRS 18.020, the prevailing  
2 party is determined by examining the amounts awarded to each party for each claim or  
3 counterclaim they have brought, offsetting those amounts, then determining which party received  
4 the higher "net verdict". *Parodi v. Budetti*, 115 Nev. 236, 241–42, 984 P.2d 172, 175 (1999); see  
5 also *N. Nevada Homes, LLC v. GL Constr., Inc.*, 134 Nev. 498, 501, 422 P.3d 1234, 1237 (2018).  
6 The party with the higher net verdict is the prevailing party under NRS 18.020. *Id.*

7  
8 What the plain language of the statute and case law makes clear, is that to be defined as a  
9 "prevailing party" under NRS 18.020, it is required that the party received a money judgment.  
10 Case law, specifically the holding from *Parodi v. Budetti*, supports this interpretation by  
11 providing a singular method for determining the "prevailing party" which entirely relies upon the  
12 existence of a money judgment in one party's favor. Here, neither party received a money  
13 judgment, neither party is thus considered the "prevailing party" under NRS 18.020, and,  
14 therefore, Defendants cannot recover their costs under this statute.  
15

### 16 III.

### 17 CONCLUSION


18 Based on the foregoing reasons, Defendants are not entitled to attorney's fees or costs  
19 pursuant to NRCP 68, NRS 18.010(2)(b), or NRS 18.020. Defendants' request for fees and costs  
20 under NRCP 68 should be denied because analysis of the Beattie Factors demonstrates that an  
21 award to Plaintiffs' would not be reasonable (and even it is was, a further analysis of the  
22 Brunzell Factors indicates an such award should be greatly reduced from the requested amount).  
23 Defendants' request for fees and costs under NRS 18.010(2)(b) should be denied because costs  
24 can't be awarded under this statute, Defendants are not a prevailing party as required by the  
25 statute and, even if Defendants were the prevailing party, Plaintiffs' claims were not brought  
26 without reasonable grounds or to harass. Finally, Defendants' request for costs under NRS  
27  
28

1 18.020 must also be denied because, again, Defendants' are not the prevailing party as required  
2 by the statute. Therefore, Plaintiffs respectfully request this Court deny Defendants' Motion for  
3 Attorney's Fees and Costs.

4 Dated this 11 day of May 2020.

**BLACK & LOBELLO**

#15271

  
Rusty Graf, Esq.  
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Las Vegas, NV 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
*Attorney for Plaintiffs*

**AFFIDAVIT OF PLAINTIFFS' COUNSEL IN SUPPORT OF THE OPPOSITION TO  
DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS**

STATE OF NEVADA )

) ss.

COUNTY OF CLARK )

I, J. RUSTY GRAF, ESQ., state under penalty of perjury that the assertions of this affidavit are true:

1. I am an attorney duly licensed to practice law in the State of Nevada. I am an attorney with the law firm of Black & LoBello.

2. This Affidavit is offered in support of Plaintiffs' Opposition to Defendants' Motion for Attorney's Fees and Costs

3. That Plaintiffs had a reasonable, good faith belief that the claims they brought and maintained in this matter were valid and actionable under relevant State statutes.

4. That Plaintiffs had a reasonable, good faith belief that their claims were distinguishable from the holding of *Nelson v. Heer*.

5. That Plaintiffs had credible evidence that they intended to introduce at trial to support the claims they asserted.

6. That Plaintiffs rejected Defendants' Offer of Judgment because they had a reasonable, good faith belief that the claims they asserted were valid and supported by evidence such that Defendants' Offer was not reasonable in amount or timing.

7. That Plaintiffs did not have any bad faith motivations in bringing or maintaining any of the claims asserted in this case and never intended to harass Defendants in any manner.

8. That Plaintiffs did not have any bad faith motivation in filing the Motion for Sanctions.

9. That analysis of the Beattie Factors indicates it would not be reasonable to award Defendants' fees or costs in this matter.

10. That analysis of the Brunzell Factors indicates that, if it is determined that an

award of fees and costs is reasonable, it would still be reasonable to reduce the amount requested by Defendants in this matter.

11. That I have reviewed the attorney's fees and costs attached to Defendants' Motion and it appears there were numerous times the two law firms engaged by Defendants engaged in needlessly duplicative work.

12. That Defendants did not receive either a money judgment or a settlement in this matter, and thus cannot be a prevailing party under NRS 18.010 or NRS 18.020.

13. That Affiant prepared the Opposition to which this Affidavit is attached, and Affiant affirms that the facts and arguments as true and accurate to best of Affiant's information and belief.

DATED this \_\_\_\_ day of May 2020.

\_\_\_\_\_  
J. RUSTY GRAF, ESQ.

SWORN and SUBSCRIBED to before me on

This \_\_\_\_ day of May 2020.

\_\_\_\_\_  
NOTARY PUBLIC in and for said  
COUNTY and STATE

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 11<sup>th</sup> day of May 2020, I caused the above and foregoing document **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128

Jeffrey L. Galliher, Esq.  
Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

## **EXHIBIT 1**

## EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

### Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment

- The door at the right side air handler is damaged and does not close properly. (I had Sierra come out and try to fix it when my A/C went out--the door closes a switch that allows the FAU to power on. His first solution was to tape the switch closed with electrical tape, which is not acceptable. Now the door is bent and not right. They need to come back and fix it correctly.)

(There are 3 water leaks inside the house that need to be fixed.)

There are leaks at both recirculation pumps. There is a plumbing leak above the ceiling of the basement bathroom.

The drain cleanouts should have permanent screw-type caps.

- There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned.

- The locking lug is missing from one water heater enclosure. I had Rakeman come out when I lost hot water in my master shower. This should be investigated further.

(The 2 upstairs secondary bathroom tubs have controls that have power, but not sure what they do?? Are there supposed to be jets in those tubs??)

The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. This is causing a constant pounding noise in the house when the valve closes. I was told that they have soft close solenoid valves that don't make such a pounding sound.

- Repair electrical system

- There is an open outlet at the lower patio.
- All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not.
- There is no power at the outlet in the master closet. The cover is also missing from this outlet.
- The outlet covers are loose at the media room wet bar cabinet.
- The door at the control box for the automated panel door can not close. The power cord is routed through the door. (up in the garage ceiling)
- The whirlpool tub is not GFCI protected.
- The screws are missing from the deadman covers at the main electrical panels.
- Review entire electrical system.

They must have come out 3-4 times before it was finally fixed (I think), but they jacked up the cover of one of the enclosures in the process. (see Photo #2)

- Make interior repairs
  - The drywall is damaged at the right side mechanical closet.
  - The whirlpool tub is not supported from the floor.
  - The cover is missing from the vent fan in the media room. (Harry Davis knows this)
  - There is a loose light fixture in the master shower. (Harry also knows about this)
  - The access cover at the basement hall does not close properly. (near the bathroom)
  - There are no secondary latches on the patio sliding glass doors.
  - One burner valve at the patio grill is not functional.
  - ~~There is no hardware in the basement bedroom closet.~~
- Repair exterior
  - The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed. (You already know about this--due to replacement of the window)
  - The grout is missing from the tile joints on the patio stairs.
  - There is no landing at the exterior door in the kitchen. (I was told this is not compliant with code)
  - There is unfinished stucco surface at the roof feature.
  - The screens for the patio slider doors do not latch. (the screen door latches don't latch)
  - The patio slider in the basement media room does not latch. (I showed you this already)
  - The automated panel doors do not close properly. The big glass panel sliders in my family room are not closing/locking at the corner. Rand Sawbuck stopped out to look. He couldn't fix them, and the guy who can fix them is on his honeymoon. Sawbuck was going to let him know that he needs to come out and fix the doors.
- Make roof repairs
  - The primary debris guards are not sealed to the roof.
  - The debris guards should be removed from the secondary drains.
  - The cap should be removed from the plumbing vent at the left side roof.
  - The elimination of low spots that accumulate standing water.
  - The gutter downspouts should be made to discharge away from the house. Therefore, a splashblock should be placed under each downspout to direct the water away from the foundation. This on the left side of the house.
- Further investigation of fire sprinkler controls I was told there should be a shutoff valve on the sprinkler
- Repair garage firewall (see photo) system since it does not shut off with the main water
- Maintain/repair the whirlpool bath supply.
- The jet nozzles are missing. They should be installed.
- There is no support under the tub, appropriate support should be installed.
- Maintain/repair the swimming pool and equipment
  - The water distribution for the water wall should be adjusted to reduce splashing. Rick Pinney is coming out to re-program the pool controls after setting up the fire feature. I asked him to take a look at this while he is out. If he can't fix it, Anthony Sylvan will need to be notified.

Henry: There are also some cosmetic problems that need to be addressed, which I can go over with you (small drywall repairs, touch-up paint, etc.).

iii



DEF000144



## EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

### Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment
  - The door at the right side air handler is damaged and does not close properly. Sierra fixed today.
- Repair plumbing fixtures
  - There are leaks at both recirculation pumps. Need plumber to address
  - There is a plumbing leak above the ceiling of the basement bathroom. Need plumber to address
  - The drain cleanouts should have permanent screw-type caps. Not necessary per Henry
  - There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned. Henry will investigate with plumber
  - The locking lug is missing from one water heater enclosure. Plumber needs to fix
  - The tubs in the second floor bathroom have controls for some unknown feature. This should be investigated further. They are to heat tubs. n/a
  - The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. Anthony Sylvan fixed yesterday
- Repair electrical system
  - There is an open outlet at the lower patio. Discussed with electrician
  - All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not. Discussed with electrician
  - There is no power at the outlet in the master closet. The cover is also missing from this outlet. Discussed with electrician
  - The outlet covers are loose at the media room wet bar cabinet. Discussed with electrician
  - The door at the control box for the automated panel door can not close. The power cord is routed through the door. This is for the automated doors. Henry will contact Sawbuck
  - The whirlpool tub is not GFCI protected. Discussed with electrician
  - The screws are missing from the deadman covers at the main electrical panels. Discussed with electrician
  - Review entire electrical system.

Also, the following items need to be addressed (not on this list):

1. Pot filler is not anchored well and droops. Need plumber to address
2. Steamer is not anchored to countertop. Need to address with appliance company
3. Master bathroom light fixtures on mirrors are unstable. I will discuss with electrician
4. Main sliding pocket doors in great room do not fully close and latch. Henry to discuss with Sawbuck
5. Built in wine rack in basement bar area does not hold wine bottles; may cause them to drop down inside. Henry to discuss with Absolute Closets
6. I may have the final drywall, paint, & grouting touch ups done in the next month or so. I will mark areas with blue tape.
7. All double screen doors have no "stop," allowing them to slide all the way off to the side of the double patio doors in 3 areas. Need to ask door company about this.
8. I'm still waiting for the correct stone top to be installed in the main floor powder room. I had Ashley Rogers emailed me 2/13/2015 saying she was working on it.
- 9.



DEF000168

- Make interior repairs
  - The drywall is damaged at the right side mechanical closet. Not a problem, but Henry will discuss
  - The whirlpool tub is not supported from the floor. Henry will talk to plumber about this
  - The cover is missing from the vent fan in the media room. (Electrician knows about this)
  - There is a loose light fixture in the master shower. (Electrician also knows about this)
  - The access cover at the basement hall does not close properly. Sierra will fix. Talked to Chris today
  - There are no secondary latches on the patio sliding glass doors. Not necessary per Henry
  - One burner valve at the patio grill is not functional. n/a. Appears to be working fine.
  - ~~There is no hardware in the basement bedroom closet.~~
- Repair exterior
  - The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed. (You already know about this)
  - The grout is missing from the tile joints on the patio stairs. Will address with final touch ups
  - There is no landing at the exterior door in the kitchen. Not needed per Henry
  - There is unfinished stucco surface at the roof feature. Henry will discuss with Chris Myers
  - The screens for the patio slider doors do not latch. Discussed with door/window company today
  - The patio slider in the basement media room does not latch. Henry will talk to door company
  - The automated panel doors do not close properly. Henry will discuss with Sawbuck
- Make roof repairs
  - The primary debris guards are not sealed to the roof. Not sure what this is about
  - The debris guards should be removed from the secondary drains. Not sure what this is about
  - The cap should be removed from the plumbing vent at the left side roof. Henry will investigate this
  - The elimination of low spots that accumulate standing water. Already done per Henry
  - The gutter downspouts should be made to discharge away from the house. Henry will discuss with  
Therefore, a splashblock should be placed under each downspout to direct the Chris Myers  
water away from the foundation. This on the left side of the house.
- Further investigation of fire sprinkler controls Called fire sprinkler company. Valve not necessary. n/a
- Repair garage firewall 5/8" drywall sufficient per Henry
- Maintain/repair the whirlpool bath
  - The jet nozzles are missing. They should be installed. Henry will call tub installer to provide
  - There is no support under the tub, appropriate support should be installed. Henry will discuss with  
plumber
- Maintain/repair the swimming pool and equipment
  - The water distribution for the water wall should be adjusted to reduce splashing. I talked to Anthony  
Sylvan yesterday.  
I'll try to make some  
adjustments in the  
frequency the  
waterfall runs to see  
if this resolves the  
problem.

## EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

### Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment

~~———— The door at the right side air handler is damaged and does not close properly.~~ Sierra fixed today.

- Repair plumbing fixtures

Fixed by plumber There are leaks at both recirculation pumps. Need plumber to address

They couldn't find it. I'll monitor There is a plumbing leak above the ceiling of the basement bathroom. Need plumber to address

~~———— The drain cleanouts should have permanent screw-type caps.~~ Not necessary per Henry

Plumber is addressing There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned. Henry will investigate with plumber

Plumber is addressing The locking lug is missing from one water heater enclosure. Plumber needs to fix

~~———— The tubs in the second floor bathroom have controls for some unknown feature.~~

~~This should be investigated further.~~ They are to heat tubs. n/a

Fixed by Anthony Sylvan The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. Anthony Sylvan fixed yesterday

Harry Davis is addressing all Repair electrical system  
of these items

- There is an open outlet at the lower patio. Discussed with electrician
- All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not. Discussed with electrician
- There is no power at the outlet in the master closet. The cover is also missing from this outlet. Discussed with electrician
- The outlet covers are loose at the media room wet bar cabinet. Discussed with electrician
- The door at the control box for the automated panel door can not close. The power cord is routed through the door. This is for the automated doors. Henry will contact Sawbuck
- The whirlpool tub is not GFCI protected. Discussed with electrician
- The screws are missing from the deadman covers at the main electrical panels. Discussed with electrician
- Review entire electrical system.

Also, the following items need to be addressed (not on this list):

1. Pot filler is not anchored well and droops. Need plumber to address Fixed by plumber
2. Steamer is not anchored to countertop. Need to address with appliance company Need someone to address
3. Master bathroom light fixtures on mirrors are unstable. I will discuss with electrician Harry Davis is addressing
4. Main sliding pocket doors in great room do not fully close and latch. Henry to discuss with Sawbuck This needs attention. The door has not been fixed so it still won't close
5. Built in wine rack in basement bar area does not hold wine bottles; may cause them to drop down inside. Henry to discuss with Absolute Closets Need to find a solution with Absolute
6. I may have the final drywall, paint, & grouting touch ups done in the next month or so. I will mark areas with blue tape. **CRITERION**  
**McWILLIAM ENGINEERS**
7. All double screen doors have no "stop," allowing them to slide all the way off to the side of the double patio doors in 3 areas. Need to ask door company about this. Door company needs to address this issue
8. I'm still waiting for the correct stone top to be installed in the main floor powder room. I had Ashley Rogers emailed me 2/13/2015 saying she was working on it. This has not been addressed yet
- 9.

DEF000191

- Make interior repairs

Not a major issue      The drywall is damaged at the right side mechanical closet. Not a problem, but Henry will discuss  
 Plumbers have fixed; I will check      The whirlpool tub is not supported from the floor. Henry will talk to plumber about this  
 Harry Davis to address      The cover is missing from the vent fan in the media room. (Electrician knows about this)  
 Harry Davis to address      There is a loose light fixture in the master shower. (Electrician also knows about this)  
 Sierra knows and says will fix      The access cover at the basement hall does not close properly. Sierra will fix. Talked to Chris today  
~~There are no secondary latches on the patio sliding glass doors.~~ Not necessary per Henry  
~~One burner valve at the patio grill is not functional.~~ n/a. Appears to be working fine.  
~~There is no hardware in the basement bedroom closet.~~

- Repair exterior

Waiting JD Stairs to replace -      The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed. (You already know about this)  
 Will address with final touch-up      The grout is missing from the tile joints on the patio stairs. Will address with final touch ups  
~~There is no landing at the exterior door in the kitchen.~~ Not needed per Henry  
 Ask Chris -      There is unfinished stucco surface at the roof feature. Henry will discuss with Chris Myers  
 Door company is supposed to fix      The screens for the patio slider doors do not latch. Discussed with door/window company today  
 Door company needs to fix -      The patio slider in the basement media room does not latch. Henry will talk to door company  
 Sawbuck needs to fix ASAP -      The automated panel doors do not close properly. Henry will discuss with Sawbuck

- Make roof repairs

~~The primary debris guards are not sealed to the roof.~~ Not sure what this is about  
~~The debris guards should be removed from the secondary drains.~~ Not sure what this is about  
 Henry to investigate      The cap should be removed from the plumbing vent at the left side roof. Henry will investigate this  
~~The elimination of low spots that accumulate standing water.~~ Already done per Henry  
 Ask Chris      The gutter downspouts should be made to discharge away from the house. Henry will discuss with  
 Therefore, a splashblock should be placed under each downspout to direct the Chris Myers  
 water away from the foundation. This on the left side of the house.  
~~Further investigation of fire sprinkler controls~~ Called fire sprinkler company. Valve not necessary. n/a  
~~Repair garage firewall 5/8" drywall sufficient per henry~~  
~~Maintain/repair the whirlpool bath~~

Plumber to supply jets      The jet nozzles are missing. They should be installed. Henry will call tub installer to provide  
 Plumber fixed; I will check      There is no support under the tub, appropriate support should be installed. Henry will discuss with  
 plumber

- Maintain/repair the swimming pool and equipment

I think Anthony Sylvan adequately addressed this; I will monitor      The water distribution for the water wall should be adjusted to reduce splashing. I talked to Anthony Sylvan yesterday. I'll try to make some adjustments in the frequency the waterfall runs to see if this resolves the problem.

## EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

### Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment

~~———— The door at the right side air handler is damaged and does not close properly. Sierra fixed today.~~

- Repair plumbing fixtures

Fixed by plumber ~~———— There are leaks at both recirculation pumps. Need plumber to address ————~~

They couldn't find it. I'll monitor There is a plumbing leak above the ceiling of the basement bathroom. Need plumber to address

~~———— The drain cleanouts should have permanent screw-type caps. Not necessary per Henry~~

Plumber is addressing There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned. Henry will investigate with plumber

Plumber is addressing The locking lug is missing from one water heater enclosure. Plumber needs to fix

~~———— The tubs in the second floor bathroom have controls for some unknown feature. ————~~

~~This should be investigated further. They are to heat tubs. n/a~~

Fixed by Anthony Sylvan ~~The automatic solenoid valves on the pool fill circuit are noisy and create a water-hammer effect throughout the house. This should be investigated further, and ———— repaired as needed. Anthony Sylvan fixed yesterday~~

Harry Davis is addressing all Repair electrical system  
of these items

- There is an open outlet at the lower patio. Discussed with electrician
- All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not. Discussed with electrician
- ~~———— There is no power at the outlet in the master closet. The cover is also missing from this outlet. Discussed with electrician ————~~
- The outlet covers are loose at the media room wet bar cabinet. Discussed with electrician
- ~~———— The door at the control box for the automated panel door can not close. The power cord is routed through the door. This is for the automated doors. Henry will contact Sawbuck~~
- The whirlpool tub is not GFCI protected. Discussed with electrician
- The screws are missing from the deadman covers at the main electrical panels. Discussed with electrician
- Review entire electrical system.

Also, the following items need to be addressed (not on this list):

- ~~1. Pot filler is not anchored well and droops. Need plumber to address ————~~ Fixed by plumber
- ~~2. Steamer is not anchored to countertop. Need to address with appliance company ————~~ Need someone to address
3. Master bathroom light fixtures on mirrors are unstable. I will discuss with electrician Harry Davis is addressing
4. Main sliding pocket doors in great room do not fully close and latch. Henry to discuss with Sawbuck This needs attention. The door has not been fixed so still won't close
5. Built in wine rack in basement bar area does not hold wine bottles; may cause them to drop down inside. Henry to discuss with Absolute Closets I am meeting with Jay with Absolute
6. I may have the final drywall, paint, & grouting touch ups done in the next month or so. I will mark areas with blue tape.
7. All double screen doors have no "stop," allowing them to slide all the way off to the side of the double patio doors in 3 areas. Need to ask door company about this. Door company needs to address this issue
- ~~8. I'm still waiting for the correct stone top to be installed in the main floor powder room. I had Ashley Rogers emailed me 2/13/2015 saying she was working on it. ———— This has not been addressed yet ————~~
- 9.

DEF000211

- Make interior repairs

Not a major issue ~~The drywall is damaged at the right side mechanical closet. Not a problem, but Henry will discuss.~~  
 Plumbers have fixed; I will check ~~The whirlpool tub is not supported from the floor. Henry will talk to plumber about this~~  
 Harry Davis to address ~~The cover is missing from the vent fan in the media room. (Electrician knows about this)~~  
 Harry Davis to address ~~There is a loose light fixture in the master shower. (Electrician also knows about this)~~  
 Sierra knows and says will fix ~~The access cover at the basement hall does not close properly. Sierra will fix. Talked to Chris today~~  
~~There are no secondary latches on the patio sliding glass doors. Not necessary per Henry~~  
~~One burner valve at the patio grill is not functional. n/a. Appears to be working fine.~~  
~~There is no hardware in the basement bedroom closet.~~

- Repair exterior

~~Waiting JD Stairs to replace~~ ~~The handrail has been removed from a second floor window. The handrail should~~  
~~be properly replaced or the wall penetrations sealed. (You already know about this)~~  
 Will address with final touch-up ~~The grout is missing from the tile joints on the patio stairs. Will address with final touch ups~~  
~~There is no landing at the exterior door in the kitchen. Not needed per Henry~~  
 Ask Chris ~~There is unfinished stucco surface at the roof feature. Henry will discuss with Chris Myers~~  
~~Door company is supposed to fix~~ ~~The screens for the patio slider doors do not latch. Discussed with door/window company today~~  
 Door company needs to fix ~~The patio slider in the basement media room does not latch. Henry will talk to door company.~~  
 Sawbuck needs to fix ASAP ~~The automated panel doors do not close properly. Henry will discuss with Sawbuck~~

- Make roof repairs

~~The primary debris guards are not sealed to the roof. Not sure what this is about~~  
~~The debris guards should be removed from the secondary drains. Not sure what this is about~~  
 Henry to investigate ~~The cap should be removed from the plumbing vent at the left side roof. Henry will investigate this~~  
~~The elimination of low spots that accumulate standing water. Already done per Henry~~  
 Ask Chris ~~The gutter downspouts should be made to discharge away from the house. Henry will discuss with~~  
~~Therefore, a splashblock should be placed under each downspout to direct the Chris Myers~~  
~~water away from the foundation. This on the left side of the house.~~  
~~Further investigation of fire sprinkler controls Called fire sprinkler company. Valve not necessary. n/a~~  
~~Repair garage firewall 5/8" drywall sufficient per henry~~  
~~Maintain/repair the whirlpool bath~~

~~Plumber to supply jets~~ ~~The jet nozzles are missing. They should be installed. Henry will call tub installer to provide~~  
~~Plumber fixed; I will check~~ ~~There is no support under the tub, appropriate support should be installed. Henry will discuss with~~  
 plumber

- Maintain/repair the swimming pool and equipment

~~I think Anthony Sylvan adequately~~ ~~The water distribution for the water wall should be adjusted to reduce splashing. I talked to Anthony~~  
~~addressed this, I will monitor~~ ~~Sylvan yesterday.~~  
~~I'll try to make some~~  
~~adjustments in the~~  
~~frequency the~~  
~~waterfall runs to see~~  
~~if this resolves the~~  
~~problem.~~

## **EXHIBIT 2**

1 **OPPS**  
2 Rusty Graf, Esq.  
3 Nevada Bar No. 6322  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
6 Las Vegas, Nevada 89135  
7 Telephone: (702) 869-8801  
8 Facsimile: (702) 869-2669  
9 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
10 *Attorney for Plaintiff*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JOSEPH FOLINO, an individual and NICOLE  
10 FOLINO, an individual,

11 Plaintiff,

12 v.

13 TODD SWANSON, an individual; TODD  
14 SWANSON, Trustee of the SHIRAZ TRUST;  
15 SHIRAZ TRUST, a Trust of unknown origin;  
16 LYONS DEVELOPMENT, LLC, a Nevada  
17 limited liability company; DOES I through X;  
18 and ROES 1 through X,

19 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

19 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
20 Rusty Graf, Esq. of Black & LoBello, their attorney of record, and hereby submit their  
21 Opposition to Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint. This  
22 Opposition is made and based upon the Memorandum of Points and Authorities attached hereto,  
23 all exhibits attached hereto, and any oral argument as may be entertained by the Court at the time  
24 and place of the hearing of this matter.

25 ///

26 ///

27 ///

28 ///



I.

**PROCEDURAL HISTORY**

On October 19, 2018, Plaintiffs filed their initial Complaint for Defendants' failure to disclose known water leaks and issues with a plumbing system prior to the sale of real property. Defendants filed their first Motion to Dismiss on February 4, 2019, but it was not granted, and the Court instead granted Plaintiffs leave to amend. On May 20, 2019, Defendants filed their second Motion to Dismiss. On July 18, 2019, the Court dismissed several of Plaintiffs claims, but denied Defendants' motion to dismiss the claim for fraud and claim of concealment in violation of NRS 113.

Plaintiffs then filed their second amended Complaint, with the surviving claims of fraud and concealment in violation of NRS 113 on September 4, 2019. Inexplicably, Defendants have brought the instant Motion to Dismiss these same claims, which the Court refused to dismiss less than three months ago, alleging no new facts which support a different outcome than their past already decided Motions to Dismiss. This is an attempt to delay the discovery process.

II.

**INTRODUCTION**

As is clear from the short procedural history above, Defendants have little grasp of the requirements for a successful Motion to Dismiss. Plaintiffs assume this, as there is no other logical explanation for (1) a third motion on issues that the Court has already decided twice and (2) the strange hybrid motion that Defendants have produced which is nominally a motion to dismiss but is written as if it is a motion for summary judgment. Not a single discovery act has been taken in the case. The Court has yet to conduct the NRCP 16.1 conference. In the interest of expediency, Plaintiffs would respectfully suggest that in future motions Defendants focus on issues that have not already been clearly decided and, perhaps more importantly, determine which type of motion is appropriate for the circumstances rather than creating a hodgepodge of

1 different standards and requests that the uncharitable might call nearly indecipherable. *See*  
2 *Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint.*

3  
4 **III.**

5 **"UNDISPUTED FACTS"**

6 Defendants begin their argument by listing a series of "undisputed" facts. Again, not a  
7 single discovery act has been taken. The primary issue here is that Defendants seem to have  
8 mistaken the term "undisputed" to simply mean alleged, as many of these facts are heavily  
9 disputed. Plaintiffs do not dispute the fact that (1) there were previous water leaks at the  
10 property;<sup>1</sup> (2) that Rakeman Plumbing invoiced and submitted a warranty claim for one of these  
11 leaks; and (3) that Defendants did not disclose any leaks in their October 24, 2017 Sellers Real  
12 Property Disclosure Form ("SRPD"). However, Plaintiffs do dispute Defendants assertions that  
13 (1) the leak was completely repaired, as there have been subsequent leaks; and (2) that no  
14 information about the repair other than completion was reported to Defendants. Further, there is  
15 clearly a dispute of material facts as Plaintiffs assert that there were more than the two incidents  
16 of water leakage, that there was a systemic defect in the plumbing system that was never repaired  
17 (even if Rakeman believes they identified all of the damages), and that the Upnor fittings  
18 (referenced in the Rakeman affidavit) were all defective. However regardless of the status of  
19 these facts, as stated below, Defendants' Motion to Dismiss lacks merit.  
20

21 **IV.**

22 **ARGUMENT**

23 **A. Summary judgment is not warranted as to Plaintiffs' claim for concealment.**

24 As discussed above, though Defendants call this a Motion to Dismiss, they immediately  
25 enter into a summary judgment analysis. Defendants are correct that under NRCP 56(a) the court  
26

27 <sup>1</sup> The admission of which is a violation and in contradiction of the requirements of the NRS 113 Sellers  
28 Real Property Disclosure Form ("SRPD")

1 may grant summary judgment, if the movant shows that there is not genuine dispute of material  
2 facts and that the movant is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 731,  
3 121 P.3d 1026, 1031 (2005). However, this is generally done by filing a Motion for Summary  
4 judgement rather than a Motion to Dismiss that requests summary judgment. *See NRCP 56*.  
5 However, being understanding of the Defendants apparent difficulty distinguishing between the  
6 two standards, Plaintiffs will respond to the Motion for Summary Judgment within the Motion to  
7 Dismiss.  
8

9 Evidence presented in support of a motion for summary judgment must be construed in  
10 the light most favorable to the nonmoving party, and facts demonstrating the existence of a  
11 genuine issue will preclude an unfavorable summary judgment. *Sustainable Growth Initiative*  
12 *Committee v. Jumpers. LLC*, 22 Nev. 53, 61, 128 P.3d 452, 458 (2006). A factual dispute is  
13 genuine when the evidence is such that a rational jury could return a verdict in the nonmoving  
14 party's favor. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031, 1032 (2005).  
15 When ruling on a summary judgment motion, "[a]ll of the nonmovant's statements must be  
16 accepted as true." *Jones v. First Mortgage Company of Nevada*, 112 Nev. 531, 534, 915 P.2d  
17 883, 885 (1996). See also, *Harrington v. Syufy Enterprises*, 113 Nev. 246, 248, 931 P.2d 1378,  
18 1379-80 (1997). Further, "a court should exercise great care in granting summary judgment; a  
19 litigant has a right to trial where there is the slightest doubt as to the facts." (emphasis  
20 added) See *Nehls v. Leonard*, 97 Nev. 325, 328, 630 P.2d 258, 260 (1981).  
21  
22

23 Defendants argue that, under NRCP 56(c)1(A), they may establish facts as undisputed  
24 using an affidavit. *See NRCP 56(c)1(A)*. This is incorrect. The actual standard is that a party  
25 asserting that a fact is or is not genuinely disputed must cite evidence in support of that assertion  
26 and that can include affidavits. *Id.* However, simply offering an affidavit in support of a position  
27 does not establish it as an undisputed fact. *Id.* Especially, when those facts are contradicted by  
28

1 real admissible evidence and facts. Further, as stated above, all facts, statements, and evidence  
2 must be viewed in the light most favorable to Plaintiffs, as Defendants are the moving party.  
3 *Sustainable Growth Initiative Committee v. Jumpers. LLC*, 22 Nev. 53, 61, 128 P.3d 452, 458  
4 (2006).

5  
6 Defendants go on to assert that the affidavit of Rakeman has shifted the burden of proof  
7 to Plaintiffs to “present specific facts showing a material issue of fact.”<sup>2</sup> This is incorrect, not  
8 because defendants have misstated the law, but because they completely misinterpret what the  
9 Rakeman affidavit establishes. All it proves is that a repair was conducted, not that Defendants  
10 did not engage in misrepresentation, concealment, and fraud. Further, Plaintiffs assert that there  
11 were more than the two incidents of water leakage and that there was a systemic defect in the  
12 plumbing system that was never repaired by Rakeman or any other contractor. These disputes  
13 over key facts make Defendants’ Motion to Dismiss inappropriate, as the claims have been plead  
14 sufficiently and no discovery has yet taken place to further uncover the existence of admissible  
15 evidence in support of Plaintiffs’ assertions. Further, Defendants’ Motion for Summary  
16 Judgment, within their motion to Dismiss, is even less applicable to the current situation as there  
17 are key facts that remain unknown without discovery and all assumptions and inferences should  
18 be made in favor of Plaintiffs as the non-moving party.  
19  
20

21 Defendants argue that under *Nelson v. Heer* and NRS 113.140, they did not commit  
22 concealment because they were not “aware” of the defect after they believed it repaired.<sup>3</sup>  
23 Defendants then go into an extensive analysis of the Court’s holding in *Nelson*, and also of the  
24 word “aware”, and what it means to be aware and have knowledge of something, but this  
25

26  
27 <sup>2</sup> Defendants’ Motion to Dismiss, pg. 7.

28 <sup>3</sup> Id.

1 discussion is totally irrelevant. Moreover, this is nonsense! Defendants are correct that in *Nelson*  
2 the Court found it was not concealment for a seller not to disclose past water damage they  
3 believed repaired. *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007). However, Defendants  
4 ignore a key difference between the holding in *Nelson* and the current situation. Namely that,  
5 unlike in *Nelson*, Defendants explicitly lied on the SRDP, and this is true regardless of what they  
6 were told about the repairs by Rakeman. *Id.*  
7

8 At least 10 days before residential property is conveyed to a purchaser the seller "shall  
9 complete a disclosure form regarding the residential property." See *NRS 113.130(1)(a)*. Here, the  
10 SRPD for the sale asked if Defendants were aware of any "previous or current moisture  
11 conditions and/or water damage". (emphasis added) See *attached Exhibit 1, Seller's Real*  
12 *Property Disclosure Form*. This is explicitly clear. It does not matter whether Defendants believe  
13 that the repair removed their awareness of the issue, because the question did not only ask about  
14 current issues. It specifically asked if there were any "previous" moisture conditions or water  
15 damage.<sup>4</sup> A repair does not remove one's awareness of previous occurrences. Despite this, on the  
16 SRPD Defendants indicated no, that they were not aware of any previous moisture conditions or  
17 water damage.<sup>5</sup> This is concealment, and the Rakeman affidavit has no relevance.  
18  
19

20 It's not like *Nelson*, where it is unclear what the SRPD form actually asked. The Court  
21 merely held that the seller had no affirmative duty to disclose something they did not know  
22 materially and adversely affected the value of the property. *Nelson v. Heer*, 123 Nev. 217, 163  
23  
24  
25

26 \_\_\_\_\_  
27 <sup>4</sup> See attached Exhibit 1, *Seller's Real Property Disclosure Form*, Pg. 2, *Question 1*.

28 <sup>5</sup> *Id.*

1 P.3d 420 (2007). Here, the seller was asked an explicit question about past occurrences, not just  
2 whether an issue still existed, and they gave a demonstrably false and misleading answer.<sup>6</sup>

3  
4 Further, though the concealment is obvious, it should be reiterated that the standard for  
5 summary judgment requires that all facts and inferences be interpreted in the light most favorable  
6 to the non-moving party (Plaintiffs). *Sustainable Growth Initiative Committee v. Jumpers, LLC*,  
7 22 Nev. 53, 61, 128 P.3d 452, 458 (2006). More importantly, Plaintiffs allege there were more  
8 than two previous water leaks. Plaintiffs also dispute the allegation that the water leak was even  
9 repaired, as there were systemic defects in the plumbing system that were never addressed by  
10 Rakeman. Therefore, viewed through the legal standard that requires all facts and inferences be  
11 interpreted in the light most favorable to the non-moving party, it is impossible to conclude that  
12 Defendants have met their burden and should be granted the Motion for Summary Judgment.

13  
14 **B. Summary judgment is not warranted as to Plaintiffs' claim for fraud.**

15 Defendants conclude their Motion by stating that if the Court grants the Motion for  
16 Summary Judgment as to the concealment claim, then the fraud claim will necessarily fail as  
17 well.<sup>7</sup> Defendants are correct that fraud requires (1) that the Defendants made a false  
18 representation or misrepresentation of fact; and (2) that the Defendants had knowledge or belief  
19 that the representation was false. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*,  
20 121 Nev. 44, 75, 110 P.3d 30, 51 (2005). It is somewhat inexplicable that Defendants would state  
21 these requirements, then assert that "Rakeman Plumbing's completed repair eviscerates the  
22 factual allegation that the Defendants made a false representation."<sup>8</sup> Further, Plaintiffs already  
23

24  
25 \_\_\_\_\_  
26 <sup>6</sup> Id.

27 <sup>7</sup> Defendants' Motion to Dismiss, pg. 9.

28 <sup>8</sup> Id.

1 allege that there were systemic problems with the plumbing system which Rakeman did not  
2 repair, and there were more than the two water leakage incidents Defendants' claim occurred.

3  
4 Defendants themselves attached the SRDP to the instant motion.<sup>9</sup> Presumably this means  
5 they are aware of its content and the representations they made to Plaintiffs. Therefore, it is  
6 utterly illogical and offensive for them to claim that Rakeman's completed repair "eviscerates"  
7 Plaintiffs' claim of fraud, when they admit themselves that there were leaks a plumbing company  
8 was required to repair, and yet they still answered "no" to the SRPD question. The SRPD asked  
9 if the Defendants were aware of any "**previous or current** moisture conditions and/or water  
10 damage". (emphasis added) *See attached Exhibit 1, Seller's Real Property Disclosure Form.*  
11 Unambiguously, this is (1) a false representation or misrepresentation of fact by Defendants; and  
12 (2) Defendants admit they had knowledge that the representation was false. Again, the standard  
13 for determining summary judgment requires that all facts and inferences be interpreted in the  
14 light most favorable to the non-moving party (Plaintiffs) and, therefore, there is no way that  
15 Defendants can prevail. *Sustainable Growth Initiative Committee v. Jumpers, LLC*, 22 Nev. 53,  
16 61, 128 P.3d 452, 458 (2006). Going a step further, the SRPD is a due diligence form to aid a  
17 buyer of real property in determining if they want to proceed with the purchase. If it is  
18 reasonable for a buyer not to proceed with the sale after notice of a prior water leak, then the  
19 failure to make it known to the buyer is just as unreasonable.  
20  
21

22 V.

23 CONCLUSION

24 The issues presented by Defendants have already been decided by the Court multiple  
25 times.<sup>10</sup> This new Motion for Summary judgment, couched in a Motion to Dismiss, brings  
26

27 <sup>9</sup> Defendants' Motion to Dismiss, Exhibit B.

28 <sup>10</sup> Defendants' Motion to Dismiss, pg. 4-5.

1 nothing new to the table and is a blatant effort by Defendants to delay and inconvenience  
2 Plaintiffs while driving up litigation costs. Rakeman's affidavit, presented as some ground  
3 breaking evidence, is not even relevant. It does not matter whether Defendants believe the repair  
4 had taken place, they still lied on the SRDP and in doing so engaged in fraud and concealment.  
5 Further, without allowing for discovery Plaintiffs' do not have access to the documents and  
6 additional evidence necessary to demonstrate that there were more leaks than Defendants claim  
7 and that there was systemic problem with the plumbing system that was never addressed. They  
8 cannot, and should not, be allowed to continue filing motions over the same issues in an attempt  
9 prevent the discovery process and to exhaust and dissuade Plaintiffs from recovering their  
10 damages. Therefore, Defendants' Motion to Dismiss should be denied and Rule 11 sanctions  
11 should be imposed.  
12

13  
14 **VI.**

15 **PLAINTIFFS' COUNTERMOTION TO COMPEL DISCOVERY**

16  
17 It is essential to reiterate the fact that absolutely no discovery has occurred to this point.  
18 There is evidence that can be obtained in discovery to refute this Motion and the erroneous  
19 factual assertions contained therein. The instant Motion by Defendants is an end around the due  
20 process rights of the Plaintiffs to obtain those documents in discovery. Therefore, in addition to  
21 denying Defendant's Motion, the Court should grant Plaintiffs' Countermotion to compel  
22 discovery.  
23

24 The newly revised NRCPP 56 provides that when facts are unavailable to the nonmovant  
25 (here Plaintiffs), then the nonmovant may show by affidavit the specified reasons it cannot  
26 present facts essential to justify its opposition, and the Court may then allow time to take  
27 discovery. *See NRCPP 56(d)*. Here, as has been specified in the below declaration of Plaintiffs'  
28



1 counsel Rusty Graf, Esq., there are essential facts to Plaintiffs' opposition which cannot be  
2 demonstrated because no discovery has been conducted. It is ridiculous for Defendants to  
3 suggest that Plaintiffs' claims should be dismissed or summary judgment entered against  
4 Plaintiffs, all on the basis of a disputed affidavit of a plumbing company, when Plaintiffs have  
5 not even been able to engage in discovery to access to the information necessary to fully refute  
6 that affidavit. Therefore, Plaintiffs respectfully request that the Court order that the discovery  
7 process continue for this case.  
8

9 **VII.**

10 **PLAINTIFFS' COUNTERMOTION FOR RULE 11 SANCTIONS**

11 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
12 Rusty Graf, Esq. of Black & LoBello, their attorney of record, and hereby submit their Motion  
13 For Sanctions Pursuant To NRCP Rule 11 And For Attorneys' Fees And Costs seeking the  
14 following relief:  
15

- 16 1. An Order issuing Rule 11 Sanctions against Defendants;
- 17 2. An Order for reasonable Attorney's Fees and Costs for having to oppose this  
18 duplicative and baseless motion; and
- 19 3. For such further relief as the Court deems appropriate, including limiting the  
20 manner and type of future procedural motions to the Court.  
21

22 This Motion is made and based upon the following Points and Authorities, the attached  
23 Exhibits and evidence, the papers and pleadings on file herein, and any oral argument or  
24 evidence as may be adduced at the hearing of this matter, including but not limited to the  
25 following Exhibits cited in the Motion:  
26

27 ///

1 **A. Declaration of counsel in support of motion for rule 11 sanctions and to conduct**  
2 **discovery.**

3 I, Rusty Graf, Esq., declare as follows:

4  
5 1. That I am an attorney duly licensed to practice law in the State of Nevada. I have  
6 personal knowledge of the matters stated herein and am competent to testify thereto. I am  
7 counsel for the Plaintiffs, JOSEPH FOLINO and NICOLE FOLINO in this matter, and I am  
8 making this Affidavit in support of their Motion for Sanctions Pursuant to Nevada Rule of Civil  
9 Procedure 11 and for Attorneys' Fees and Costs for previous motions and hearings.

10  
11 2. On September 24, 2019, counsel for Defendants, Christopher M. Young, Esq.,  
12 filed the instant motion seeking dismissal of Plaintiffs' Second Amended Complaint.

13  
14 3. That this Motion to Dismiss Plaintiffs' Second Amended Complaint involves  
15 issues that have already been decided by this Court.

16  
17 4. Defendants offer no new evidence in support of their position other than an  
18 affidavit by the plumbing company which has no relevance to the situation.

19  
20 5. At a minimum, Declarant is aware that the Uponor fittings and the potential  
21 defective nature of those fittings has been litigated. The affidavit of Rakeman only states that the  
22 one fitting and the damage it caused were repaired.

23  
24 6. Based on the pleadings and evidence available, that this Motion was filed for the  
25 purpose of delaying, harassing, and increasing litigation costs for Plaintiffs.

26  
27 7. No discovery has yet been conducted in this case and it is my belief, based on the  
28 pleadings and evidence available, that evidence can be obtained through discovery that will  
refute Defendants' Motion to Dismiss and will be relevant to Plaintiffs' case at trial.

8. As of this date, Defendants have not withdrawn this Motion.

9. The estimated fees and costs Plaintiffs have incurred due to Defendants' efforts to delay, harass, and increase litigation costs is \$2,417.26.

10. I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045) that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of October, 2019.

Rusty Graf, Esq.

**B. Defendants have violated NRCP 11 and it is appropriate for the Court to impose sanctions.**

Rule 11 "provides for the imposition of sanctions when a motion is frivolous, legally unreasonable, or brought for an improper purpose." (emphasis added) *FED. R. CIV. P. 11(b)*; *Conn v. Borjorquez*, 967 F.2d 1418, 1420 (9th Cir. 1992); *McMahon v. Best*, 2000 WL 1071828, \*6 (N.D. Cal. 2000). Rule 11 sanctions may be imposed upon litigants and counsel who file baseless papers without first conducting a reasonable and competent inquiry. *Schutts v. Bentley Nevada Corp.*, 966 F. Supp. 1549 (D. Nev. 1997). The test for determining whether a Rule 11 violation has occurred is one of objective reasonableness. *Operating Engineers Pension Trust v. G.C. Wallace, Inc.*, 159 F.R.D. 536, 539 (D. Nev. 1994).

Rule 11 provides in pertinent part:

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. (Emphasis added).

Here, Defendants have clearly violated Rule 11 by introducing a motion for the purpose of harassment, delay, and to increase litigation costs. As outlined above, Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint is the third time that Defendants have asked the Court to rule on the same issues. This Court has found that the Plaintiffs' claims of concealment and fraud are valid and should not be dismissed. When Defendants continue to file motions seeking the dismissal of the same claims, the only reasonable conclusion is that they have an improper purpose. The Defendants have previously made the arguments in the current motion.

At this point they cannot legitimately believe they have a legal basis to stand upon. Rather, they are simply seeking to dissuade Plaintiffs from attempting to recover by (1) causing unnecessary delay; (2) increasing costs; and (3) harassing Plaintiffs. These are all of the improper purposes specifically enumerated in Rule 11(b)(1). Therefore, if Defendants are unable to offer an explanation for their continued motions on the same issues (other than their ridiculous claim that the Rakeman affidavit is sufficient for summary judgment, despite having no relevance to the misrepresentations made on the SRDP) then Rule 11 sanctions should be imposed.

**C. Plaintiffs Should Be Awarded Attorneys' Fees and Costs for the Necessity of Filing this Motion.**

Defendants have flagrantly violated NRCF Rule 11. As such, Plaintiffs are requesting an award of reasonable attorneys' fees for the necessity of filing this Motion. NRS 113.150(4) provides in pertinent part:

1 "if a seller conveys residential property to a purchaser without complying with the  
2 requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's  
3 agent with written notice of all defects in the property of which the seller is aware, and  
4 there is a defect in the property of which the seller was aware before the property was  
5 conveyed to the purchaser and of which the cost of repair or replacement was not limited  
6 by provisions in the agreement to purchase the property, the purchaser is entitled to  
7 recover from the seller treble the amount necessary to repair or replace the defective part  
8 of the property, together with court costs and reasonable attorney's fees." *See NRS*  
9 *113.150.*

10 Further, NRS 18.010(2)(b) provides that the court may award attorneys' fees "when the  
11 court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the  
12 opposing party was brought or maintained without reasonable ground or to harass the prevailing  
13 party." *See NRS 18.010(2)(b).* Additionally, the statute goes on to read that "The court shall  
14 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all  
15 appropriate situations." *Id.*

16 As demonstrated above, Defendants have clearly violated NRCP Rule 11 by seeking to  
17 relitigate decided issues in perpetuity or until they receive the desired outcome. Defendants'  
18 Motions have been brought without reasonable grounds and for either the purpose of harassment,  
19 delay, or increasing litigation costs. Therefore, pursuant to NRS 18.010 (and NRS 113), the  
20 Court should liberally construe the provisions of NRS 18.010 "in favor of awarding attorney's  
21 fees in all appropriate situations." *Id.* The Defendants' blatant violation of NRCP Rule 11,  
22 coupled with the relevant authority, demonstrate an award of attorneys' fees is appropriate.

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1 **D. Conclusion**

2 For the forgoing reasons, Rule 11 sanctions should be imposed upon Defendants and  
3 Plaintiffs should be awarded their fees and costs incurred in preparing the opposition to  
4 Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint.

5 DATED this 3<sup>rd</sup> day of October 2019

6  
7 **BLACK & LOBELLO**

8  
9  
10 Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
11 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
12 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
13 *Attorneys for Plaintiff*  
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**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 3<sup>rd</sup> day of October 2019, I caused the above and foregoing document *Plaintiffs' Opposition To Defendant's Motion To Dismiss Plaintiff's First Amended Complaint*; to be served as follows:

- [ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- [X] by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- [ ] pursuant to EDCR 7.26, to be sent via facsimile;
- [ ] hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.

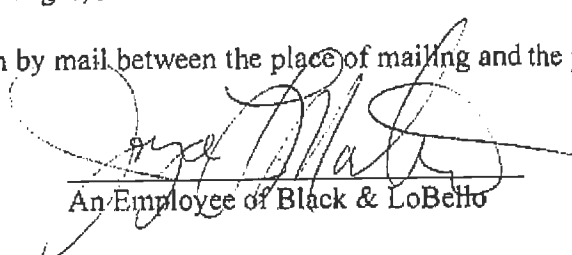
Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

# EXHIBIT 1



## SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (*see NRS 113.130 and 113.140*).

Date 10/24/2017

Do you currently occupy or have you ever occupied this property? ☒ YES ☐ NO

Property address 42 Meadowhawk Lane

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (*NRS 113.130(3)*)

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☒ Owner-occupier; ☐ Other: \_\_\_\_\_

**Purpose of Statement:** (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

**Instructions to the Seller:** (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (*see NRS 113.150*).

**Systems / Appliances:** Are you aware of any problems and/or defects with any of the following:

|   | YES                      | NO                                  | N/A                                 |   | YES                      | NO                                  | N/A                      |
|---|--------------------------|-------------------------------------|-------------------------------------|---|--------------------------|-------------------------------------|--------------------------|
| Electrical System .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Shower(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Plumbing .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Sink(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sewer System & line .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Sauna / hot tub(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Septic tank & leach field .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Built-in microwave .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Well & pump .....   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Range / oven / hood-fan .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Yard sprinkler system(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Dishwasher .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Fountain(s) .....   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Garbage disposal .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Heating system .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Trash compactor .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Cooling system .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Central vacuum .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Solar heating system .....  | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Alarm system .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Fireplace & chimney .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                          |                                     |                          |
| Wood burning system .....   | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Smoke detector .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Garage door opener .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Intercom .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Water treatment system(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Data Communication line(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                          |                                     |                                     | Satellite dish(es) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Water heater .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | owned.. <input checked="" type="checkbox"/> leased.. <input type="checkbox"/> |                          |                                     |                          |
| Toilet(s) .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Other .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Bathtub(s) .....  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |   |                          |                                     |                          |

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

TS  
Seller(s) Initials

MF  
11/02/17 2:05PM EST  
Buyer(s) Initials

Property conditions, improvements and additional information: ..... YES NO N/A

Are you aware of any of the following?:

1. Structure:

- (a) Previous or current moisture conditions and/or water damage? ..... ☐ ☒
- (b) Any structural defect? ..... ☐ ☒
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ..... ☐ ☒
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ..... ☐ ☒
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

- (a) Any of the improvements being located on unstable or expansive soil? ..... ☐ ☒
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ..... ☐ ☒
- (c) Any drainage, flooding, water seepage, or high water table? ..... ☐ ☒
- (d) The property being located in a designated flood plain? ..... ☐ ☒
- (e) Whether the property is located next to or near any known future development? ..... ☐ ☒
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ..... ☐ ☒
- (g) Is the property adjacent to "open range" land? ..... ☐ ☒
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ..... ☐ ☒

4. Pool/spa: Any problems with structure, wall, liner, or equipment? ..... ☐ ☒ ☐

5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ..... ☐ ☒

6. Environmental:

- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ..... ☐ ☒
- (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ..... ☐ ☒

7. Fungi / Mold: Any previous or current fungus or mold? ..... ☐ ☒

8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ..... ☐ ☒

9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ..... ☒ ☐

- (a) Common Interest Community Declaration and Bylaws available? ..... ☒ ☐
- (b) Any periodic or recurring association fees? ..... ☒ ☐
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ..... ☐ ☒
- (d) Any litigation, arbitration, or mediation related to property or common area? ..... ☐ ☒
- (e) Any assessments associated with the property (excluding property taxes)? ..... ☒ ☐ (SID or LID)
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ..... ☐ ☒

10. Any problems with water quality or water supply? ..... ☐ ☒

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ..... ☐ ☒

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ..... ☐ ☒

(If yes, additional Federal EPA notification and disclosure documents are required)

13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐

If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐

Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ..... ☐ ☒

15. Solar panels: Are any installed on the property? ..... ☐ ☒

If yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐

16. Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐

17. This property is subject to a Private Transfer Fee Obligation? ..... ☒ ☐

(standard transfer tax)

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form

TS  
Seller(s) Initials

AF  
11/07/17 7:34PM EST  
Buyer(s) Initials

**EXPLANATIONS:** Any "Yes" to questions on pages 1 and 2 must be fully explained here.  
Attach additional pages if needed.

JS  
Seller(s) Initials

JS  
11/07/17  
10:08 AM EST

JS  
12/12/17  
7:34 PM EST

Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

**CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE**

**NRS 113.100** Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.  
(Added to NRS by 1995, 842; A 1999, 1446)

**NRS 113.110** Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
  - (a) Upon the closure of any escrow opened for the conveyance; or
  - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
  - (a) Upon personal delivery of the document to the person being served; or
  - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.  
(Added to NRS by 1995, 844)

**NRS 113.120** Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
2. Provides notice:
  - (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
  - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
  - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.  
(Added to NRS by 1995, 842)

**NRS 113.130** Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsection 2:
  - (a) At least 10 days before residential property is conveyed to a purchaser:
    - (1) The seller shall complete a disclosure form regarding the residential property; and
    - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
  - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
    - (1) Rescind the agreement to purchase the property; or
    - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property:
  - (a) By foreclosure pursuant to chapter 107 of NRS.
  - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
  - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
  - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates in another county, state or country before title to the property is transferred to a purchaser.
3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
  - (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
  - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.

5 As used in this section:

- (a) "Seller" includes, without limitation, a client as defined in NRS 645B.060.
- (b) "Service report" has the meaning ascribed to it in NRS 645H.150.  
(Added to NRS by 1994, 842; A 1997, 144; 2003, 133; 2005, 598; 2011, 2822)

TS  
Seller(s) Initials

MF  
11/07/17 3:07PM EST  
Buyer(s) Initials

**NRS 113.135** Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

**NRS 113.140** Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 45 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

**NRS 113.150** Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): Shiraz Trust Date: 10/24/2017

Seller(s): Manager, Lyons Development LLC Date: \_\_\_\_\_

**BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS.** Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-150, inclusive, attached hereto as pages four (4) and five (5).

Buyer(s): Joseph Folino Date: 10/25/2017

Buyer(s): Nicole Folino Date: 10/25/2017

## **EXHIBIT 3**



10777 W. Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
Phone: 702-869-8801  
www.blacklobello.law

## INVOICE

Invoice # 133832  
Date: 01/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

| Date       | Timekeeper | Description  | Hours | Rate     | Total    |
|------------|------------|--|-------|----------|----------|
| 01/04/2018 | TRB        | INITIAL CONFERENCE WITH NICOLE FOLINO RE: QUEENS RIDGE PROPERTY  | 0.30  | \$0.00   | \$0.00   |
| 01/22/2018 | TRB        | RESEARCH RE: DIMINUTION IN VALUE; VIEW CASE  | 0.40  | \$400.00 | \$160.00 |
| 01/25/2018 | TRB        | REVIEW NRS 113; PREPARE MEMORANDUM FOR CLIENT MEETING; MEETING WITH CLIENT   | 1.40  | \$400.00 | \$560.00 |
| 01/31/2018 | SMW        | REVIEW DEED; RESEARCH RE SELLER; PREPARE PRESERVATION LETTERS; CONFER WITH ATTORNEY BLACK RE INSPECTION; LEFT VOICEMAIL AND E-CORRESPONDENCE WITH CLIENT RE ROOF INSPECTION; UPDATE FILE RE SAME | 1.10  | \$275.00 | \$302.50 |

| Time Keeper       | Hours | Rate                        | Total              |
|-------------------|-------|-----------------------------|--------------------|
| Tisha Black       | 1.8   | \$400.00                    | \$720.00           |
| Tisha Black       | 0.3   | \$0.00                      | \$0.00             |
| Shannon M. Wilson | 1.1   | \$275.00                    | \$302.50           |
|                   |       | <b>Subtotal</b>             | <b>\$1,022.50</b>  |
|                   |       | <b>Total</b>                | <b>\$1,022.50</b>  |
|                   |       | <b>Payment (02/09/2018)</b> | <b>-\$1,022.50</b> |
|                   |       | <b>Balance Owing</b>        | <b>\$0.00</b>      |

**Matter Financial Summary**

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,022.50                  | ) - ( \$1,022.50                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

**INVOICES ARE DUE UPON RECEIPT.**

Please make all amounts payable to: **Black & LoBello**. Please visit <https://www.blacklobello.law/client-resources/make-a-payment/> to pay via credit card or ACH online. *(A processing fee of up to 3% will appear on your next bill for any payments or advanced deposits made with Credit Card beginning January 1, 2019).*

If you have any questions regarding this invoice, please reply to this email or reach out to your attorney. **All billing concerns must be addressed within 30 days of receipt or they will be deemed correct.**

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## INVOICE

Invoice # 135527  
Date: 02/28/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description  | Hours | Rate     | Total      |
|-------------------|------------|--|-------|----------|------------|
| 02/01/2018        | TEK        | REVIEW DOCS  | 0.60  | \$350.00 | \$210.00   |
| 02/01/2018        | TEK        | REVIEW AND DISCUSS MATTER REGARDING PIPE ISSUE WITH PUCHASED HOUSE WITH TISHA          | 0.50  | \$350.00 | \$175.00   |
| 02/01/2018        | SMW        | REVIEW AND REPLY TO E-CORRESPONDENCE RE INSPECTION                                     | 0.20  | \$275.00 | \$55.00    |
| 02/01/2018        | TRB        | FINALIZE PRESERVATION LETTERS TO PARTIES TO PROPERTY SALE                              | 0.50  | \$400.00 | \$200.00   |
| 02/06/2018        | TRB        | DRAFT PRESERVATION LETTERS TO SHER, RAKEMAN, SWANSON, AND REPIPE                       | 0.80  | \$400.00 | \$320.00   |
| 02/08/2018        | SMW        | RECEIVE AND REPLY TO E-CORRESPONDENCE OF CLIENT RE INSPECTION STATUS                   | 0.20  | \$275.00 | \$55.00    |
| 02/20/2018        | SMW        | CHECK FILE RE STATUS   | 0.20  | \$275.00 | \$55.00    |
| 02/20/2018        | TRB        | MEETING WITH CLIENT; AMEND DRAFT OF DEMAND; PREPARE AND FORWARD PRESERVATION TO UPONOR | 1.40  | \$400.00 | \$560.00   |
| Services Subtotal |            |  |       |          | \$1,630.00 |

### Expenses

| Date | Quantity | Description | Rate | Total |
|------|----------|-------------|------|-------|
|------|----------|-------------|------|-------|

|                          |      |  |        |                |
|--------------------------|------|--|--------|----------------|
| 02/07/2018               | 1.00 | Postage to Repipe Specialists of Nevada Inc          | \$0.47 | \$0.47         |
| 02/07/2018               | 1.00 | Postage to Aaron Hawley President - Rakeman Plumbing | \$0.47 | \$0.47         |
| 02/07/2018               | 1.00 | Postage to Mr. Ivan Sher/Ms. Kelly Contenta          | \$0.47 | \$0.47         |
| 02/07/2018               | 1.00 | Postage to Lyons Development LLC                     | \$0.47 | \$0.47         |
| 02/07/2018               | 1.00 | Postage to Repipe Specialist of Nevada Inc           | \$0.47 | \$0.47         |
| 02/07/2018               | 1.00 | Copies (15)  | \$4.50 | \$4.50         |
| 02/20/2018               | 1.00 | Copies   | \$7.50 | \$7.50         |
| 02/21/2018               | 1.00 | Postage to Uponor, Inc.                              | \$0.47 | \$0.47         |
| <b>Expenses Subtotal</b> |      |  |        | <b>\$14.82</b> |

| Time Keeper                 | Hours | Rate     | Total              |
|-----------------------------|-------|----------|--------------------|
| Tisha Black                 | 2.7   | \$400.00 | \$1,080.00         |
| Todd Kennedy                | 1.1   | \$350.00 | \$385.00           |
| Shannon M. Wilson           | 0.6   | \$275.00 | \$165.00           |
| <b>Subtotal</b>             |       |          | <b>\$1,644.82</b>  |
| <b>Total</b>                |       |          | <b>\$1,644.82</b>  |
| <b>Payment (04/12/2018)</b> |       |          | <b>-\$1,644.82</b> |
| <b>Balance Owning</b>       |       |          | <b>\$0.00</b>      |

## Matter Financial Summary

|                     |                               |                                   |                                 |
|---------------------|-------------------------------|-----------------------------------|---------------------------------|
| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | <b>Total Amount Outstanding</b> |
| ( \$44,706.99       | + \$1,644.82                  | ) - ( \$1,644.82                  | <b>\$44,706.99</b>              |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 137226  
Date: 03/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description  | Hours | Rate     | Total      |
|-------------------|------------|--|-------|----------|------------|
| 03/13/2018        | SMW        | REVIEW E-CORRESPONDENCE RE DEMAND LETTER; CHECK FILE STATUS; UPDATE FILE RE STATUS   | 0.30  | \$275.00 | \$82.50    |
| 03/13/2018        | TRB        | [NO CHARGE] TEXT RE: TIMING OF DEMAND LETTER   | 0.30  | \$0.00   | \$0.00     |
| 03/14/2018        | SMW        | REVIEW AND REVISE DEMAND LETTER PER ATTORNEY BLACK; CONFER WITH ATTORNEY BLACK RE SAME   | 0.50  | \$275.00 | \$137.50   |
| 03/14/2018        | TRB        | DEMAND CORRESPONDENCE; TEXTS AND EMAILS WITH CLIENT RE: PROPER ADDRESS FOR RECIPIENT   | 0.40  | \$400.00 | \$160.00   |
| 03/15/2018        | TRB        | DRAFT AND FORWARD DEMAND LETTER TO CLIENT FOR APPROVAL; REVISE AS REQUESTED AND FORWARD  | 1.10  | \$400.00 | \$440.00   |
| 03/26/2018        | TRB        | RECEIVE AND REVIEW CORRESPONDENCE FROM ATTORNEY YOUNG; FORWARD TO CLIENT   | 0.30  | \$400.00 | \$120.00   |
| 03/28/2018        | JRG        | RECEIVE AND REVIEW MARCH 21, 2018 LETTER FROM COUNSEL FOR DR SWANSON, CHRIS YOUNG; COMPARE TO OUR DEMAND DATED MARCH 15, 2018 TO PREPARE RESPONSE; PREPARE DRAFT OF RESPONSE; REVIEW OF FILE FOR EXHIBITS TO ATTACH TO RESPONSE LETTER (UPONOR INVOICE AND PAYMENT CONFIRMATION DATED MAY AND JUNE OF 2017) PRIOR TO SRPD DATED OCTOBER 2017 | 1.00  | \$350.00 | \$350.00   |
| 03/30/2018        | SMW        | REVIEW E-CORRESPONDENCE OF ATTORNEY GRAF RE RESPONSE TO CHRIS YOUNG CORRESPONDENCE   | 0.20  | \$275.00 | \$55.00    |
| Services Subtotal |            |  |       |          | \$1,345.00 |

**Expenses**

| Date       | Quantity | Description                         | Rate                     | Total           |
|------------|----------|-------------------------------------|--------------------------|-----------------|
| 03/14/2018 | 1.00     | Legal Research - Westlaw (JRG)      | \$18.35                  | \$18.35         |
| 03/14/2018 | 1.00     | Copies                              | \$9.00                   | \$9.00          |
| 03/15/2018 | 1.00     | Copies                              | \$7.20                   | \$7.20          |
| 03/15/2018 | 1.00     | FedEx to Todd Swanson               | \$61.44                  | \$61.44         |
| 03/16/2018 | 1.00     | Postage to Todd Swanson (certified) | \$6.88                   | \$6.88          |
|            |          |                                     | <b>Expenses Subtotal</b> | <b>\$102.87</b> |

| Time Keeper       | Hours | Rate                 | Total       |
|-------------------|-------|----------------------|-------------|
| Tisha Black       | 1.8   | \$400.00             | \$720.00    |
| Tisha Black       | 0.3   | \$0.00               | \$0.00      |
| Rusty Graf        | 1.0   | \$350.00             | \$350.00    |
| Shannon M. Wilson | 1.0   | \$275.00             | \$275.00    |
|                   |       | Subtotal             | \$1,447.87  |
|                   |       | Total                | \$1,447.87  |
|                   |       | Payment (04/12/2018) | -\$1,447.87 |
|                   |       | Balance Owing        | \$0.00      |

**Matter Financial Summary**

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,447.87                  | ) - ( \$1,447.87                  | = <b>\$44,706.99</b>     |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 138753  
Date: 04/30/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

| Date       | Attorney | Description   | Hours | Rate     | Total    |
|------------|----------|---|-------|----------|----------|
| 04/04/2018 | TRB      | REVISE AND FORWARD CORRESPONDENCE TO OPPOSING COUNSEL RE: PRESERVATION CORRESPONDENCE AND NRS 113; FORWARD TO CLIENT  | 0.30  | \$400.00 | \$120.00 |
| 04/24/2018 | SMW      | REVIEW FILE RE STATUS OF RESPONSE TO DEMAND LETTER  | 0.20  | \$275.00 | \$55.00  |
| 04/24/2018 | TRB      | TELEPHONE CALL WITH IVAN SHER RE: STATUS  | 0.20  | \$400.00 | \$80.00  |
| 04/25/2018 | JRG      | TELEPHONE CONVERSATION WITH CHRIS YOUNG, ATTORNEY FOR DR SWANSON ABOUT DEMAND AND POSSIBLE MEDIATION; PREPARE EMAIL TO TISHA BLACK REGARDING SAME   | 0.40  | \$350.00 | \$140.00 |
| 04/26/2018 | TRB      | PREPARE AND FORWARD STATUS LETTER TO CLIENT   | 0.30  | \$400.00 | \$120.00 |
| 04/27/2018 | JRG      | RECEIVE AND REVIEW EMAIL WITH RESPONSE TO CLIENT'S INQUIRY ABOUT MEDIATION; REVIEW OF SALE CONTRACT TO SEE IF MEDIATION OR ARBITRATION REQUIRED; PREPARE AND SEND RESPONSE TO CLIENT ABOUT TELEPHONE CONFERENCE FOR NEXT WEEK | 0.40  | \$350.00 | \$140.00 |
| 04/30/2018 | JRG      | TELEPHONE CONVERSATION WITH NICOLE FOLINO ABOUT STRATEGY AND HOW TO PROCEED WITH MEDIATION VERSUS LITIGATION  | 0.50  | \$350.00 | \$175.00 |
| 04/30/2018 | TRB      | BRIEF CONFERENCE  | 0.20  | \$0.00   | \$0.00   |

| Time Keeper | Hours | Rate     | Total    |
|-------------|-------|----------|----------|
| Tisha Black | 0.8   | \$400.00 | \$320.00 |

|                             |     |          |                  |
|-----------------------------|-----|----------|------------------|
| Tisha Black                 | 0.2 | \$0.00   | \$0.00           |
| Rusty Graf                  | 1.3 | \$350.00 | \$455.00         |
| Shannon M. Wilson           | 0.2 | \$275.00 | \$55.00          |
| <b>Subtotal</b>             |     |          | <b>\$830.00</b>  |
| <b>Total</b>                |     |          | <b>\$830.00</b>  |
| <b>Payment (05/11/2018)</b> |     |          | <b>-\$830.00</b> |
| <b>Balance Owing</b>        |     |          | <b>\$0.00</b>    |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$830.00                    | ) - ( \$830.00                    | = <b>\$44,706.99</b>     |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18139502  
Date: 05/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Attorney | Description  | Hours | Rate     | Total    |
|------------|----------|--|-------|----------|----------|
| 05/04/2018 | TRB      | BRIEF CONFERENCE WITH ATTORNEY GRAF RE: STATUS   | 0.20  | \$400.00 | \$80.00  |
| 05/08/2018 | TRB      | REVIEW MEDIATION V. TRIAL CORRESPONDENCE AND AMEND (NO CHARGE)   | 0.20  | \$0.00   | \$0.00   |
| 05/11/2018 | JRG      | MEETING WITH NICOLE FOLINO AND TELEPHONIC MEETING WITH JOE FOLINO REGARDING ESTIMATE FOR LITIGATION AND OTHER TASKS ASSIGNED; TELEPHONE MESSAGE LEFT FOR REALTOR   | 1.00  | \$350.00 | \$350.00 |
| 05/16/2018 | JRG      | RECEIVE AND REVIEW EMAILS FROM CLIENT ABOUT CONTACTING THEIR REALTOR; TELEPHONE CONVERSATION STEVE KITNIC ABOUT CONTACT THAT THE REALTOR HAD WITH THE SELLER OR SELLER'S AGENT; PREPARE AND SEND EMAIL TO CLIENT ABOUT CONTENT OF CONVERSATION | 0.60  | \$350.00 | \$210.00 |
| 05/17/2018 | JRG      | RECEIVE AND REVIEW RESPONSIVE EMAILS FROM STEVE KITNIC ABOUT A CALL COMING FROM OUR REALTOR; TELEPHONE CONVERSATION WITH ASHLEY LAZOSKY; PREPARE AND SEND EMAIL TO CLIENT WITH STATUS OF CONVERSATION WITH REALTOR                             | 0.60  | \$350.00 | \$210.00 |
| 05/23/2018 | JRG      | RECEIVE AND REVIEW EMAIL FROM CLIENT ABOUT STATUS; PREPARE AND SEND RESPONSE TO STATUS AS TO SAME; MAKE PRELIMINARY CALL TO JAMS FOR LIST OF AVAILABLE MEDIATORS IN THE MONTH OF JUNE TO SCHEDULE MEDIATION                                    | 0.40  | \$350.00 | \$140.00 |
| 05/23/2018 | TRB      | STATUS CHECK WITH CLIENT; CONFERENCE WITH ATTORNEY GRAF (NO CHARGE)  | 0.30  | \$0.00   | \$0.00   |

Services Subtotal \$990.00

**Expenses**

| Date              | Description | Rate    | Total   |
|-------------------|-------------|---------|---------|
| 05/07/2018        | Copies      | \$1.50  | \$1.50  |
| 05/08/2018        | Copies      | \$4.50  | \$4.50  |
| 05/08/2018        | Copies      | \$39.90 | \$39.90 |
| 05/11/2018        | Copies      | \$6.60  | \$6.60  |
| Expenses Subtotal |             |         | \$52.50 |

| Time Keeper          | Hours | Rate     | Total       |
|----------------------|-------|----------|-------------|
| Tisha Black          | 0.2   | \$400.00 | \$80.00     |
| Tisha Black          | 0.5   | \$0.00   | \$0.00      |
| Rusty Graf           | 2.6   | \$350.00 | \$910.00    |
| Subtotal             |       |          | \$1,042.50  |
| Total                |       |          | \$1,042.50  |
| Payment (06/18/2018) |       |          | -\$1,042.50 |
| Balance Owning       |       |          | \$0.00      |

**Matter Financial Summary**

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,042.50                  | ) - ( \$1,042.50                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18141467  
Date: 06/30/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Attorney | Description  | Hours | Rate     | Total    |
|------------|----------|--|-------|----------|----------|
| 06/04/2018 | JRG      | RECEIVE AND REVIEW EMAIL FROM CLIENT ABOUT A SECOND LEAK SINCE THE RE-PLUMB; PREPARE AND SEND RESPONSE TO SAME   | 0.30  | \$350.00 | \$105.00 |
| 06/04/2018 | JRG      | LEAVE VOICEMAIL FOR CHRIS YOUNG ON SETTING OF MEDIATION AND MEDIATOR; PREPARE AND SEND EMAIL ABOUT SAME  | 0.20  | \$350.00 | \$70.00  |
| 06/04/2018 | TRB      | RECEIVE, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM CLIENT [NO CHARGE]  | 0.20  | \$0.00   | \$0.00   |
| 06/05/2018 | JRG      | PREPARE AND SEND EMAIL TO CHRIS YOUNG CONFIRMING TELEPHONE CONVERSATION WITH HIM ABOUT MEDIATORS AND TIMING OF MEDIATION; CALL WITH HIM REGARDING SAME           | 0.40  | \$350.00 | \$140.00 |
| 06/05/2018 | JRG      | RECEIVE AND REVIEW EMAILS FROM CLIENT ABOUT NEW LEAK AND CONTACT WITH UPONOR   | 0.20  | \$350.00 | \$70.00  |
| 06/06/2018 | JRG      | RECEIVE AND REVIEW MULTIPLE EMAILS ABOUT NEW LEAK AND HAVING A CALL TODAY;   | 0.30  | \$350.00 | \$105.00 |
| 06/06/2018 | JRG      | RECEIVE AND REVIEW EMAIL RESPONSE FROM CHRIS YOUNG ABOUT LIST OF PROPOSED MEDIATORS  | 0.20  | \$350.00 | \$70.00  |
| 06/06/2018 | JRG      | TELEPHONE CONVERSATION WITH CLIENTS ABOUT STATUS AND RECENT ISSUES   | 0.40  | \$350.00 | \$140.00 |
| 06/12/2018 | JRG      | RECEIVE AND REVIEW EMAIL CONFIRMING THE USE OF FLOYD HALE AS MEDIATOR; TELEPHONE CONVERSATION WITH FLOYD HALE'S OFFICE ABOUT USE AS MEDIATOR; RECEIVE AND REVIEW | 0.60  | \$350.00 | \$210.00 |

EMAIL FROM CLIENT REQUESTING STATUS; PREPARE AND SEND  
RESPONSE WITH COPY OF EMAIL SENT TO CHRIS YOUNG ABOUT  
DATES AND COSTS OF MEDIATOR

|            |     |  |      |          |          |
|------------|-----|--|------|----------|----------|
| 06/27/2018 | JRG | PREPARE AND SEND EMAILS ABOUT SCHEDULING MEDIATION TO<br>CHRIS YOUNG; RECEIVE AND REVIEW RESPONSE; CONTACT<br>FLOYD HALE'S OFFICE TO REQUEST AGREEMENT BE PREPARED<br>AND CIRCULATED | 0.40 | \$350.00 | \$140.00 |
|------------|-----|--|------|----------|----------|

**Services Subtotal** **\$1,050.00**

### Expenses

| Date                     | Quantity | Description                  | Rate   | Total         |
|--------------------------|----------|------------------------------|--------|---------------|
| 06/05/2018               | 1.00     | Postage to Christopher Young | \$0.47 | \$0.47        |
| 06/05/2018               | 1.00     | Copies                       | \$0.60 | \$0.60        |
| 06/12/2018               | 1.00     | Copies                       | \$3.30 | \$3.30        |
| 06/14/2018               | 1.00     | Copies                       | \$0.60 | \$0.60        |
| 06/27/2018               | 1.00     | Copies                       | \$0.60 | \$0.60        |
| <b>Expenses Subtotal</b> |          |                              |        | <b>\$5.57</b> |

| Time Keeper                 | Hours | Rate     | Total              |
|-----------------------------|-------|----------|--------------------|
| Tisha Black                 | 0.2   | \$0.00   | \$0.00             |
| Rusty Graf                  | 3.0   | \$350.00 | \$1,050.00         |
| <b>Subtotal</b>             |       |          | <b>\$1,055.57</b>  |
| <b>Total</b>                |       |          | <b>\$1,055.57</b>  |
| <b>Payment (07/19/2018)</b> |       |          | <b>-\$1,055.57</b> |
| <b>Balance Owing</b>        |       |          | <b>\$0.00</b>      |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18152427  
Date: 07/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Attorney | Description   | Hours | Rate     | Total    |
|-------------------|----------|---|-------|----------|----------|
| 07/17/2018        | JRG      | RECEIVE AND REVIEW FORMAL CONFIRMATION OF MEDIATION AUGUST 17; PREPARE AND SEND CORRESPONDENCE TO CLIENT ABOUT SAME | 0.40  | \$350.00 | \$140.00 |
| 07/19/2018        | TRB      | CONFERENCE RE: MEDIATION AND MEDIATION BRIEF  | 0.20  | \$400.00 | \$80.00  |
| Services Subtotal |          |   |       |          | \$220.00 |

### Expenses

| Date              | Description     | Rate   | Total  |
|-------------------|-----------------|--------|--------|
| 07/09/2018        | Copies          | \$2.10 | \$2.10 |
| 07/10/2018        | Copies          | \$0.30 | \$0.30 |
| 07/11/2018        | Copies          | \$1.50 | \$1.50 |
| 07/17/2018        | Copies          | \$2.40 | \$2.40 |
| 07/18/2018        | Copies          | \$0.30 | \$0.30 |
| 07/24/2018        | Copies          | \$0.60 | \$0.60 |
| 07/25/2018        | Postage to JAMS | \$0.47 | \$0.47 |
| Expenses Subtotal |                 |        | \$7.67 |

| Time Keeper | Hours | Rate                        | Total            |
|-------------|-------|-----------------------------|------------------|
| Tisha Black | 0.2   | \$400.00                    | \$80.00          |
| Rusty Graf  | 0.4   | \$350.00                    | \$140.00         |
|             |       | <b>Subtotal</b>             | <b>\$227.67</b>  |
|             |       | <b>Total</b>                | <b>\$227.67</b>  |
|             |       | <b>Payment (08/14/2018)</b> | <b>-\$227.67</b> |
|             |       | <b>Balance Owning</b>       | <b>\$0.00</b>    |

### Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$227.67                    | ) - ( \$227.67                    | ) = <b>\$44,706.99</b>   |

### Client Trust Account (PP)

| Date       | Type                     | Description                             | Matter    | Receipts   | Payments   | Balance    |
|------------|--------------------------|---|-----------|------------|------------|------------|
| 01/25/2018 | Credit/<br>Debit<br>Card | Advanced Deposit                        | 6239-0001 |            | \$2,500.00 | \$2,500.00 |
| 06/14/2018 | Credit<br>Card           | Payment                                 | 6239-0001 |            | \$1,042.50 | \$3,542.50 |
| 06/18/2018 |                          | Payment for invoice #18139502           | 6239-0001 | \$1,042.50 |            | \$2,500.00 |
| 07/17/2018 | Check                    | JAMS: invoice 0004458196-260, Mediation | 6239-0001 | \$2,035.00 |            | \$465.00   |
| 07/17/2018 | Credit<br>Card           | Payment                                 | 6239-0001 |            | \$1,130.00 | \$1,595.00 |
| 07/19/2018 |                          | Payment for invoice #18141467           | 6239-0001 | \$1,055.57 |            | \$539.43   |
| 08/10/2018 | Credit<br>Card           | Payment                                 | 6239-0001 |            | \$227.67   | \$767.10   |
| 08/14/2018 |                          | Payment for invoice #18152427           | 6239-0001 | \$227.67   |            | \$539.43   |
| 10/22/2018 | Credit<br>Card           | Payment for 6239-0001 and 6239-0002     | 6239-0001 |            | \$9,044.42 | \$9,583.85 |
| 10/24/2018 |                          | Payment for invoice #18154848           | 6239-0001 | \$7,154.40 |            | \$2,429.45 |
| 10/24/2018 |                          | Payment for invoice #18154848           | 6239-0001 | \$112.90   |            | \$2,316.55 |
| 10/24/2018 |                          | Payment for invoice #18156329           | 6239-0001 | \$1,374.30 |            | \$942.25   |
| 11/08/2018 | Credit<br>Card           | Payment                                 | 6239-0001 |            | \$1,674.40 | \$2,616.65 |



|                                   |  |           |            |            |
|-----------------------------------|--|-----------|------------|------------|
| 11/12/2018                        | Payment for invoice #18157950  | 6239-0001 | \$1,198.60 | \$1,418.05 |
| 05/27/2019                        | Bill Nelson & Associates: Certified Court Reporters                    | 6239-0001 | \$75.00    | \$1,343.05 |
| 12/11/2019                        | Coronado Legal Services, LLC: Invoice #CRN-2019001098, Service         | 6239-0001 | \$70.00    | \$1,273.05 |
| 12/31/2019                        | NOW! Services: Invoice #31684; Service, The Summerlin Association, COR | 6239-0001 | \$45.00    | \$1,228.05 |
| 12/31/2019                        | NOW! Services: Invoice #31704; Service Frontsteps, out of state        | 6239-0001 | \$105.00   | \$1,123.05 |
| 12/31/2019                        | NOW! Services: Invoice #31683; Service Lyons Development               | 6239-0001 | \$45.00    | \$1,078.05 |
| 12/31/2019                        | NOW! Services: Invoice #31685; Service The Ivan Sher Group             | 6239-0001 | \$45.00    | \$1,033.05 |
| 12/31/2019                        | NOW! Services: Invoice #31903; Service Repipe Specialists, Inc         | 6239-0001 | \$105.00   | \$928.05   |
| 01/07/2020                        | NOW! Services: Invoice #31955; Service Americana, LLC dba Berkshire    | 6239-0001 | \$45.00    | \$883.05   |
| 02/06/2020                        | Trust Transfer (PP) - Payment for invoice #181483083                   | 6239-0001 | \$4.33     | \$878.72   |
| Client Trust Account (PP) Balance |  |           |            | \$0.00     |

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## INVOICE

Invoice # 18154848  
Date: 08/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Attorney | Description   | Hours | Rate     | Total    |
|------------|----------|---|-------|----------|----------|
| 08/03/2018 | JRG      | CONTINUE REVIEW OF FILE TO PREPARE MEDIATION BRIEF;<br>CONTINUE TO DICTATE MEDIATION BRIEF  | 2.20  | \$350.00 | \$770.00 |
| 08/07/2018 | JRG      | FINISH PREPARING THE MEDIATION BRIEF; REVIEW OF FILE;<br>RESEARCH AS TO DAMAGES AND DEMAND PREVIOUSLY MADE;<br>FINALIZE AND HAVE SENT TO MEDIATOR   | 1.20  | \$350.00 | \$420.00 |
| 08/07/2018 | SMW      | REVIEW AND REVISE MEDIATION SUBMISSION  | 0.40  | \$275.00 | \$110.00 |
| 08/08/2018 | JRG      | REVIEW OF FILE FOR MATERIALS TO ADD TO MEDIATION BRIEF<br>FOR DIMINUTION IN VALUE; TELEPHONE CONVERSATION WITH<br>APPRAISER, RICHARD CARLSON; PREPARE AND SEND EMAIL TO<br>CLIENT LOOKING FOR APPRAISAL; REVIEW OF APPRAISAL AS<br>RECEIVED FROM CLIENT; TELEPHONE CONVERSATION WITH NEW<br>APPRAISER CRAIG JUI | 1.00  | \$350.00 | \$350.00 |
| 08/08/2018 | JRG      | LEGAL RESEARCH ABOUT DIMINUTION IN VALUE AND SEPARATE<br>DUTY CREATED BY STATUTE (NRS 113)  | 0.80  | \$350.00 | \$280.00 |
| 08/09/2018 | TRB      | BRIEF DISCUSSION RE: EXPERT AND DAMAGE STRATEGY   | 0.20  | \$400.00 | \$80.00  |
| 08/10/2018 | JRG      | RECEIVE AND REVIEW EMAIL FROM CLIENT ABOUT NEED FOR<br>THE APPRAISER; PREPARE AND SEND RESPONSE; PREPARE AND<br>SEND EMAIL TO APPRAISER TO HOLD OFF   | 0.30  | \$350.00 | \$105.00 |
| 08/14/2018 | TRB      | [NO CHARGE] CONFERENCE RE: MEDIATION  | 0.30  | \$400.00 | \$120.00 |
| 08/16/2018 | JRG      | MEDIATION PREP WITH CLIENT  | 0.40  | \$350.00 | \$140.00 |

|                          |     |   |      |          |                   |
|--------------------------|-----|---|------|----------|-------------------|
| 08/16/2018               | JRG | REVIEW OF FILE IN PREPARATION FOR MEDIATION TOMORROW;<br>REVIEW OF BRIEF FOR SAME; REVIEW OF CLIENT DOCUMENTS<br>FOR SAME | 0.50 | \$350.00 | \$175.00          |
| 08/17/2018               | JRG | ATTEND AND CONDUCT MEDIATION WITH CLIENTS; MATTER DID<br>NOT SETTLE   | 6.50 | \$350.00 | \$2,275.00        |
| 08/20/2018               | JRG | REVIEW OF FILE TO BEGIN DRAFTING COMPLAINT; PREPARE AND<br>DRAFT COMPLAINT  | 2.00 | \$350.00 | \$700.00          |
| 08/21/2018               | JRG | BEGIN DRAFTING COMPLAINT; REVIEW OF FILE FOR SAME   | 1.50 | \$350.00 | \$525.00          |
| 08/27/2018               | JRG | REVIEW AND REVISE DRAFT OF COMPLAINT;   | 1.40 | \$350.00 | \$490.00          |
| 08/28/2018               | JRG | REVIEW AND REVISE COMPLAINT FROM CALL WITH CLIENT<br>TODAY  | 1.00 | \$350.00 | \$350.00          |
| 08/28/2018               | JRG | DISCUSSION WITH CLIENT ABOUT COMPLAINT AND<br>NEGOTIATIONS; PREPARE AND SEND EMAIL TO FLOYD HALE<br>ABOUT SAME            | 0.50 | \$350.00 | \$175.00          |
| <b>Services Subtotal</b> |     |   |      |          | <b>\$7,065.00</b> |

**Expenses**

| Date                     | Quantity | Description       | Rate    | Total          |
|--------------------------|----------|-------------------|---------|----------------|
| 08/01/2018               | 1.00     | Copies on 7/31/18 | \$1.80  | \$1.80         |
| 08/06/2018               | 1.00     | Copies            | \$12.60 | \$12.60        |
| 08/07/2018               | 1.00     | Copies            | \$64.20 | \$64.20        |
| 08/08/2018               | 1.00     | Copies            | \$3.60  | \$3.60         |
| 08/28/2018               | 1.00     | Copies            | \$3.60  | \$3.60         |
| 08/29/2018               | 1.00     | Copies            | \$3.60  | \$3.60         |
| <b>Expenses Subtotal</b> |          |                   |         | <b>\$89.40</b> |

| Time Keeper       | Hours | Rate     | Total             |
|-------------------|-------|----------|-------------------|
| Tisha Black       | 0.5   | \$400.00 | \$200.00          |
| Rusty Graf        | 19.3  | \$350.00 | \$6,755.00        |
| Shannon M. Wilson | 0.4   | \$275.00 | \$110.00          |
| <b>Subtotal</b>   |       |          | <b>\$7,154.40</b> |

**Interest**

| Type                     | Date       | Description                           | Total           |
|--------------------------|------------|---------------------------------------|-----------------|
| Interest                 | 10/02/2018 | Interest on overdue invoice #18154848 | \$112.90        |
| <b>Interest Subtotal</b> |            |                                       | <b>\$112.90</b> |

|                             |                    |
|-----------------------------|--------------------|
| <b>Subtotal</b>             | <b>\$7,154.40</b>  |
| <b>Interest</b>             | <b>\$112.90</b>    |
| <b>Total</b>                | <b>\$7,267.30</b>  |
| <b>Payment (10/24/2018)</b> | <b>-\$7,154.40</b> |
| <b>Payment (10/24/2018)</b> | <b>-\$112.90</b>   |
| <b>Balance Owing</b>        | <b>\$0.00</b>      |

| <b>Account</b>                    | <b>Balance</b> |
|-----------------------------------|----------------|
| Client Trust Account (PP) Balance | \$0.00         |
| <b>Total Account Balance</b>      | <b>\$0.00</b>  |

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## INVOICE

Invoice # 18156329  
Date: 09/30/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Attorney | Description  | Hours | Rate     | Total             |
|-------------------|----------|--|-------|----------|-------------------|
| 09/04/2018        | JRG      | REVIEW AND REVISE DRAFT OF COMPLAINT   | 0.80  | \$350.00 | \$280.00          |
| 09/05/2018        | JRG      | TELEPHONE CONVERSATION WITH FLOYD HALE ABOUT STATUS OF NEGOTIATIONS AND OUR SUGGESTED STRATEGY GOING FORWARD                                 | 0.30  | \$350.00 | \$105.00          |
| 09/06/2018        | JRG      | RECEIVE AND REVIEW EMAIL DIRECTION FROM CLIENT; PREPARE AND SEND RESPONSE WITH UPDATE AS TO CONVERSATION WITH FLOYD HALE                     | 0.20  | \$350.00 | \$70.00           |
| 09/06/2018        | JRG      | PREPARE FINAL REVISIONS TO COMPLAINT; DICTATE CHANGES AND ADDITIONS TO SAME, INCLUDING ADDITIONAL PARTIES AND THE FACTUAL ALLEGATIONS        | 1.20  | \$350.00 | \$420.00          |
| 09/11/2018        | JRG      | RECEIVE AND REVIEW EMAILS FROM CLIENT ABOUT STATUS; PREPARE AND SEND EMAILS TO FLOYD HALE ABOUT THE SAME; LEFT VOICEMAIL FOR FLOYD HALE ALSO | 0.40  | \$350.00 | \$140.00          |
| 09/24/2018        | JRG      | TELEPHONE CONVERSATION WITH CHRIS YONG ABOUT NEGOTIATIONS  | 0.50  | \$350.00 | \$175.00          |
| 09/28/2018        | JRG      | CALL WITH CHRIS YOUNG ABOUT SETTLEMENT NEGOTIATIONS  | 0.50  | \$350.00 | \$175.00          |
| Services Subtotal |          |  |       |          | <b>\$1,365.00</b> |

### Expenses

| Date              | Description | Rate   | Total  |
|-------------------|-------------|--------|--------|
| 09/10/2018        | Copies      | \$9.30 | \$9.30 |
| Expenses Subtotal |             |        | \$9.30 |

| Time Keeper          | Hours | Rate     | Total       |
|----------------------|-------|----------|-------------|
| Rusty Graf           | 3.9   | \$350.00 | \$1,365.00  |
| Subtotal             |       |          | \$1,374.30  |
| Total                |       |          | \$1,374.30  |
| Payment (10/24/2018) |       |          | -\$1,374.30 |
| Balance Owing        |       |          | \$0.00      |

### Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,374.30                  | ) - ( \$1,374.30                  | = <b>\$44,706.99</b>     |

| Account                           | Balance |
|-----------------------------------|---------|
| Client Trust Account (PP) Balance | \$0.00  |
| Total Account Balance             | \$0.00  |

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## INVOICE

Invoice # 18157950  
Date: 10/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description  | Hours | Rate     | Total      |
|-------------------|------------|--|-------|----------|------------|
| 10/01/2018        | JRG        | CALL WITH FLOYD HALE ABOUT STATUS OF NEGOTIATIONS  | 0.60  | \$350.00 | \$210.00   |
| 10/08/2018        | JRG        | RECEIVE AND REVIEW EMAIL FROM CLIENT; TELEPHONE CONVERSATION WITH CHRIS YOUNG; TELEPHONE CONVERSATION WITH CLIENT AND DISCUSS FILING THE COMPLAINT | 0.50  | \$350.00 | \$175.00   |
| 10/08/2018        | JRG        | REVIEW OF COMPLAINT TO PUT IN FINAL AND FILE TOMORROW  | 0.60  | \$350.00 | \$210.00   |
| 10/08/2018        | SK         | REVIEW AND REVISE COMPLAINT; DRAFT SUMMONSES; DRAFT INITIAL APPEARANCE FEE DISCLOSURE.   | 1.50  | \$175.00 | \$262.50   |
| 10/09/2018        | SMW        | REVIEW AND REVISE COMPLAINT; ENSURE PROPER EXHIBITS FOR FILING   | 0.80  | \$275.00 | \$220.00   |
| 10/10/2018        | SK         | REVIEW AND REVISE COMPLAINT.   | 0.30  | \$175.00 | \$52.50    |
| Services Subtotal |            |  |       |          | \$1,130.00 |

### Expenses

| Date       | Quantity | Description                    | Rate   | Total  |
|------------|----------|--------------------------------|--------|--------|
| 10/08/2018 | 1.00     | Copies                         | \$3.90 | \$3.90 |
| 10/11/2018 | 1.00     | Postage to Joe & Nicole Folino | \$6.70 | \$6.70 |



|            |      |                  |                          |                |
|------------|------|------------------|--------------------------|----------------|
| 10/11/2018 | 1.00 | Copies           | \$23.10                  | \$23.10        |
| 10/12/2018 | 1.00 | Court Filing Fee | \$3.50                   | \$3.50         |
| 10/12/2018 | 1.00 | Copies           | \$27.60                  | \$27.60        |
| 10/18/2018 | 1.00 | Copies           | \$0.30                   | \$0.30         |
| 10/23/2018 | 1.00 | Court Filing Fee | \$3.50                   | \$3.50         |
|            |      |                  | <b>Expenses Subtotal</b> | <b>\$68.60</b> |

| Time Keeper       | Hours | Rate                 | Total       |
|-------------------|-------|----------------------|-------------|
| Rusty Graf        | 1.7   | \$350.00             | \$595.00    |
| Shannon Kearsley  | 1.8   | \$175.00             | \$315.00    |
| Shannon M. Wilson | 0.8   | \$275.00             | \$220.00    |
|                   |       | Subtotal             | \$1,198.60  |
|                   |       | Total                | \$1,198.60  |
|                   |       | Payment (11/12/2018) | -\$1,198.60 |
|                   |       | Balance Owing        | \$0.00      |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,198.60                  | ) - ( \$1,198.60                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18159689  
Date: 11/30/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Attorney | Description  | Hours | Rate     | Total    |
|-------------------|----------|--|-------|----------|----------|
| 11/06/2018        | JRG      | RECEIVE AND REVIEW ODDLY WORDED LETTER FROM FLOYD HALE; TELEPHONE MESSAGE LEFT FOR HIM TO DISCUSS  | 0.30  | \$350.00 | \$105.00 |
| 11/07/2018        | JRG      | TELEPHONE CONVERSATION WITH CLIENT ABOUT FLOYD HALE EMAIL AND SETTLEMENT NUMBERS   | 0.30  | \$350.00 | \$105.00 |
| 11/07/2018        | JRG      | PREPARE AND SEND CORRESPONDENCE ABOUT ACCEPTING SERVICE OF PROCESS; PREPARE TO BE SENT ACCEPTANCE OF SERVICE OF PROCESS FOR TODD SWANSON | 0.30  | \$350.00 | \$105.00 |
| 11/25/2018        | JRG      | REVIEW OF FILE FOR SERVICE ON DEFENDANTS; FOLLOW UP WITH EMAIL TO SERVICE COMPANY ON SAME  | 0.30  | \$350.00 | \$105.00 |
| Services Subtotal |          |  |       |          | \$420.00 |

### Expenses

| Date              | Description | Rate   | Total  |
|-------------------|-------------|--------|--------|
| 11/08/2018        | Copies      | \$0.60 | \$0.60 |
| Expenses Subtotal |             |        | \$0.60 |

| Time Keeper | Hours | Rate | Total |
|-------------|-------|------|-------|
|-------------|-------|------|-------|

|            |     |                             |                  |
|------------|-----|-----------------------------|------------------|
| Rusty Graf | 1.2 | \$350.00                    | \$420.00         |
|            |     | <b>Subtotal</b>             | <b>\$420.60</b>  |
|            |     | <b>Total</b>                | <b>\$420.60</b>  |
|            |     | <b>Payment (12/07/2018)</b> | <b>-\$420.60</b> |
|            |     | <b>Balance Owing</b>        | <b>\$0.00</b>    |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$420.60                    | ) - ( \$420.60                    | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18161798  
Date: 12/31/2018

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Attorney | Description  | Hours | Rate     | Total    |
|-------------------|----------|--|-------|----------|----------|
| 12/05/2018        | JRG      | REVIEW OF FILE FOR SERVICE OF COMPLAINT AFFIDAVITS NECESSARY TO FILE MOTION TO SERVE VIA PUBLICATION; PREPARE LETTER TO CHRIS YOUNG ABOUT ACCEPTING SERVICE AND LEAVE MESSAGE FOR HIM REGARDING SAME | 0.40  | \$350.00 | \$140.00 |
| 12/18/2018        | JRG      | REVIEW OF FILE TO DETERMINE SERVICE OF COMPLAINT AND TO DRAFT MOTION TO SERVE VIA PUBLICATION AND ENLARGE TIME TO SERVE; PREPARE AND SEND FOLLOW UP LETTER TO CHRIS YOUNG                            | 0.40  | \$350.00 | \$140.00 |
| 12/19/2018        | SMW      | UPDATE FILE RE STATUS OF MOTION TO EXTEND SERVICE FOR SWANSON  | 0.20  | \$275.00 | \$55.00  |
| 12/20/2018        | JRG      | TELEPHONE CONVERSATION WITH CHRIS YOUNG ABOUT NEGOTIATIONS, SERVICE ON DR SWANSON AND OPEN ISSUES ACCEPTANCE OF SERVICE.   | 0.50  | \$350.00 | \$175.00 |
| Services Subtotal |          |  |       |          | \$510.00 |

### Expenses

| Date       | Description  | Rate     | Total    |
|------------|--|----------|----------|
| 10/31/2018 | JAMS: Invoice #1260004936 Mediation Expense, ChkNo. 164.75 | \$164.75 | \$164.75 |
| 12/10/2018 | JAMS: Invoice #1260004936 Mediation Expense, ChkNo. 1632   | \$49.50  | \$49.50  |

Expenses Subtotal \$214.25

| Time Keeper       | Hours | Rate                 | Total     |
|-------------------|-------|----------------------|-----------|
| Rusty Graf        | 1.3   | \$350.00             | \$455.00  |
| Shannon M. Wilson | 0.2   | \$275.00             | \$55.00   |
|                   |       | Subtotal             | \$724.25  |
|                   |       | Total                | \$724.25  |
|                   |       | Payment (01/18/2019) | -\$724.25 |
|                   |       | Balance Owing        | \$0.00    |

### Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$724.25                    | ) - ( \$724.25                    | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18163673  
Date: 01/31/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Attorney | Description   | Hours | Rate     | Total    |
|------------|----------|---|-------|----------|----------|
| 01/04/2019 | SMW      | CHECK STATUS ON SERVICE OF SWANSON AND SHIRAZ TRUST; CHECK STATUS RE MOTION TO ENLARGE AND SERVE BY PUBLICATION; EMAIL ATTORNEY GRAF RE SAME          | 0.30  | \$275.00 | \$82.50  |
| 01/04/2019 | SMW      | CALENDAR LITIGATION DEADLINES [NO CHARGE]   | 0.20  | \$0.00   | \$0.00   |
| 01/07/2019 | JRG      | TELEPHONE CONVERSATION WITH CHRIS YOUNG CONFIRMING ACCEPTANCE OF SERVICE  | 0.40  | \$350.00 | \$140.00 |
| 01/10/2019 | JRG      | RECEIVE AND REVIEW EMAIL FROM CLIENT; PREPARE AND SEND RESPONSE AND INVITE FOR CALL TO TAKE PLACE 1/21/19   | 0.30  | \$350.00 | \$105.00 |
| 01/10/2019 | JRG      | RECEIVE AND REVIEW SIGNED ACCEPTANCE OF SERVICE FOR SWANSON AND SWANSON AS TRUSTEE  | 0.20  | \$350.00 | \$70.00  |
| 01/21/2019 | JRG      | CALL WITH CLIENTS TO DISCUSS STATUS AND TIMELINE FROM HERE TO TRIAL   | 0.30  | \$350.00 | \$105.00 |
| 01/23/2019 | JRG      | RECEIVE AND REVIEW LETTER CONFIRMING ADDITIONAL EXTENSION TO FILE ANSWERS   | 0.20  | \$350.00 | \$70.00  |
| 01/31/2019 | JRG      | RECEIVE AND REVIEW MOTION TO DISMISS OR FOR MORE DEFINITE STATEMENT; FORWARD TO CLIENTS FOR REVIEW AND FURTHER DISCUSSION                             | 0.80  | \$350.00 | \$280.00 |
| 02/01/2019 | JRG      | RESEARCH REGARDING THE CASES CITED FOR THE MORE DEFINITE STATEMENT PART OF THE MOTION; RESEARCH REGARDING POTENTIAL COUNTER MOTION TO AMEND COMPLAINT | 0.80  | \$350.00 | \$280.00 |



Services Subtotal \$1,132.50

**Expenses**

| Date              | Description  | Rate    | Total    |
|-------------------|--|---------|----------|
| 01/02/2019        | NOW! Services: Invoice #24188 Service: Summons, Complaint, Todd Swanson  | \$75.00 | \$75.00  |
| 01/03/2019        | Court Filing Fee   | \$3.50  | \$3.50   |
| 01/03/2019        | Copies   | \$0.60  | \$0.60   |
| 01/04/2019        | Copies   | \$23.10 | \$23.10  |
| 01/08/2019        | RUNNER SERVICE: Drop-off/Hand Deliver, Two Summons, Two copies of complaint, two copies of Acceptance of Service | \$35.00 | \$35.00  |
| 01/08/2019        | Copies   | \$52.20 | \$52.20  |
| 01/11/2019        | Postage to JAMS  | \$0.47  | \$0.47   |
| 01/14/2019        | Court Filing Fee   | \$3.50  | \$3.50   |
| 01/31/2019        | Copies   | \$3.90  | \$3.90   |
| Expenses Subtotal |  |         | \$197.27 |

| Time Keeper       | Hours | Rate                 | Total       |
|-------------------|-------|----------------------|-------------|
| Rusty Graf        | 3.0   | \$350.00             | \$1,050.00  |
| Shannon M. Wilson | 0.3   | \$275.00             | \$82.50     |
| Shannon M. Wilson | 0.2   | \$0.00               | \$0.00      |
|                   |       | Subtotal             | \$1,329.77  |
|                   |       | Total                | \$1,329.77  |
|                   |       | Payment (02/20/2019) | -\$1,329.77 |
|                   |       | Balance Owing        | \$0.00      |

**Matter Financial Summary**

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding                                      |
|---------------------|-------------------------------|-----------------------------------|---|
| ( \$44,706.99       | + \$1,329.77                  | ) - ( \$1,329.77                  | ) = <span style="border: 1px solid black;">\$44,706.99</span> |

| Account                           | Balance |
|-----------------------------------|---------|
| Client Trust Account (PP) Balance | \$0.00  |
| Total Account Balance             | \$0.00  |

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## INVOICE

Invoice # 18165424  
 Date: 02/28/2019

Nicole Folino  
 42 Meadowhawk Lane  
 Las Vegas, NV 89135  
 Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Attorney | Description  | Hours | Rate     | Total             |
|-------------------|----------|--|-------|----------|-------------------|
| 02/01/2019        | SMW      | BRIEF REVIEW OF MOTION TO DISMISS AND MOTION FOR DEFINITE STATEMENT AND MEET WITH ATTORNEY GRAF RE STRATEGY FOR RESPONSE IN PREPARATION OF SAME  | 0.30  | \$275.00 | \$82.50           |
| 02/04/2019        | SMW      | BEGIN OPPOSITION TO MOTION TO DISMISS; PERFORM LEGAL RESEARCH RE DECEPTIVE TRADE PRACTICES AND CIVIL RICO CLAIMS   | 2.50  | \$275.00 | \$687.50          |
| 02/06/2019        | JRG      | PREPARE PETITION FOR EXEMPTION FROM MANDATORY ARBITRATION PROGRAM  | 0.60  | \$350.00 | \$210.00          |
| 02/07/2019        | SMW      | REVIEW AND REVISE OPPOSITION TO MOTION TO DISMISS  | 2.00  | \$275.00 | \$550.00          |
| 02/11/2019        | SMW      | REVIEW AND REVISE OPPOSITION RE RICO ACTION AND PERFORM LEGAL RESEARCH RELATED THERETO   | 0.90  | \$275.00 | \$247.50          |
| 02/11/2019        | JRG      | REVIEW AND REVISE OPPOSITION TO MOTION TO DISMISS  | 1.20  | \$350.00 | \$420.00          |
| 02/12/2019        | SMW      | REVIEW AND REVISE ATTORNEY GRAF'S REVISIONS TO OPPOSITION; REVISE OPPOSITION RE ALTER EGO THEORY AND PERFORM LEGAL RESEARCH RELATED THERETO; REVIEW AND REVISE FIRST AMENDED COMPLAINT | 2.00  | \$275.00 | \$550.00          |
| 02/12/2019        | JRG      | PREPARE AMENDED COMPLAINT WITH ALTER EGO ALLEGED   | 0.80  | \$350.00 | \$280.00          |
| 02/13/2019        | SMW      | FINALIZE COMPLAINT AND MOTION TO DISMISS   | 0.20  | \$275.00 | \$55.00           |
| Services Subtotal |          |  |       |          | <b>\$3,082.50</b> |

**Expenses**

| Date                     | Description  | Rate    | Total           |
|--------------------------|--|---------|-----------------|
| 01/02/2019               | NOW! Services, Inc: Invoice #24188 Service: Todd Swanson, 12.19.2018 | \$40.00 | \$40.00         |
| 02/04/2019               | Legal Research - Westlaw (SMW)                                       | \$54.34 | \$54.34         |
| 02/04/2019               | Copies   | \$3.90  | \$3.90          |
| 02/05/2019               | Copies   | \$0.30  | \$0.30          |
| 02/07/2019               | Copies   | \$3.90  | \$3.90          |
| 02/07/2019               | Legal Research - Westlaw (SMW)                                       | \$7.18  | \$7.18          |
| 02/08/2019               | Court Filing Fee   | \$3.50  | \$3.50          |
| 02/11/2019               | Legal Research - Westlaw (SMW)                                       | \$56.48 | \$56.48         |
| 02/12/2019               | Legal Research - Westlaw (SMW)                                       | \$47.12 | \$47.12         |
| 02/13/2019               | Copies   | \$10.20 | \$10.20         |
| 02/13/2019               | Court Filing Fee   | \$3.50  | \$3.50          |
| <b>Expenses Subtotal</b> |  |         | <b>\$230.42</b> |

| Time Keeper                 | Hours | Rate     | Total              |
|-----------------------------|-------|----------|--------------------|
| Rusty Graf                  | 2.6   | \$350.00 | \$910.00           |
| Shannon M. Wilson           | 7.9   | \$275.00 | \$2,172.50         |
| <b>Subtotal</b>             |       |          | <b>\$3,312.92</b>  |
| <b>Total</b>                |       |          | <b>\$3,312.92</b>  |
| <b>Payment (03/20/2019)</b> |       |          | <b>-\$3,312.92</b> |
| <b>Balance Owing</b>        |       |          | <b>\$0.00</b>      |

**Matter Financial Summary**

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$3,312.92                  | ) - ( \$3,312.92                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18167140  
Date: 03/31/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Attorney | Description   | Hours | Rate     | Total    |
|-------------------|----------|---|-------|----------|----------|
| 03/06/2019        | JRG      | ATTEND HEARING ON TRAFFIC CITATION (NO CHARGE)                              | 1.00  | \$0.00   | \$0.00   |
| 03/18/2019        | JRG      | MEETING WITH CLIENT S AT THEIR HOME   | 1.50  | \$350.00 | \$525.00 |
| 03/21/2019        | JRG      | RECEIVE AND REVIEW EMAIL ABOUT NEW HEARING DATES                            | 0.20  | \$350.00 | \$70.00  |
| 03/21/2019        | TRB      | STATUS CONFERENCE RE: CONSTRUCTION MATTER                                   | 0.40  | \$400.00 | \$160.00 |
| 03/21/2019        | SMW      | OBTAIN STATUS RE OUTCOME OF CONSTRUCTION INSPECTION;<br>UPDATE FILE RE SAME | 0.30  | \$275.00 | \$82.50  |
| 03/26/2019        | JRG      | RECEIVE AND REVIEW NOTICE OF RESCHEDULING OF HEARING<br>FROM THE COURT      | 0.20  | \$350.00 | \$70.00  |
| Services Subtotal |          |   |       |          | \$907.50 |

### Expenses

| Date       | Description  | Rate    | Total   |
|------------|--|---------|---------|
| 03/14/2019 | Rusty Graf: Douglas Parking LV10 Receipt   | \$10.00 | \$10.00 |
| 03/14/2019 | Copies   | \$0.60  | \$0.60  |
| 03/25/2019 | Copies   | \$7.80  | \$7.80  |
| 03/29/2019 | RUNNER SERVICE: Drop-off/Hand Deliver: Courtesy Copy of Hearing Documents; District Court, | \$20.00 | \$20.00 |

03/29/2019 Copies

\$121.30 \$121.30

Expenses Subtotal \$159.70

| Time Keeper       | Hours | Rate                        | Total              |
|-------------------|-------|-----------------------------|--------------------|
| Tisha Black       | 0.4   | \$400.00                    | \$160.00           |
| Rusty Graf        | 1.9   | \$350.00                    | \$665.00           |
| Rusty Graf        | 1.0   | \$0.00                      | \$0.00             |
| Shannon M. Wilson | 0.3   | \$275.00                    | \$82.50            |
|                   |       | <b>Subtotal</b>             | <b>\$1,067.20</b>  |
|                   |       | <b>Total</b>                | <b>\$1,067.20</b>  |
|                   |       | <b>Payment (04/12/2019)</b> | <b>-\$1,067.20</b> |
|                   |       | <b>Balance Owing</b>        | <b>\$0.00</b>      |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,067.20                  | ) - ( \$1,067.20                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18168933  
Date: 04/30/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Timekeeper | Description  | Hours | Rate                     | Total             |
|------------|------------|--|-------|--------------------------|-------------------|
| 04/01/2019 | JRG        | REVIEW OF FILE AND PLEADINGS FOR MATERIALS TO BE SENT TO THE COURT PER REQUEST OF LAW CLERK  | 0.50  | \$350.00                 | \$175.00          |
| 04/03/2019 | JRG        | RECEIVE AND REVIEW REPLY TO THE OPPOSITION TO THE MOTION TO DISMISS  | 0.50  | \$350.00                 | \$175.00          |
| 04/03/2019 | JRG        | CALL WITH DUKE PHELPS ABOUT WHAT HE FOUND IN HIS INSPECTION OF THE PLANS AND THE COO; PREPARE EMAIL TO CLIENTS WITH STATUS                             | 0.40  | \$350.00                 | \$140.00          |
| 04/08/2019 | JRG        | REVIEW OF MATERIALS FOR HEARING ON MOTION TO DISMISS   | 0.60  | \$350.00                 | \$210.00          |
| 04/09/2019 | JRG        | ATTEND AND ARGUE AT MOTION TO DISMISS AND COUNTER MOTION TO AMEND; COUNTER MOTION GRANTED AND PREPARED ORDER FOR SAME;                                 | 1.50  | \$350.00                 | \$525.00          |
| 04/09/2019 | JRG        | PREPARE ORDER GRANTING COUNTER MOTION TO AMEND THE COMPLAINT AND DENYING THE MOTION TO DISMISS   | 0.50  | \$350.00                 | \$175.00          |
| 04/18/2019 | JRG        | RECEIVE AND REVIEW ORDER SIGNED BY THE COURT; FILE AND PREPARE AND FILE NOTICE OF ENTRY OF SAME; PRINT AND SIGN FINAL OF AMENDED COMPLAINT; HAVE FILED | 0.30  | \$350.00                 | \$105.00          |
|            |            |  |       | <b>Services Subtotal</b> | <b>\$1,505.00</b> |

### Expenses

| Date                     | Quantity | Description  | Rate    | Total           |
|--------------------------|----------|--|---------|-----------------|
| 04/02/2019               | 1.00     | RUNNER SERVICE: Courtesy Copy: Plaintiffs' Opposition to Defendant's Motion to Dismiss and/or Motion for More Definite Statement; Counter Motion to Amend the Complaint; District Court, eFile | \$25.00 | \$25.00         |
| 04/02/2019               | 1.00     | Copies   | \$7.20  | \$7.20          |
| 04/09/2019               | 1.00     | Copies   | \$22.50 | \$22.50         |
| 04/10/2019               | 1.00     | Copies   | \$6.90  | \$6.90          |
| 04/11/2019               | 1.00     | RUNNER SERVICE: Leave for Signature: Order on Defendants' Motion to Dismiss and/or Motion For More Definite Statement; Countermotion to Amend Complaint; District Court, eFile                 | \$25.00 | \$25.00         |
| 04/11/2019               | 1.00     | Copies   | \$0.60  | \$0.60          |
| 04/12/2019               | 1.00     | RUNNER SERVICE: Leave for Signature: Order on Defendants' Motion to Dismiss and/or Motion For More Definite Statement; Countermotion to Amend the Complaint; District Court, eFile             | \$25.00 | \$25.00         |
| 04/15/2019               | 1.00     | RUNNER SERVICE: Pick-up: Order on Defendants' Motion to Dismiss and/or Motion For More Definite Statement; Countermotion to Amend the Complaint; District Court, eFile                         | \$25.00 | \$25.00         |
| 04/18/2019               | 83.00    | Copies   | \$0.30  | \$24.90         |
| 04/18/2019               | 2.00     | Copies   | \$0.30  | \$0.60          |
| 04/18/2019               | 1.00     | Court Filing Fee   | \$3.50  | \$3.50          |
| 04/19/2019               | 1.00     | RUNNER SERVICE: Courtesy Copy: Notice of Entry of Order and First Amended Complaint; District Court,   | \$20.00 | \$20.00         |
| <b>Expenses Subtotal</b> |          |  |         | <b>\$186.20</b> |

| Time Keeper                 | Hours | Rate     | Total              |
|-----------------------------|-------|----------|--------------------|
| Rusty Graf                  | 4.3   | \$350.00 | \$1,505.00         |
| <b>Subtotal</b>             |       |          | <b>\$1,691.20</b>  |
| <b>Total</b>                |       |          | <b>\$1,691.20</b>  |
| <b>Payment (05/13/2019)</b> |       |          | <b>-\$1,691.20</b> |
| <b>Balance Owing</b>        |       |          | <b>\$0.00</b>      |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,691.20                  | ) - ( \$1,691.20                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance |
|-----------------------------------|---------|
| Client Trust Account (PP) Balance | \$0.00  |

**Total Account Balance                      \$0.00**

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## INVOICE

Invoice # 18171040  
Date: 05/31/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Timekeeper | Description   | Hours | Rate     | Total    |
|------------|------------|---|-------|----------|----------|
| 05/20/2019 | JRG        | RECEIVE AND REVIEW MOTION TO DISMISS THE FIRST AMENDED COMPLAINT; FORWARD TO CLIENT   | 0.60  | \$350.00 | \$210.00 |
| 05/21/2019 | MXL        | REVIEWING MOTION TO DISMISS AND OPP TO MOTION TO DISMISS  | 0.90  | \$150.00 | \$135.00 |
| 05/21/2019 | MXL        | RESEARCH ON DECEPTIVE TRADE PRACTICES IN REAL ESTATE NV CASE LAW, CIVIL RICO SPECIFICITY, AND UNITY OF INTEREST REQUIREMENT FOR PIERCING CORP VEIL, AND OTHER APPLICABLE ISSUES FOR THE OPPOSITION TO THE MOTION TO DISMISS | 1.50  | \$150.00 | \$225.00 |
| 05/21/2019 | MXL        | REVIEWING MOTION TO DISMISS AND OPPO TO MOTION TO DISMISS   | 1.20  | \$150.00 | \$180.00 |
| 05/23/2019 | MXL        | REVIEWING DOCUMENTS AND CORRESPONDENCE FROM FILE & DRAFTING OPPOSITION TO MOTION TO DISMISS   | 1.10  | \$150.00 | \$165.00 |
| 05/23/2019 | JRG        | CALL WITH CLIENT ABOUT STATUS AND MOTION TO DISMISS/ OPPOSITION TO BE FORWARDED   | 0.40  | \$350.00 | \$140.00 |
| 05/23/2019 | MXL        | ANSWERED THE FOLINO'S QUESTION ABOUT WHEN DEFENDANTS ALLEGE TO HAVE PROVIDED NOTICE THROUGH EMAIL.  | 0.60  | \$150.00 | \$90.00  |
| 05/23/2019 | MXL        | DRAFTING OPPOSITION TO MOTION TO DISMISS  | 1.30  | \$150.00 | \$195.00 |
| 05/28/2019 | MXL        | REVIEWING DOCUMENTS TO FIND REQUESTED DATE OF DISCLOSURE  | 0.80  | \$150.00 | \$120.00 |

|            |     |  |      |                          |                   |
|------------|-----|--|------|--------------------------|-------------------|
| 05/28/2019 | MXL | CONTINUE DRAFTING OPPOSITION                           | 2.00 | \$150.00                 | \$300.00          |
| 05/30/2019 | MXL | ECONOMIC LOSS DOCTRINE RESEARCH AND FINISHING DRAFTING | 0.90 | \$150.00                 | \$135.00          |
|            |     |  |      | <b>Services Subtotal</b> | <b>\$1,895.00</b> |

**Expenses**

| Date              | Quantity | Description   | Rate   | Total  |
|-------------------|----------|---|--------|--------|
| 05/29/2019        | 1.00     | Postage to Bill Nelson & Assoc. Certified Court Reporters | \$0.50 | \$0.50 |
| 05/30/2019        | 15.00    | Copies  | \$0.30 | \$4.50 |
| Expenses Subtotal |          |   |        | \$5.00 |

| Time Keeper    | Hours | Rate                 | Total       |
|----------------|-------|----------------------|-------------|
| Rusty Graf     | 1.0   | \$350.00             | \$350.00    |
| Mark Lounsbury | 10.3  | \$150.00             | \$1,545.00  |
|                |       | Subtotal             | \$1,900.00  |
|                |       | Total                | \$1,900.00  |
|                |       | Payment (06/21/2019) | -\$1,900.00 |
|                |       | Balance Owing        | \$0.00      |

**Matter Financial Summary**

|                     |                               |                                   |                                 |
|---------------------|-------------------------------|-----------------------------------|---------------------------------|
| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | <b>Total Amount Outstanding</b> |
| ( \$44,706.99       | + \$1,900.00                  | ) - ( \$1,900.00                  | <b>\$44,706.99</b>              |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 18173364  
 Date: 06/30/2019

Nicole Folino  
 42 Meadowhawk Lane  
 Las Vegas, NV 89135  
 Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description   | Hours | Rate     | Total           |
|-------------------|------------|---|-------|----------|-----------------|
| 06/04/2019        | MXL        | FACTS REQUESTED BY NICOLE FOLINO TO OPPOSITION  | 0.40  | \$150.00 | \$60.00         |
| 06/04/2019        | MXL        | CASE CITES RUSTY REQUESTED TO OPPOSITION  | 0.80  | \$150.00 | \$120.00        |
| 06/04/2019        | JRG        | RECEIVE AND REVIEW REVISIONS AND REVISE SAME; RECEIVE AND REVIEW COMMENTS FROM CLIENT AND REVISE SAME TO FILE | 0.40  | \$350.00 | \$140.00        |
| 06/04/2019        | TRB        | BRIEF STATUS UPDATE WITH ATTORNEY GRAF  | 0.20  | \$0.00   | \$0.00          |
| Services Subtotal |            |   |       |          | <b>\$320.00</b> |

### Expenses

| Date              | Quantity | Description      | Rate   | Total         |
|-------------------|----------|------------------|--------|---------------|
| 06/05/2019        | 1.00     | Court Filing Fee | \$3.50 | \$3.50        |
| 06/05/2019        | 14.00    | Copies           | \$0.30 | \$4.20        |
| 06/18/2019        | 4.00     | Copies           | \$0.30 | \$1.20        |
| Expenses Subtotal |          |                  |        | <b>\$8.90</b> |

| Time Keeper | Hours | Rate | Total |
|-------------|-------|------|-------|
|-------------|-------|------|-------|

|                      |     |          |           |
|----------------------|-----|----------|-----------|
| Tisha Black          | 0.2 | \$0.00   | \$0.00    |
| Rusty Graf           | 0.4 | \$350.00 | \$140.00  |
| Mark Lounsbury       | 1.2 | \$150.00 | \$180.00  |
| Subtotal             |     |          | \$328.90  |
| Total                |     |          | \$328.90  |
| Payment (07/22/2019) |     |          | -\$328.90 |
| Balance Owing        |     |          | \$0.00    |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$328.90                    | ) - ( \$328.90                    | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 181474494  
Date: 07/31/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description  | Hours | Rate     | Total      |
|-------------------|------------|--|-------|----------|------------|
| 06/25/2019        | MXL        |  | 0.30  | \$150.00 | \$45.00    |
| 07/03/2019        | JRG        | RECEIVE AND REVIEW REPLY TO MOTION TO DISMISS                                      | 0.60  | \$350.00 | \$210.00   |
| 07/03/2019        | JRG        | CALL WITH COUNSEL AND THE COURT TO RESCHEDULE THE HEARING DUE TO CALENDAR CONFLICT | 0.30  | \$350.00 | \$105.00   |
| 07/17/2019        | JRG        | REVIEW OF MATERIALS FOR MOTION TO DISMISS TOMORROW                                 | 0.50  | \$350.00 | \$175.00   |
| 07/18/2019        | JRG        | ATTEND AND ARGUE MOTION TO DISMISS; LEAVE VOICEMAIL TO CLIENT ABOUT OUTCOME        | 2.50  | \$350.00 | \$875.00   |
| 07/23/2019        | JRG        | CALL WITH CLIENT TO DISCUSS HEARING RESULTS FROM LAST WEEK                         | 0.30  | \$350.00 | \$105.00   |
| Services Subtotal |            |  |       |          | \$1,515.00 |

### Expenses

| Date       | Quantity | Description  | Rate       | Total      |
|------------|----------|--|------------|------------|
| 07/08/2019 | 1.00     | PACER - Document Retrieval   | \$0.10     | \$0.10     |
| 07/22/2019 | 1.00     | Phelps Consulting Group, LLC: Visual Inspection of Homeowners Concerns, Site Visit to CC Development Services, review plans and Cert. of Occupancy | \$1,575.00 | \$1,575.00 |
| 07/26/2019 | 1.00     | Postage to Jamie Clymer  | \$0.50     | \$0.50     |

|            |      |                            |                          |                   |
|------------|------|----------------------------|--------------------------|-------------------|
| 07/26/2019 | 1.00 | Postage to Scott Wingfield | \$0.50                   | \$0.50            |
|            |      |                            | <b>Expenses Subtotal</b> | <b>\$1,576.10</b> |

| Time Keeper    | Hours | Rate                 | Total       |
|----------------|-------|----------------------|-------------|
| Rusty Graf     | 4.2   | \$350.00             | \$1,470.00  |
| Mark Lounsbury | 0.3   | \$150.00             | \$45.00     |
|                |       | Subtotal             | \$3,091.10  |
|                |       | Total                | \$3,091.10  |
|                |       | Payment (08/23/2019) | -\$3,091.10 |
|                |       | Balance Owing        | \$0.00      |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$3,091.10                  | ) - ( \$3,091.10                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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Invoice # 181474494 - 07/31/2019

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## INVOICE

Invoice # 181475801  
 Date: 08/31/2019

Nicole Folino  
 42 Meadowhawk Lane  
 Las Vegas, NV 89135  
 Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description   | Hours | Rate     | Total           |
|-------------------|------------|---|-------|----------|-----------------|
| 08/09/2019        | JRG        | MEETING WITH CLIENTS TO DISCUSS STRATEGY AND DISCOVERY GOING FORWARD                          | 1.00  | \$350.00 | \$350.00        |
| 08/15/2019        | JRG        | RECEIVE AND REVIEW NOTICE OF ENTRY AND ORDER ON MOTION TO DISMISS AND FILING OF NEW COMPLAINT | 0.30  | \$350.00 | \$105.00        |
| 08/26/2019        | MXL        | REVIEWING ORDER & ORIGINAL COMPLAINT  | 0.50  | \$150.00 | \$75.00         |
| 08/27/2019        | MXL        | DRAFTING MOTION TO FILE FIRST AMENDED COMPLAINT AND AMENDED COMPLAINT                         | 2.10  | \$150.00 | \$315.00        |
| 08/28/2019        | MXL        | FINDING AND ATTACHING EXHIBITS TO MOTION TO AMEND AND AMENDED COMPLAINT                       | 0.30  | \$150.00 | \$45.00         |
| Services Subtotal |            |   |       |          | <b>\$890.00</b> |

### Expenses

| Date              | Quantity | Description                         | Rate    | Total          |
|-------------------|----------|-------------------------------------|---------|----------------|
| 08/05/2019        | 1.00     | Rusty Graf: Parking 7/18/19 - 30.00 | \$30.00 | \$30.00        |
| Expenses Subtotal |          |                                     |         | <b>\$30.00</b> |

| Time Keeper | Hours | Rate | Total |
|-------------|-------|------|-------|
|-------------|-------|------|-------|

|                |     |                             |                  |
|----------------|-----|-----------------------------|------------------|
| Rusty Graf     | 1.3 | \$350.00                    | \$455.00         |
| Mark Lounsbury | 2.9 | \$150.00                    | \$435.00         |
|                |     | <b>Subtotal</b>             | <b>\$920.00</b>  |
|                |     | <b>Total</b>                | <b>\$920.00</b>  |
|                |     | <b>Payment (09/12/2019)</b> | <b>-\$920.00</b> |
|                |     | <b>Balance Owning</b>       | <b>\$0.00</b>    |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$920.00                    | ) - ( \$920.00                    | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 181478003  
Date: 09/30/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date       | Timekeeper | Description   | Hours | Rate     | Total    |
|------------|------------|---|-------|----------|----------|
| 09/03/2019 | MXL        | FINALIZING AMENDED COMPLAINT FOR FILING, FIXING PRAYER FOR RELIEF, AND ATTACHING EXHIBITS   | 0.30  | \$150.00 | \$45.00  |
| 09/03/2019 | JRG        | REVIEW AND FINAL AMENDED COMPLAINT PER COURT ORDER; FILE SAME   | 0.40  | \$350.00 | \$140.00 |
| 09/12/2019 | TRB        | CONFERENCE RE: STATUS OF CASE (MOTION TO DISMISS THIRD)   | 0.30  | \$450.00 | \$135.00 |
| 09/24/2019 | MXL        | REVIEWING NEW MOTION TO DISMISS AND ATTACHED AFFIDAVIT AND OTHER EXHIBITS   | 0.40  | \$150.00 | \$60.00  |
| 09/24/2019 | JRG        | RECEIVE AND REVIEW NOTICE OF HEARING FOR MOTION TO DISMISS SECOND AMENDED COMPLAINT   | 0.20  | \$350.00 | \$70.00  |
| 09/25/2019 | MXL        | REVIEWING PAST COURT ORDERS AND FIRST TWO MOTIONS TO DISMISS & BEGINNING DRAFTING ON NEW OPPO TO MOTION TO DISMISS  | 1.40  | \$150.00 | \$210.00 |
| 09/26/2019 | MXL        | LOOKING UP CASES CITED IN MTD NELSON v. HEER & BRELIANT   | 0.50  | \$150.00 | \$75.00  |
| 09/27/2019 | MXL        | MET WITH RUSTY TO DISCUSS FOLINO OPPO CONTENT, MOTION FOR RULE 11 SANCTIONS, MOTION TO AMEND TO REINTRODUCE DISMISSED CLAIMS AND CONFERENCE CALL AT 4:00 PM | 0.20  | \$150.00 | \$30.00  |
| 09/27/2019 | MXL        | DRAFTING OPPO   | 1.30  | \$150.00 | \$195.00 |
| 09/27/2019 | MXL        | CONFERENCE CALL WITH FOLINOS  | 0.30  | \$150.00 | \$45.00  |
| 09/30/2019 | MXL        | DRAFTING AND ADDITIONAL CASE RESEARCH FOR OPPO  | 1.50  | \$150.00 | \$225.00 |

Services Subtotal \$1,230.00

**Expenses**

| Date                     | Quantity | Description  | Rate    | Total          |
|--------------------------|----------|--|---------|----------------|
| 09/03/2019               | 1.00     | Court Filing Fee   | \$3.50  | \$3.50         |
| 09/17/2019               | 9.00     | Copies   | \$0.30  | \$2.70         |
| 09/27/2019               | 1.00     | WestLaw - Online Research, Multi-Search Document Displays (JRG)      | \$23.70 | \$23.70        |
| 09/27/2019               | 1.00     | WestLaw - Online Research, Multi-Search Transactional Searches (JRG) | \$48.56 | \$48.56        |
| <b>Expenses Subtotal</b> |          |  |         | <b>\$78.46</b> |

| Time Keeper                 | Hours | Rate     | Total              |
|-----------------------------|-------|----------|--------------------|
| Tisha Black                 | 0.3   | \$450.00 | \$135.00           |
| Rusty Graf                  | 0.6   | \$350.00 | \$210.00           |
| Mark Lounsbury              | 5.9   | \$150.00 | \$885.00           |
| <b>Subtotal</b>             |       |          | <b>\$1,308.46</b>  |
| <b>Total</b>                |       |          | <b>\$1,308.46</b>  |
| <b>Payment (10/09/2019)</b> |       |          | <b>-\$1,308.46</b> |
| <b>Balance Owning</b>       |       |          | <b>\$0.00</b>      |

**Matter Financial Summary**

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,308.46                  | ) - ( \$1,308.46                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

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## INVOICE

Invoice # 181480115  
Date: 10/31/2019

Nicole Folino  
42 Meadowhawk Lane  
Las Vegas, NV 89135  
Via Email: nfolino@sandlerpartners.com

**6239-0001**

**Folino re: 42 Meadowhawk Lane, LV, NV (APN 164-14-414-014)**

### Services

| Date              | Timekeeper | Description   | Hours | Rate     | Total      |
|-------------------|------------|---|-------|----------|------------|
| 10/01/2019        | MXL        | FINISHING FOLINO OPPOSITION TO MTD DRAFT  | 3.00  | \$150.00 | \$450.00   |
| 10/02/2019        | JRG        | REVIEW AND REVISE OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND/OR MOTION TO DISMISS  | 0.60  | \$350.00 | \$210.00   |
| 10/02/2019        | MXL        | UPDATING OPPOSITION TO MTD WITH RUSTY'S EDITS   | 0.50  | \$150.00 | \$75.00    |
| 10/03/2019        | MXL        | FINAL DRAFT OF OPPOSITION TO INCORPORATE RUSTY'S EDITS, ALLEGATIONS OF SYSTEMIC FAILURE OF PLUMBING SYSTEM, AND ADD COUNTERMOTION TO COMPEL DISCOVERY | 1.30  | \$150.00 | \$195.00   |
| 10/03/2019        | MXL        | INCORPORATING ADDITIONAL EDITS AND FINALIZING TO FILE OPPOSITION - MOTION TO DISMISS  | 0.30  | \$150.00 | \$45.00    |
| 10/03/2019        | JRG        | REVIEW AND REVISE OPPOSITION TO MOTION TO DISMISS   | 0.40  | \$350.00 | \$140.00   |
| 10/31/2019        | JRG        | RECEIVE AND REVIEW REPLY TO MOTION TO DISMISS AND OPPOSITION TO MOTION FOR SANCTIONS  | 0.40  | \$350.00 | \$140.00   |
| Services Subtotal |            |   |       |          | \$1,255.00 |

### Expenses

| Date       | Quantity | Description  | Rate   | Total  |
|------------|----------|--|--------|--------|
| 10/01/2019 | 1.00     | WestLaw - Online Research - Multi-Search Document Displays (MXL) | \$6.97 | \$6.97 |

|            |       |   |                          |                |
|------------|-------|---|--------------------------|----------------|
| 10/04/2019 | 1.00  | Court Filing Fee                        | \$3.50                   | \$3.50         |
| 10/09/2019 | 1.00  | Postage to Phelps Consulting Group, LLC | \$0.55                   | \$0.55         |
| 10/28/2019 | 17.00 | Copies                                  | \$0.30                   | \$5.10         |
|            |       |   | <b>Expenses Subtotal</b> | <b>\$16.12</b> |

| Time Keeper    | Hours | Rate                 | Total       |
|----------------|-------|----------------------|-------------|
| Rusty Graf     | 1.4   | \$350.00             | \$490.00    |
| Mark Lounsbury | 5.1   | \$150.00             | \$765.00    |
|                |       | Subtotal             | \$1,271.12  |
|                |       | Total                | \$1,271.12  |
|                |       | Payment (11/11/2019) | -\$1,271.12 |
|                |       | Balance Owing        | \$0.00      |

## Matter Financial Summary

| Outstanding Balance | New Charges (Current Invoice) | Payments Received on this Invoice | Total Amount Outstanding |
|---------------------|-------------------------------|-----------------------------------|--------------------------|
| ( \$44,706.99       | + \$1,271.12                  | ) - ( \$1,271.12                  | ) = <b>\$44,706.99</b>   |

| Account                           | Balance       |
|-----------------------------------|---------------|
| Client Trust Account (PP) Balance | \$0.00        |
| <b>Total Account Balance</b>      | <b>\$0.00</b> |

### INVOICES ARE DUE UPON RECEIPT.

Please make all amounts payable to: **Black & LoBello**. Please visit <https://www.blacklobello.law/client-resources/make-a-payment/> to pay via credit card or ACH online. *(A processing fee of up to 3% will appear on your next bill for any payments or advanced deposits made with Credit Card beginning January 1, 2019).*

If you have any questions regarding this invoice, please reply to this email or reach out to your attorney. **All billing concerns must be addressed within 30 days of receipt or they will be deemed correct.**

**Clio Connect** : Black & LoBello Law offers each client a secure virtual platform to view and access case documents, court filings, notices, calendar, and bills. "**Clio Connect**" gives you the ability to view documents, upload documents for viewing, view important case deadlines, and view and pay invoices, all in a secure, SSL encrypted online environment that preserves important attorney-client privileges. **A copy of all your invoices is located within your Clio Connect account.** If you have not registered your Online Account, please reply to this email to request access.

Payment is due upon receipt. 18.0% simple annual interest will be charged every 31 days.

**Thank you for allowing Black & LoBello to be of service.**

## **EXHIBIT 4**

1 CHRISTOPHER M. YOUNG, ESQ.  
Nevada Bar No. 7961  
2 JAY T. HOPKINS, ESQ.  
Nevada Bar No. 3223  
3 CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
4 Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
5 Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
6 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

7 Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
8 GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
10 Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

11 Attorneys for Todd Swanson, et al.  
12

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 JOSEPH FOLINO, an individual and NICOLE CASE NO.: A-18-782494-C  
FOLINO, an individual, DEPT. NO.: XXIV

16 Plaintiff(s),  
17

18 v.

19 TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
20 LYON DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
21 and ROES I through X,

22 Defendant(s).  
23

24 **DEFENDANTS TODD SWANSON; TODD SWANSON AS, TRUSTEE OF THE SHIRAZ**  
**TRUST; SHIRAZ TRUST; AND LYON DEVELOPMENT, LLC'S FIRST**  
25 **SUPPLEMENTAL LIST OF WITNESSES AND PRODUCTION OF DOCUMENTS**  
26 **PURSUANT TO N.R.C.P. 16.1**

27 Pursuant to N.R.C.P. 16.1, Defendants, TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin;  
28

1 LYON DEVELOPMENT, LLC, (hereinafter referred to as "Defendants") by and through their  
2 counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law  
3 firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm  
4 of GALLIHER LEGAL P.C., hereby submit their First Supplemental List of Witnesses and  
5 Production of Documents Pursuant to N.R.C.P. 16.1 as follows with new information in **bold**:

6  
7 I.

8 WITNESSES

- 9 1. Joseph Folino and Nicole Folino  
10 c/o Rusty Graf, Esq.  
11 Shannon M. Wilson, Esq.  
12 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
13 Las Vegas, Nevada 89135  
14 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
15 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
16 Attorney for Plaintiffs

17 Joseph Folino and Nicole Folino are expected to testify regarding the facts and  
18 circumstances surrounding the alleged incident that occurred on or about October 22, 2017.

- 19 2. Todd Swanson, M.D.  
20 c/o Christopher M. Young, Esq.  
21 Christopher M. Young, PC  
22 2460 Professional Court, #200  
23 Las Vegas, Nevada 89128  
24 Tel: (702) 240-2499  
25 Fax: (702) 240-2489

26 Dr. Swanson is expected to testify regarding the facts and circumstances surrounding the  
27 alleged incident that occurred on or about October 22, 2017.

- 28 3. Custodian of Records/Person Most Knowledgeable for  
Lyon Development, LLC  
c/o Christopher M. Young, Esq.  
Christopher M. Young, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489

The Custodian of Records/Person Most Knowledgeable will testify as to the facts and  
circumstances of the subject incident, authentication of any reports, and photographs.

///

1     ///

- 2           4.     Todd Swanson, Trustee of The Shiraz Trust  
3                   c/o Christopher M. Young, Esq.  
4                   Christopher M. Young, PC  
5                   2460 Professional Court, #200  
                  Las Vegas, Nevada 89128  
                  Tel: (702) 240-2499  
                  Fax: (702) 240-2489

6           Dr. Swanson is expected to testify regarding the facts and circumstances surrounding the  
7     alleged incident that occurred on or about October 22, 2017.

- 8           5.     Nikki Whitfield  
9                   c/o Christopher M. Young, Esq.  
10                  Christopher M. Young, PC  
11                  2460 Professional Court, #200  
                  Las Vegas, Nevada 89128  
                  Tel: (702) 240-2499  
                  Fax: (702) 240-2489

12          Ms. Whitfield is Dr. Swanson's assistant and is expected to testify regarding the facts and  
13     circumstances surrounding the alleged incident that occurred on or about October 22, 2017 and  
14     other issues related to the sale of 42 Meadowhawk.

- 15          6.     Aaron Hawley  
16                   c/o Rakeman Plumbing, Inc.  
17                   4075 Losee Road  
18                   North Las Vegas, Nevada 89030  
                  Tel: (702) 642-8553  
                  Fax: (702) 399-1410

19          Mr. Hawley is expected to testify regarding the work performed on 42 Meadowhawk  
20     Lane, Las Vegas, Nevada 89135.

- 21          7.     William "Rocky" Gerber  
22                   c/o Rakeman Plumbing, Inc.  
23                   4075 Losee Road  
24                   North Las Vegas, Nevada 89030  
                  Tel: (702) 642-8553  
                  Fax: (702) 399-1410

25          Mr. Gerber is expected to testify regarding the work performed on 42 Meadowhawk  
26     Lane, Las Vegas, Nevada 89135.

27          Defendant also names as witnesses all witnesses designated by all parties.

28          Defendant reserves the right to call any and all other witnesses who may have relevant

1 knowledge of the facts and circumstances surrounding the subject incident.

2 Defendant reserves the right to supplement their list of witnesses as new witnesses  
3 become known, including expert witnesses and as Plaintiff's testimony at trial may make  
4 necessary.

5 Defendant reserves the right to call rebuttal and/or impeachment witnesses; to call the  
6 records custodian of any person(s) or institution(s) to which there is an objection concerning  
7 authenticity; and to call any and all witnesses of any other party in this matter.

8 Defendant intends to retain a construction and landscaping experts related to the various  
9 alleged property damages. Defendant will designate experts pursuant to the Court's Discovery  
10 Scheduling Order. It is anticipated that these experts will testify regarding their review and  
11 examination of Plaintiff's property damages.

12 Defendant hereby reserves the right to supplement this proposed list of witnesses and  
13 documents as discovery continues. Defendant also reserves the right to utilize any witnesses and  
14 documents identified by the Plaintiff and/or other Defendants.

## 15 II.

### 16 DOCUMENTS

- 17 1. BHHS Nevada Properties Listing Packet (Bate Nos. DEF000001 –  
18 DEF000015).
- 19 2. Counter Offer No. 1 (Bate No. DEF000016).
- 20 3. Residential Purchase Agreement (Bate Nos. DEF000017 – DEF000027).
- 21 4. Seller's Real Property Disclosure Form (Bate Nos. DEF000028 –  
22 DEF000032).
- 23 5. Addendum No. 1 to Purchase Agreement (Bate No. DEF000033).
- 24 6. Request for Repair No. 1 (Bate Nos. DEF000034 – DEF000035).
- 25 7. Addendum No. 2 to Purchase Agreement (Bate No. DEF000036).
- 26 8. Addendum No. 3 to Purchase Agreement (Bate No. DEF000037).
- 27 9. Addendum Final to Purchase Agreement (Bate No. DEF000038).
- 28 10. Addendum No. 4A To Purchase Agreement (Bate No. DEF000039).
11. Caveat Emptor Inspection Report (Bate Nos. DEF000049 - DEF000049).



- 1           12.    Photos of Pool Deck and Roof Stucco (Bate Nos. DEF000050 – DEF000051).  
2           13.    Agreement to Occupy After the Close of Escrow (Bate Nos. DEF000052 –  
3           DEF000053).  
4           14.    Rakeman Plumbing correspondence dated November 16, 2017 (Bate Nos.  
5           DEF000054).  
6           15.    Equity Title of Nevada – Closing Packet (Bates Nos. DEF000055 –  
7           DEF000068).  
8           16.    **E-mails between Todd Swanson, Austin Sherwood and Ivan Sher dated  
9           December 6-7, 2017 (Bates Nos. DEF000069-DEF000072.)**

10       DATED this 23rd day of January 2020..

11                       Respectfully Submitted,

12                       /s/ *Jeffrey L. Galliher, Esq.*

13                       CHRISTOPHER M. YOUNG, ESQ.  
14                       Nevada Bar No. 7961  
15                       JAY T. HOPKINS, ESQ.  
16                       Nevada Bar No. 3223  
17                       CHRISTOPHER M. YOUNG, PC  
18                       2460 Professional Court, #200  
19                       Las Vegas, Nevada 89128  
20                       Tel: (702) 240-2499  
21                       Fax: (702) 240-2489  
22                       [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
23                       [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

24                       Jeffrey L. Galliher, Esq.  
25                       Nevada Bar No. 8078  
26                       GALLIHER LEGAL P.C.  
27                       1850 East Sahara Avenue, Suite 107  
28                       Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Todd Swanson, et al.

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and  
3 N.E.F.C.R. 9, I hereby certify that on the 23rd day of January 2020 I caused the foregoing  
4 **DEFENDANTS TODD SWANSON, TODD SWANSON, TRUSTEE OF THE SHIRAZ**  
5 **TRUST; SHIRAZ TRUST, LYON DEVELOPMENT, LLCs' FIRST SUPPLEMENTAL**  
6 **LIST OF WITNESSES AND PRODUCTION OF DOCUMENTS PURSUANT TO**  
7 **N.R.C.P. 16.1**

8 to be electronically e-served on counsel as follows:

9 Rusty Graf, Esq.  
10 Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
11 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
12 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)

13  
14 ***s. Kimalee Goldstein***  
15 An Employee of  
GALLIHER LEGAL, PC

16  
17  
18  
19  
20  
21  
22 H:\Open Case Files\0300.003\PLEADING\16.1

## Todd Swanson

---

**From:** Austin Sherwood <Austin@shapiroandsher.com>  
**Sent:** Thursday, December 7, 2017 11:27 AM  
**To:** Todd Swanson  
**Cc:** Ivan Sher  
**Subject:** RE: 42 Meadowhawk

Hello Todd,

Thank you for sending this over.

Ivan is traveling at the moment but will be reaching out to discuss tomorrow.

Best Regards,

**Austin Sherwood**  
Fine Home Specialist | Transaction Manager  
Phone: 702-686-6638  
Office: 702-315-0223  
e-Fax: 702-317-3175

**Shapiro & Sher • Berkshire Hathaway**  
**HomeServices | Luxury Collection**  
lasvegasfinehomes.com

**From:** Todd Swanson [mailto:tvsw@tswansonmd.com]  
**Sent:** Wednesday, December 6, 2017 9:26 PM  
**To:** Austin Sherwood <Austin@shapiroandsher.com>  
**Cc:** Ivan Sher <Ivan@ShapiroandSher.com>  
**Subject:** RE: 42 Meadowhawk

Austin and Ivan,

I am sorry that the buyer is frustrated, but I have been out of the country since I moved out, so Nicky has been keeping me informed as to what is going on. I also want to remain on good terms with the buyers, but unfortunately, they are trying to blame me for things that are not my fault:

1. Nicky notified me before I even came home from Denver that the buyer found the sliding glass door was not working. Nicky says she never opened that door in the past several months. I attempted to open the door when I arrived home on 11/21, but to no avail. The usual "reset/unlock/open" sequence that usually causes the door to open did not work. That problem occurred for reasons unknown to me and out of my control. We never even use that door. Nicky's time in the past month, and my 6 days in the house before I moved out, were spent packing my remaining items. I only touched the sliding door controls once, to try to troubleshoot the problem, but to no avail. We absolutely had NOTHING to do with those doors now not working. I had a similar problem over a year ago, and I think I contacted Blue Heron to fix the problem. That is who I recommend they start with.
2. The buyers wanted the desks. (I could have used the desks, and yes, they could have been moved. The large one comes apart, so it is moved in pieces.) I left the rug under the desk not because I couldn't have moved it,

- but because I thought the buyer might want it. I didn't have a use for the rug, which is why I had no problem giving it to the buyer. The gesture was meant to be a gift, not one that turned into a problem for them.
3. The table top was left in the basement because a) Kelly Contenta, your agent, told me that the buyers' workers could remove it and b) because Nicky talked to Mrs. Folino who apparently also said she would have her workers remove the table top. I could have also had my movers remove that easily if it were not for the instructions from Kelly and Mrs. Folino. Now, because they have workers in the house, it seems that they could easily take it out the sliding glass door and dispose of it.
  4. Regarding the scratches on the walls and stairway, I saw damage to the wall and steps before my movers came on 11/27. The buyers had workers in the upstairs closet remove almost all of the cabinets when I was there from 11/21-11/27. They carried large pieces of cabinet down those stairs to the garage. In fact, I noticed 1 particularly large gouge fairly high up that could only have been caused by their workers moving some of those large cabinet pieces out of the closet. I didn't move any large pieces out of the upstairs except for a dresser—definitely nothing that could reach that high. And realistically, it is much more likely that any damage to the stairs was caused by the buyer's workers than my movers. My movers were professionals who covered and protected the stairs. To say that they caused any scratches or damage to the stairway is speculation at best—and very unfair to me.
  5. Regarding keys, I never used keys for the house. I will try to find them when I come home next week, but if I were the buyers, I would have the doors re-keyed. Most people re-key a house when they buy it. Who knows who might have keys to those doors? And I don't want them accusing me of ever entering their home if they don't re-key the doors. It costs a few hundred dollars to re-key a house. But I'll look for the keys and return them if I can find them.

Furthermore, I thought you told me there was no holdback from the sale of the house. If the furniture was part of the purchase agreement, was it not paid for at closing? If not, and if the buyer doesn't plan on paying for the furniture, I suggest that we sign a full mutual release and go our separate ways. We have been working diligently trying to get someone out to evaluate the stucco/paint issue. Blue Heron has communicated to Nicky that if it is a construction defect, they will take care of it. We are just trying to get them out to inspect the area and put something in writing. I'd be happy to pass that task on to the buyer and be done with all of these lingering issues.

I'm cc'ing Nicky in case I've mis-stated anything in this email. But all in all, mixed messages from the buyer, their agent, and your agent caused some of these issues, and now it sounds like the buyer is trying to pass blame on to me for items that are not in any way my fault. I am surprised they feel like I am taking advantage of them because I feel like they are nickel and diming me now to get as much from me as possible. I'll take responsibility for leaving the rug and table top in the house, but \$3,000 sounds like a pretty steep price to pay for that. If they don't want to sign a mutual release, I'll have those items removed (if they are now legally my responsibility), but I expect to be paid for my furniture.

I hope we can resolve these issues amicably. My new neighbor, who I have known for years, is good friends with the Folinos, and I don't want there to be any lingering bad blood between us.

Regards,  
Todd

Ps—I am 15 hours ahead of you, so I can call you tomorrow to discuss if needed.

Todd V. Swanson, M.D.  
2360 E. Evans Ave., Apt. #837  
Denver, CO 80210

(702) 249-9219  
tvs@tswansonmd.com

**From:** Austin Sherwood [mailto:Austin@shapiroandsher.com]  
**Sent:** Wednesday, December 6, 2017 7:07 PM  
**To:** Todd Swanson <tw@tswansonmd.com>  
**Subject:** Fwd: 42 Meadowhawk

Hello Todd,

Additional email received from the buyers agent.

Thank you,

Get [Outlook for iOS](#)

**Austin Sherwood**  
Fine Home Specialist | Transaction Manager  
Phone: 702-686-6638  
Office: 702-315-0223  
e-Fax: 702-317-3175

**Shapiro & Sher • Berkshire Hathaway**  
**HomeServices | Luxury Collection**  
lasvegasfinehomes.com

---

**From:** Ashley Oakes-Lazosky <ashley@vhfelv.com>  
**Sent:** Tuesday, December 5, 2017 8:54:51 AM  
**To:** Austin Sherwood; Ivan Sher  
**Subject:** 42 Meadowhawk

Austin and Ivan,

Good morning. I am reaching out to you today in hopes to get a resolution to the issues we are still having at 42 Meadowhawk.

The seller vacated the property and left a rug under the upstairs desk that the buyers purchased. This wouldn't normally be an issue...but the desk probably weighs over 800 lbs and the rug is not wanted nor needed. Now the desk will scratch the wood floors if it isn't moved by an professional.

He also left a glass table in the property which the buyer needs removed.

One of the biggest issues is that the sliding door doesn't work and it did at the time of closing and walk through. So, the property was left in a different condition than it was at walk.

Also, the movers made huge scratches on the stairwell when moving his furniture.

The buyer is taking care of that, but we need an accurate contact for the door repair and the rug removed asap.

We also need to know where the keys are for the home. I know Austin said they are all electronic pads, but there are key holes in every door, where are the keys for the doors?

We are trying to work with Nicky but we are not getting anywhere.

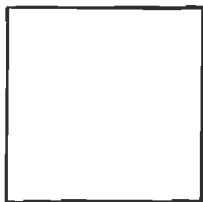
Would you please reach out to Todd Swanson regarding the issues we are having. We are trying to handle this amicably, however, this is becoming a huge issue for both me and the buyers.

The buyer will not pay for the furnishings until the rug and table are removed.  
Which, they shouldn't have to since the seller is in breach of the personal property addendum.

Please help up reach a resolution so this can be settled once and for all.

I thank you in advance.

--



## **EXHIBIT 5**

1 CHRISTOPHER M. YOUNG, ESQ.  
Nevada Bar No. 7961  
2 JAY T. HOPKINS, ESQ.  
Nevada Bar No. 3223  
3 CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
4 Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
5 Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
6 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

7 JEFFREY L. GALLIHER, ESQ.  
Nevada Bar No. 8078  
8 GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
10 Facsimile: (702) 735-0204  
[jgallier@gallierlawfirm.com](mailto:jgallier@gallierlawfirm.com)

11 Attorneys for Todd Swanson, et al.  
12

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

16 Plaintiff(s),  
17

18 v.

19 TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
20 LYON DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES 1 through X;  
21 and ROES 1 through X,

22 Defendant(s).  
23

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

24 **DEFENDANTS TODD SWANSON; TODD SWANSON AS, TRUSTEE OF THE SHIRAZ**  
25 **TRUST; SHIRAZ TRUST; AND LYON DEVELOPMENT, LLC'S SECOND**  
26 **SUPPLEMENTAL LIST OF WITNESSES AND PRODUCTION OF DOCUMENTS**  
27 **PURSUANT TO N.R.C.P. 16.1**

28 Pursuant to N.R.C.P. 16.1, Defendants, TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin;



1 LYON DEVELOPMENT, LLC, (hereinafter referred to as "Defendants") by and through their  
2 counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law  
3 firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm  
4 of GALLIHER LEGAL P.C., hereby submit their Second Supplemental List of Witnesses and  
5 Production of Documents Pursuant to N.R.C.P. 16.1 as follows with new information in **bold**:

6  
7 **I.**

8 **WITNESSES**

- 9 1. Joseph Folino and Nicole Folino  
c/o Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
11 Las Vegas, Nevada 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
12 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
Attorney for Plaintiffs

13 Joseph Folino and Nicole Folino are expected to testify regarding the facts and  
14 circumstances surrounding the alleged incident that occurred on or about October 22, 2017.

- 15 2. Todd Swanson, M.D.  
c/o Christopher M. Young, Esq.  
16 Christopher M. Young, PC  
2460 Professional Court, #200  
17 Las Vegas, Nevada 89128  
18 Tel: (702) 240-2499  
Fax: (702) 240-2489

19 Dr. Swanson is expected to testify regarding the facts and circumstances surrounding the  
20 alleged incident that occurred on or about October 22, 2017.

- 21 3. Custodian of Records/Person Most Knowledgeable for  
22 Lyon Development, LLC  
c/o Christopher M. Young, Esq.  
23 Christopher M. Young, PC  
2460 Professional Court, #200  
24 Las Vegas, Nevada 89128  
25 Tel: (702) 240-2499  
Fax: (702) 240-2489

26 The Custodian of Records/Person Most Knowledgeable will testify as to the facts and  
27 circumstances of the subject incident, authentication of any reports, and photographs.  
28

1           4.     Todd Swanson, Trustee of The Shiraz Trust  
2                 c/o Christopher M. Young, Esq.  
3                 Christopher M. Young, PC  
4                 2460 Professional Court, #200  
               Las Vegas, Nevada 89128  
               Tel: (702) 240-2499  
               Fax: (702) 240-2489

5           Dr. Swanson is expected to testify regarding the facts and circumstances surrounding the  
6     alleged incident that occurred on or about October 22, 2017.

7           5.     Nicky Whitfield  
8                 c/o Christopher M. Young, Esq.  
9                 Christopher M. Young, PC  
10                2460 Professional Court, #200  
               Las Vegas, Nevada 89128  
               Tel: (702) 240-2499  
               Fax: (702) 240-2489

11          Ms. Whitfield is Dr. Swanson's assistant and is expected to testify regarding the facts and  
12     circumstances surrounding the alleged incident that occurred on or about October 22, 2017 and  
13     other issues related to the sale of 42 Meadowhawk.

14          6.     Aaron Hawley  
15                 c/o Rakeman Plumbing, Inc.  
16                 4075 Losec Road  
17                 North Las Vegas, Nevada 89030  
               Tel: (702) 642-8553  
               Fax: (702) 399-1410

18          Mr. Hawley is expected to testify regarding the work performed on 42 Meadowhawk  
19     Lane, Las Vegas, Nevada 89135.

20          7.     William "Rocky" Gerber  
21                 c/o Rakeman Plumbing, Inc.  
22                 4075 Losee Road  
23                 North Las Vegas, Nevada 89030  
               Tel: (702) 642-8553  
               Fax: (702) 399-1410

24          Mr. Gerber is expected to testify regarding the work performed on 42 Meadowhawk  
25     Lane, Las Vegas, Nevada 89135.

26          Defendant also names as witnesses all witnesses designated by all parties.

27          Defendant reserves the right to call any and all other witnesses who may have relevant  
28     knowledge of the facts and circumstances surrounding the subject incident.

1 Defendant reserves the right to supplement their list of witnesses as new witnesses  
2 become known, including expert witnesses and as Plaintiff's testimony at trial may make  
3 necessary.

4 Defendant reserves the right to call rebuttal and/or impeachment witnesses; to call the  
5 records custodian of any person(s) or institution(s) to which there is an objection concerning  
6 authenticity; and to call any and all witnesses of any other party in this matter.

7 Defendant intends to retain a construction and landscaping experts related to the various  
8 alleged property damages. Defendant will designate experts pursuant to the Court's Discovery  
9 Scheduling Order. It is anticipated that these experts will testify regarding their review and  
10 examination of Plaintiff's property damages.

11 Defendant hereby reserves the right to supplement this proposed list of witnesses and  
12 documents as discovery continues. Defendant also reserves the right to utilize any witnesses and  
13 documents identified by the Plaintiff and/or other Defendants.

## 14 II.

### 15 DOCUMENTS

- 16 1. BHHS Nevada Properties Listing Packet (Bate Nos. DEF000001 –  
17 DEF000015).
- 18 2. Counter Offer No. 1 (Bate No. DEF000016).
- 19 3. Residential Purchase Agreement (Bate Nos. DEF000017 -- DEF000027).
- 20 4. Seller's Real Property Disclosure Form (Bate Nos. DEF000028 –  
21 DEF000032).
- 22 5. Addendum No. 1 to Purchase Agreement (Bate No. DEF000033).
- 23 6. Request for Repair No. 1 (Bate Nos. DEF000034 – DEF000035).
- 24 7. Addendum No. 2 to Purchase Agreement (Bate No. DEF000036).
- 25 8. Addendum No. 3 to Purchase Agreement (Bate No. DEF000037).
- 26 9. Addendum Final to Purchase Agreement (Bate No. DEF000038).
- 27 10. Addendum No. 4A To Purchase Agreement (Bate No. DEF000039).
- 28 11. Caveat Emptor Inspection Report (Bate Nos. DEF000049 - DEF000049).
12. Photos of Pool Deck and Roof Stucco (Bate Nos. DEF000050 – DEF000051).

13. Agreement to Occupy After the Close of Escrow (Bate Nos. DEF000052 – DEF000053).
14. Rakeman Plumbing correspondence dated November 16, 2017 (Bate Nos. DEF000054).
15. Equity Title of Nevada – Closing Packet (Bates Nos. DEF000055 – DEF000068).
16. E-mails between Todd Swanson, Austin Sherwood and Ivan Sher dated December 6-7, 2017 (Bates Nos. DEF000069-DEF000072.)
17. Inspection Report 5-11-15 (Bate Nos. DEF000073 – DEF000141)
18. Henry Regnault Punch List 05-16-15 (Bate Nos. DEF000142 – DEF000162).
19. Henry Regnault Punch List 05-20-15 (Bate Nos. DEF000163 – DEF000190).
20. Henry Regnault Punch List 05-29-15 (Bate Nos. DEF000191 –DEF000210).
21. Henry Regnault Punch List 06-08-15 (Bate Nos. DEF000211 – DEF000230).
22. Invoices (Bate Nos. DEF000231 – DEF000243).
23. Bids/Estimates (Bate Nos. DEF000244 – DEF000252).
24. Design Drawings for Todd Swanson's Office (Bate Nos. DEF000253 – DEF000282).
25. Design Drawings for Todd Swanson's Closet (Bate Nos. DEF000283 – DEF000289)
26. Design Drawings for Todd Swanson's Fireplace/TV (Bate Nos. DEF000290 – DEF000295).
27. Patio Design Drawing (Bate No. DEF000296).
28. Construction Photos (Bate Nos. DEF000297 – DEF000305).
29. Landscaping Photos (Bate Nos. DEF000306 – DEF000312).
30. Hardwood Floor picture (Bate No. DEF000313).
31. Absolute Closets Add Insured-Shiraz Trust (Bate Nos. DEF0000314 – DEF000315).
32. Ed's List (Bate Nos. DEF0000316 – DEF000319).
33. 42 Meadowhawk Ridges Pool Approval 01-07-15 (Bate No. DEF000320).
34. Email Correspondence between Swanson and Blue Heron Re: Swanson Customer Service (Bate Nos. DEF000321 – DEF000328).
35. Email Correspondence RE: Touch Screens (Bate Nos. DEF000329 - DEF000334).

- 1 36. 42 Meadowhawk Northern Trust Loan Statement 07-07-17 (Bate Nos.  
2 DEF000335 – DEF000336).  
3 37. 42 Meadowhawk Equity Tile Seller Info (Bate No. DEF000337).  
4 38. Email Correspondence between Swanson and Julie Torchin (Bate Nos.  
5 DEF000338 – DEF000341).  
6 39. Email Correspondence between Swanson and Alexxa Warren (Bate Nos.  
7 DEF000342 – DEF000380).  
8 40. Email Correspondence between Swanson and Nicky Whitfield (Bate Nos.  
9 DEF000381 – DEF000393).  
10 41. Email Correspondence between Swanson and Kelly Contenta (Bate Nos.  
11 DEF000394 – DEF000399).  
12 42. Folino Earnest Money Wire Confirmation 10-24-17 (Bate No. DEF000400).  
13 43. Nevada Title Wiring Instructions (Bate No. DEF000401).  
14 44. Henry Text (Bate No. DEF000402).

15 DATED this 31<sup>st</sup> day of January 2020.

16 Respectfully Submitted,

17 */s/ Jeffrey L. Galliher, Esq.*

18 CHRISTOPHER M. YOUNG, ESQ.  
19 Nevada Bar No. 7961  
20 JAY T. HOPKINS, ESQ.  
21 Nevada Bar No. 3223  
22 CHRISTOPHER M. YOUNG, PC  
23 2460 Professional Court, #200  
24 Las Vegas, Nevada 89128  
25 Tel: (702) 240-2499  
26 Fax: (702) 240-2489  
27 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
28 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

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Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)  
Attorneys for Todd Swanson, et al.

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and  
3 N.E.F.C.R. 9, I hereby certify that on the 31<sup>st</sup> day of January, 2020 I caused the foregoing  
4 **DEFENDANTS TODD SWANSON, TODD SWANSON, TRUSTEE OF THE SHIRAZ**  
5 **TRUST; SHIRAZ TRUST, LYON DEVELOPMENT, LLCs' SECOND**  
6 **SUPPLEMENTAL LIST OF WITNESSES AND PRODUCTION OF DOCUMENTS**  
7 **PURSUANT TO N.R.C.P. 16.1** to be electronically e-served and by placing same to be  
8 deposited for mailing in the United States [CD CONTAINING PRODUCTION], in a sealed  
9 envelope upon which first class postage was prepaid in Las Vegas, Nevada on counsel as  
10 follows:

11 Rusty Graf, Esq.  
12 Shannon M. Wilson, Esq.  
13 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
14 Las Vegas, Nevada 89135  
15 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
16 [swilson@blacklobello.law](mailto:swilson@blacklobello.law)

17 **.s. Kimalee Goldstein**  
18 An Employee of  
19 GALLIHER LEGAL, PC  
20  
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FOLINO v. SWANSON

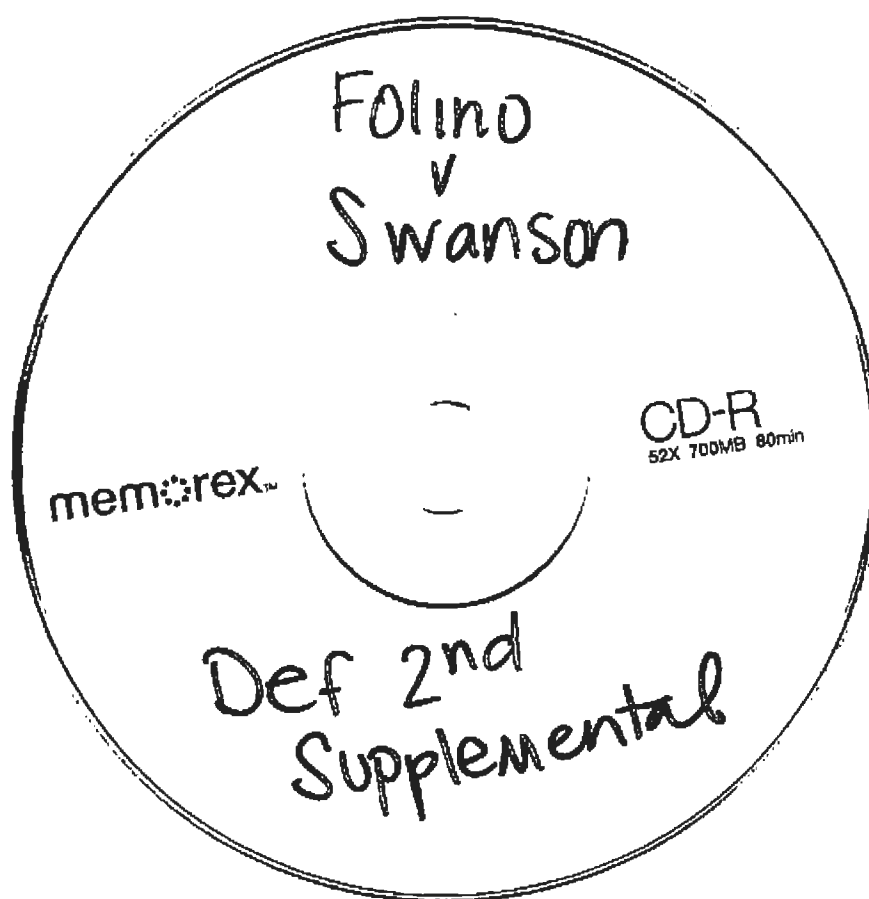
A-18-782494-C

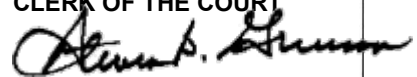
1/31/2020

DEFENDANT'S SECOND SUPPLEMENTAL LIST OF WITNESSES AND

PRODUCTION OF DOCUMENTS PURSUANT TO NRCP 16.1

[CD CONTAINING PRODUCTION]





1 **ERR**

2 Rusty Graf, Esq.

3 Nevada Bar No. 6322

4 **BLACK & LOBELLO**

5 10777 West Twain Avenue, 3<sup>rd</sup> Floor

6 Las Vegas, Nevada 89135

7 Telephone: (702) 869-8801

8 Facsimile: (702) 869-2669

9 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)

10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JOSEPH FOLINO, an individual and NICOLE  
14 FOLINO, an individual,

15 Plaintiff,

16 v.

17 TODD SWANSON, an individual; TODD  
18 SWANSON, Trustee of the SHIRAZ TRUST;  
19 SHIRAZ TRUST, a Trust of unknown origin;  
20 LYONS DEVELOPMENT, LLC, a Nevada  
21 limited liability company; DOES I through X;  
22 and ROES I through X,

23 Defendants.

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**ERRATA TO OPPOSITION TO  
DEFENDANTS' MOTION FOR  
ATTORNEY'S FEES AND COSTS**

24 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
25 their attorney of record Rusty Graf, Esq., of Black & LoBello, hereby submit their Errata to  
26 Opposition to Defendants' Motion for Attorney Fees and Costs, wherein the Affidavit of  
27 Plaintiffs' Counsel in Support of the Opposition to Defendants' Motion for Attorney's Fees and  
28 Costs was submitted unsigned as a result of remote working due to the Emergency Order of the  
Governor of Nevada.

Plaintiffs submit the instant Errata, therefore, for the purpose of providing the Court and  
opposing counsel with a signed and notarized copy of the Affidavit of Plaintiffs' Counsel in

///

///




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support of the Opposition to Defendants' Motion for Attorney's Fees and Costs.

DATED this 13<sup>th</sup> day of May 2020.

**BLACK & LOBELLO**



---

Rusty Graf, Esq.  
Nevada Bar No. 6322  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
*Attorney for Plaintiffs*

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 13 day of May 2020, I caused the above and foregoing document **ERRATA TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.

Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

Christopher M. Young, PC

2640 Professional Court, #200

Las Vegas, Nevada 89128

Jeffrey L. Galliher, Esq.

Galliher Legal, P.C.

Nevada Bar No. 8078

1850 E. Sahara Ave., #107

Las Vegas, NV 89104

Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

**AFFIDAVIT OF PLAINTIFFS' COUNSEL IN SUPPORT OF THE OPPOSITION TO  
DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS**

STATE OF NEVADA )

) ss.

COUNTY OF CLARK )

I, J. RUSTY GRAF, ESQ., state under penalty of perjury that the assertions of this affidavit are true:

1. I am an attorney duly licensed to practice law in the State of Nevada. I am an attorney with the law firm of Black & LoBello.

2. This Affidavit is offered in support of Plaintiffs' Opposition to Defendants' Motion for Attorney's Fees and Costs

3. That Plaintiffs had a reasonable, good faith belief that the claims they brought and maintained in this matter were valid and actionable under relevant State statutes.

4. That Plaintiffs had a reasonable, good faith belief that their claims were distinguishable from the holding of *Nelson v. Heer*.

5. That Plaintiffs had credible evidence that they intended to introduce at trial to support the claims they asserted.

6. That Plaintiffs rejected Defendants' Offer of Judgment because they had a reasonable, good faith belief that the claims they asserted were valid and supported by evidence such that Defendants' Offer was not reasonable in amount or timing.

7. That Plaintiffs did not have any bad faith motivations in bringing or maintaining any of the claims asserted in this case and never intended to harass Defendants in any manner.

8. That Plaintiffs did not have any bad faith motivation in filing the Motion for Sanctions.

9. That analysis of the Beattie Factors indicates it would not be reasonable to award Defendants' fees or costs in this matter.

10. That analysis of the Brunzell Factors indicates that, if it is determined that an

award of fees and costs is reasonable, it would still be reasonable to reduce the amount requested by Defendants in this matter.

11. That I have reviewed the attorney's fees and costs attached to Defendants' Motion and it appears there were numerous times the two law firms engaged by Defendants engaged in needlessly duplicative work.

12. That Defendants did not receive either a money judgment or a settlement in this matter, and thus cannot be a prevailing party under NRS 18.010 or NRS 18.020.

13. That Affiant prepared the Opposition to which this Affidavit is attached, and Affiant affirms that the facts and arguments as true and accurate to best of Affiant's information and belief.

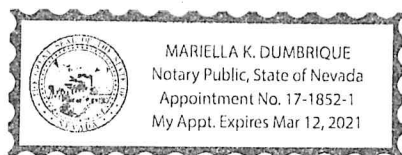
DATED this 13<sup>th</sup> day of May 2020.

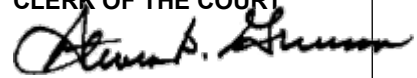
J. RUSTY GRAF, ESQ.

SWORN and SUBSCRIBED to before me on

This 13<sup>th</sup> day of May 2020.

NOTARY PUBLIC in and for said  
COUNTY and STATE





Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
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[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

Jeffrey L. Galliher, Esq.  
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Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Defendants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**DEFENDANTS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS**

Pursuant to NRS 18.020, NRS 18.005, NRS 18.110 and NRCP 68 Defendants, TODD  
SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST,  
a Trust of unknown origin; LYON DEVELOPMENT, LLC, (hereinafter referred to as

“Defendants”) by and through their counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., hereby moves this court to recover costs of suit. These costs were actually incurred and are reasonable in amount.

Defendants are entitled to recover statutory interest on the above costs from the date the costs were incurred through the date of entry of judgment pursuant to NRS 17.130 and *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of the calculation of prejudgment interest, the actual date or latest date each reasonable cost was incurred is set forth. Further, Defendants are entitled to post-judgment statutory interest from the date of entry of judgment.

| COST                        | DATE     | TOTAL      |
|-----------------------------|----------|------------|
| 1. Mediation deposit        | 7/16/18  | \$2,035.00 |
| 2. Runner                   | 7/23/19  | 29.10      |
| 3. Runner                   | 8/6/19   | 36.44      |
| 4. Filing fees              | 9/15/19  | 7.00       |
| 5. NVEFile                  | 10/15/19 | 3.50       |
| 6. Mediation final bill     | 11/7/19  | 49.50      |
| 7. Copies                   | 11/20/19 | 15.75      |
| 8. Copies                   | 11/22/19 | 15.65      |
| 9. Runner                   | 11/30/19 | 70.06      |
| 10. Deposition (Swanson I)  | 1/24/20  | 1404.30    |
| 11. Deposition (Whitfield)  | 1/29/20  | 908.10     |
| 12. Deposition (Gerber)     | 1/31/20  | 641.49     |
| 13. Deposition (Swanson II) | 2/6/20   | 587.02     |

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14. Copies

2/27/20

37.50

**TOTAL COSTS**

**\$5840.41**

DATED this 22nd day of April 2020.

GALLIHER LEGAL P.C.

*/s/ Jeffrey L. Galliher*

Jeffrey Galliher, Esq.

Nevada Bar No. 8078

1850 E. Sahara Ave., Suite 107

Las Vegas, NV 89104

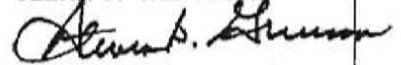
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 22<sup>nd</sup> day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** postage prepaid and addressed to the following:

Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3rd Floor  
Las Vegas, Nevada 89135  
rgraf@blacklobello.law  
swilson@blacklobello.law

*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC





Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
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[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

Jeffrey L. Galliher, Esq.  
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[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Defendants

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and NICOLE  
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

Defendant(s).

CASE NO.: A-18-782494-C  
DEPT. NO.: XXIV

**DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES**

COME NOW Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee of  
the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT, LLC,  
(hereinafter referred to as "Defendants") by and through their counsel of record CHRISTOPHER M.

1 YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC,  
2 and JEFFREY L. GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., and hereby reply  
3 in support of their motion for Attorney Fees and Costs pursuant to NRCP 68 and NRS 18.010.

4 This reply is made and based upon the attached points and authorities, affidavit, and all the  
5 pleadings, papers and files herein.

6 DATED this 2<sup>nd</sup> day of June 2020.

7 GALLIHER LEGAL P.C.

8 /s/ Jeffrey L. Galliher  
9 Jeffrey Galliher, Esq.  
10 Nevada Bar No. 8078  
11 1850 E. Sahara Ave., Suite 107  
12 Las Vegas, NV 89104

13 **INTRODUCTION**

14 It is hard to imagine a case more appropriate for an award of fees and costs. Before dismissing  
15 the Plaintiffs' case, this court acted cautiously and gave the Plaintiffs every opportunity to develop  
16 their case. But Plaintiffs could not present any evidence supporting their claims against the  
17 Defendants.

18 The Plaintiffs now attempt to side-step the evidence presented to the court and the clear record  
19 developed here in a desperate attempt to avoid the rightful sanction of reimbursing Defendants for  
20 their reasonable fees and costs incurred in defending this baseless case.

21 ***The Court Gave the Plaintiffs Every Opportunity to Develop Their Case Despite Significant***  
22 ***Deficiencies, but Plaintiffs Failed to Present Specific Facts to Defeat Summary Judgment***

23 The Plaintiffs initially filed their claim with six causes of action and included voluminous  
24 documents in purported support of their claims. When the Defendants filed a motion to dismiss  
25

1 Plaintiffs' ungrounded and improperly pled claims,<sup>1</sup> rather than even considering dismissal, the court  
2 denied the Defendants' motion and allowed the Plaintiffs to amend their Complaint.

3 Without otherwise changing a word in the allegations and claims, the Plaintiffs filed a First  
4 Amended Complaint. But, instead of bolstering their claims, the Plaintiffs simply added a seventh  
5 claim for piercing the corporate veil. The court dismissed all of the Plaintiffs' claims except the NRS  
6 Chapter 113 concealment and fraud claims. Plaintiffs were directed to file a Second Amended  
7 Complaint with the surviving claims.  
8

9 In a motion to dismiss the Plaintiffs' Second Amended Complaint, the Defendants presented  
10 evidence which negated a critical element of the Plaintiffs' claim. The evidence showed that the  
11 purportedly undisclosed leak had been repaired which, under Nevada law, negated the Defendants'  
12 duty to disclose.  
13

14 Even though the Plaintiffs could not present specific facts to rebut the evidence presented by  
15 the Defendants, under NRCP 56 standards, and even though the Plaintiffs filed a rogue and  
16 inappropriate motion for sanctions, the court delayed its ruling. Instead, the court threw the Plaintiffs  
17 a life-line and granted the Plaintiffs leave to conduct discovery and file a supplemental opposition  
18 with evidence that rebutted the Defendants' otherwise undisputed evidence.  
19

20 *The Discovery Supported Defendants' Defense, so the Plaintiffs Changed Course and Asserted  
21 Facts Unrelated to their Underlying Claims that Defendants Concealed Upon or System Defects*

22 The Plaintiffs engaged in virtually unbridled discovery for over 90 days. The parties produced  
23 thousands of pages of documents and conducted numerous depositions. But the Plaintiffs' still came  
24 up empty. Thereafter, in opposing the Defendants' motion for dismissal/summary judgment, the  
25 Plaintiffs claimed *Nelson v. Heer* did not apply, and presented irrelevant facts which had nothing to  
26

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27 <sup>1</sup> For instance, the Plaintiffs asserted claims for Deceptive Trade Practices and Civil RICO, without alleging most of the  
28 required elements. The Plaintiffs' fraud claim was not pled with specificity and only survived (until its ultimate  
dismissal) because the court determined that claim was fact-dependent.

do with their underlying claim that the Defendants concealed “a systemic plumbing defect” in the Uponor system.

### ARGUMENT

#### *The Plaintiffs’ Opposition Relies on the Same Specious Arguments Already Rejected by this Court*

Contrary to Plaintiffs’ assertion, discovery did *not* uncover “numerous leaks, some of which were not repaired”. What Plaintiffs refer to is the desperate attempt by Plaintiffs themselves to infer that there was a leak in the basement bathroom of the residence based solely on 2 photos taken in May of 2015 which purportedly show 3-4 drops of water in the basement bathroom. It cannot be stated clearly enough that Plaintiffs’ repeated claims that the “leak” in the basement bathroom referenced in the May 2015 inspection by Caveat Emptor forms the basis for a cognizable claim are patently absurd.

The undisputed evidence in the case is that Rakeman Plumbing, a licensed plumbing contractor, investigated the area where the photos showed drops of water and found no “leak”. In the 5 years since then, including more than 2 years where the Plaintiffs themselves have lived in the property, there has never been any evidence of a “leak” at that location. Presumably a “leak which was never repaired” would still exist. After all, it is axiomatic that leaks don’t repair themselves. So if, as Plaintiffs suggest, there was a “leak” in the basement bathroom and that “leak” was never repaired, then where is the evidence that the “leak” persists? There is none. The more realistic conclusion is that the few drops of water that were present in May 2015 were not from a “leak”, but instead from a spill or other temporary condition which has never re-occurred despite the passage of more than 5 years. The idea that a few drops of water in a photograph five years ago – never to be seen again – materially affects the value of a \$3,000,000.00 house is preposterous. And if the condition does not materially affect the value of the property it need not be disclosed under Nevada law.

1 Plaintiffs' claim that the instant lawsuit was based upon "multiple leaks" is also non-sensical.  
2 The Plaintiffs claim they did not know about any leaks which occurred prior to 2017 until taking  
3 discovery. How could the suit possibly be based upon leaks that Plaintiffs didn't know about when  
4 they filed the suit? Further, none of the earlier leaks implicated the Uponor system which is the basis  
5 for Plaintiffs' claim of a "systemic defect" requiring disclosure. The reality is that Plaintiffs' case is  
6 predicated on the February 2017 leak and the November 2017 leak, as clearly stated in their pleadings.  
7 However, as pointed out in the instant motion, the evidence that the February leak had been  
8 repaired, the Rakeman Plumbing invoice showing the repair to be completed, was attached as an  
9 exhibit to the complaint itself. The November 2017 leak is a non-issue because it was disclosed prior  
10 to closing in Addendum 4A to the Purchase Agreement. Therefore, the evidence which directly refutes  
11 the allegations in the complaint was contained within the complaint itself.

12  
13  
14 ***The Plaintiffs' Invented Claim that the Defendants Concealed Mold is Utterly Unsupported by Any  
Evidence and in Bad Faith***

15 In their Supplement and as argued before this court, the Plaintiffs presented a blatant un-truth  
16 – that the Defendants knew that the property had a mold issue *before closing*. The court did not  
17 challenge the Plaintiffs' misrepresentation, but determined the Plaintiffs waived their right to object  
18 to the mold because they knew there was a pending test and they could have delayed the closing until  
19 after the test came back.  
20

21 However, in the instant Opposition, the Plaintiffs' state that "Plaintiff (sic) asserted that there  
22 was never any mold that existed at this residence. This is also false, as the condition existed at the time  
23 of the closing." Opposition at page 4, lines 12-13. Assuming that this passage actually was intended  
24 to claim that Dr. Swanson failed to disclose a known condition of mold when he completed the SRPD  
25 on October 24, 2017, such a claim is blatantly false and intentionally misleading. There can be no  
26 dispute that the first evidence of mold at the property was contained in the report dated November 24,  
27  
28

1 2017 which was a month AFTER the SRPD was completed and a week AFTER escrow closed on the  
2 sale to Plaintiffs. While it is true that the mold *testing* was done on November 17, 2017 (the same  
3 date as closing) the *results* were not had until a week later. Furthermore, those results were never  
4 provided to Dr. Swanson until his deposition in 2020, since as of the date of the report he was no  
5 longer the owner of the property. (See, excerpt of the Deposition of Todd Swanson, M.D., Volume II  
6 at page 303, lines 6-18, attached hereto as Exhibit "J") Finally, after the positive mold result was  
7 reported the property was remediated at no expense to Plaintiffs and a subsequent test revealed no  
8 mold. No test since that time has ever resulted in a positive mold result.

10 ***The Plaintiffs' Sanctions Motion Was Inappropriate, Vexatious and in Bad Faith***

11 Plaintiffs lament that Defendants "repeatedly deem 'inappropriate'" the countermotion for  
12 sanctions filed by Plaintiffs. But the characterization of the motion for sanctions as "inappropriate"  
13 originated with the Court, not Defendants. (See, the Court's minute order of November 7, 2019  
14 attached as Exhibit B to Defendants' Motion for Fees and Costs which states in relevant part "the  
15 Court was inclined ...to deny to (sic) inappropriately filed counter motion for sanctions".)  
16 Nevertheless, Plaintiffs' conduct in the case is indicative of the motives behind bringing the case in  
17 the first place. When combined with the dubious factual basis of the case itself, filing a frivolous, or  
18 "inappropriate," motion for sanctions indicates a deeper motive beyond merely seeking legal redress.  
19 It is an indicator that Plaintiffs sought to punish Defendants because Plaintiffs assumed that Dr.  
20 Swanson was aware of the need to re-pipe the house prior to selling it. Discovery has established that  
21 was not the case. The Plaintiffs' misguided desire for retribution colored the decision making by  
22 Plaintiffs to the point where Defendants' good faith, even generous, offer to settle the case went  
23 ignored.

26 ///

27 ///



*The Plaintiffs' Damages Claims Are Speculative and Unsupported by Any Evidence*

Plaintiffs claim that their damage claims of \$300,000.00 for "Fraud" and \$100,000.00 for "Bad Faith" "were calculated as the result of both (1) the need to complete a re-pipe of the entire residence due to the systemic issues with the plumbing system; (2) the likely affect to the value of the home due to the multiple water leaks that will be required to be reported going forward; and (3) the additional expenses Plaintiffs incurred for additional living expenses due to their home remaining non-functional for such a significant period of time." Opposition at page 12, lines 2-7.

This attempted justification falls short for many reasons. First, there is no evidence that Plaintiffs paid *any* of the costs to re-pipe the house. All indications are that Uponor bore that cost as a warranty expense based upon a manufacturing defect in the Uponor piping. Despite producing over 5,400 pages of documents in this case Plaintiffs never produced a single page which indicated that they paid a penny towards the re-piping of the house.

Second, the only evidence adduced in the case regarding the effect of the re-piping or other leak issues on the value of the house indicated that there would *not* be a negative effect on the property value. Ivan Sher, a Realtor with decades of experience selling luxury properties in Las Vegas, testified that he had personal experience with homes in the same neighborhood that had suffered "seven figures in water damage" and positive mold tests but had nevertheless subsequently sold at a premium:

10 · · · And -- and he was -- I think he was  
11 · frustrated. · He said that -- you know, that -- that  
12 · things were not looking good and that the buyers were  
13 · painting the picture that their house is permanently  
14 · damaged and that it'll never -- it'll never be able  
15 · to get the -- that they're going to lose money because  
16 · of the stigma of the plumbing issue, and he wanted my  
17 · thoughts on that. · He didn't ask me to present  
18 · anything. · He just wanted my thoughts on that.  
19 · · · · · And I said -- I said, "I absolutely don't  
20 · believe that." · And I said, "I don't believe it because  
21 · it's not like they're in a fire where there's -- you  
22 · know, there's fumes afterwards. · It's not like in a

23 situation -- it's -- the broken parts of the house were  
24 fixed; so it's a better version of what it was before."  
25 . . . . . And -- and I expressed that here -- there was

1 a home across the -- just one street over that I sold  
2 for -- I think it was \$6 million, and there was seven  
3 figures in water damage to that house in litigation,  
4 and they reconstructed and sold it for a premium  
5 because it was a style and a design that people liked  
6 and it had great views, and that's hard to find.  
7 . . . . . And so I guess that was my basis of  
8 understanding. Since then, I've worked in other homes  
9 where they've had floods and they came in and -- as a  
10 result of an insurance settlement, came in and redid  
11 the house, and the home would sell for a premium above  
12 what the market was, regardless of the water damage,  
13 and the water damage was fully disclosed in every  
14 situation.

15 . . . Q. So were -- in those other examples that you  
16 just gave, was there any mold tests that were positive?

17 . . . A. Yes.

18 . . . Q. Was the mold or the prior existence of the  
19 mold disclosed?

20 . . . A. Yes.

21 . . . Q. So what are the addresses of those homes?

22 . . . A. One is 15 Hawk Ridge. That's going to be the  
23 biggest case. And the other one I'll have to get for  
24 you.

25 . . . Q. Okay.

1 A. The other one's on Meadowhawk. I think it's

2 82 Meadowhawk, but I'll get that for you as well.

3 . . . . . And we were presented with a whole

4 environmental study and the mold that was done and the

5 gutting of the house and everything.

*Deposition of Ivan Sher, Page 122, line 10- Page 124, line 5,*

Finally, Plaintiffs have likewise never produced any documentation or other evidence that they incurred any "additional expenses ... for additional living expenses due to their home remaining non-functional for such a significant period of time." The calculation of damages disclosed by Plaintiffs includes no component of special damages. No affidavit, declaration or other testimony has been produced by Plaintiffs to support such a claim. Without that information being provided it could not



1 have been possible for Defendants to consider such alleged damages when making their offer of  
2 judgment. Even if Plaintiffs' new claim for "additional living expenses" could be substantiated, these  
3 are not damages allowable under NRS 113.150(4) ("purchaser is entitled to recover from the seller  
4 treble the **amount necessary to repair or replace the defective part of the property**, together with  
5 court costs and reasonable attorney's fees. ") Nev. Rev. Stat. § 113.150 (Emphasis added).  
6

7 Plaintiffs argue that any offer less than the \$400,000.00 of "damages" alleged in their  
8 computation of damages, plus their accrued attorney's fees and costs, cannot be in good faith. *See*  
9 *Opposition* at page lines 12-15. But any settlement is a compromise. Under the facts here: where  
10 Plaintiffs had not disclosed any real out-of-pocket costs, where the precedential case law weighed  
11 heavily against any recovery, where the applicable statute dictated that Plaintiffs likely waived the  
12 bulk of any potential damages and where the court had indicated in open court its inclination to grant  
13 a pending dispositive motion, rejecting a six-figure settlement was grossly unreasonable.  
14

15 While Plaintiffs correctly assert that "[t]he Court's inclination was not an actual decision" it  
16 was vital information available to the Plaintiffs as a factor to be considered regarding the likelihood  
17 that their case would succeed, or even proceed, on its merits. In the face of a substantial offer of  
18 judgment, Plaintiffs ignored that information at their peril.  
19

20 *Throughout This Case, the Plaintiffs Ignored - and Continue to Ignore – Controlling Nevada Law*

21 Throughout their *Opposition*, Plaintiffs stubbornly cling to a string of irrelevant facts and their  
22 continued refusal to accept the clear precedent of *Nelson v. Heer* to avoid the realities of this case.  
23 The recirculating pumps replaced by a licensed contractor in 2015 were simply not a condition which  
24 required disclosure. Further, they were not part of the Uponor system which was ultimately deemed  
25 defective in late 2017 or early 2018 and required replacement. The few drops of water spotted in the  
26 basement bathroom ONE TIME in 2015, never to be seen again, could certainly never reasonably  
27 form the basis for a claim like the one brought in this case.  
28

1 The only relevant “leaks” are the two which occurred in 2017: the first leak (February) was  
2 repaired as evidenced by the invoice attached to Plaintiffs’ complaint; the second leak (November)  
3 was disclosed in Addendum 4A and with that knowledge Plaintiffs nevertheless closed escrow.

4 *In Their Motion, the Defendants Amply Established the Brunzell Factors*

5 Plaintiffs argue that “this matter was not difficult to handle”. However, that characterization  
6 belies the fact that defense counsel had to prepare for and participate in 6 separate depositions over  
7 the period of only a couple of weeks. During that same time Plaintiffs were producing thousands of  
8 pages of documents from multiple sources.

9 Plaintiffs also ignore the inherent difficulty of litigating a case where the opposition is  
10 constantly evolving, as it was in this case. Initially, Plaintiffs’ complained that Defendants failed to  
11 disclose the Uponor warranty issue. Then that switched to a failure to disclose the earlier 2017 leak  
12 which eventually became a general failure to disclose issues from as far back as 2105. Plaintiffs are  
13 correct that Defendants believed the case was easily analyzed under *Nelson*. But Plaintiffs’ stubborn  
14 refusal to accept that fact made defending the case more difficult than it needed to be.

15 Plaintiffs’ suggestion that “on September 19 and September 20, 2019 both firms worked on  
16 the affidavit of Aaron Hawley” is in error. After Mr. Galliher associated as counsel in late November  
17 2019, Galliher Legal PC assumed the role as lead firm, including billing the Defendants. Included on  
18 the first billing was work completed by Mr. Hopkins in September when he worked through Mr.  
19 Young’s firm. Mr. Hopkins has worked Of Counsel to both firms at various points in the case. The  
20 claim put forth that “Mr. Hopkins cannot possibly work for both Nevada law firms at the same time  
21 and be deemed to have done so reasonably in terms of time and amount” is non-sensical. Plaintiffs’  
22 argument is akin to saying a lawyer can only work on one case at a time. Further, it suggests that  
23 multiple lawyers in one firm are “double billing” when they work together on a case.

1 A careful review of the bills submitted makes it clear that there were no instances of "double  
2 billing" as suggested by Plaintiffs. The duties of counsel for the defense were clearly defined  
3 internally and coordination between counsel is not the same as "double billing". This argument seems  
4 hypocritical since at least three lawyers from Plaintiffs' counsel's firm billed on the case. Further, all  
5 three lawyers who worked on this case on the defense side charged LESS per hour than the most junior  
6 associate at Black & Lobello despite the fact that they average more than 20 years of litigation  
7 experience between them.  
8

9 Plaintiffs misunderstand the characterization of the work as "unnecessary". It was unnecessary  
10 from the standpoint that Plaintiffs case was doomed by its facts, and no amount of discovery was  
11 going to change those facts. However, once Plaintiffs rejected the offer of judgment and charged  
12 ahead with extensive discovery, defense counsel's participation became absolutely required.  
13

14 *Fees Are Warranted Under NRS 18.010(2)(b)*

15 Plaintiffs' characterization of the holding in *Singer v. Chase Manhattan*<sup>2</sup> is grossly  
16 misleading. While the *Singer* court specifically notes that the decision under review was not issued  
17 pursuant to NRS 18.010(2)(b)<sup>3</sup>, the reasoning cited to in Plaintiffs' opposition, including reference to  
18 Chief Justice Steffen's concurrence, relates solely to requests for fees brought under NRS 18.010(2)(a)  
19 as a *prevailing party*. But Defendants' request for fees and costs since inception of suit herein is clearly  
20 brought under NRS 18.010(2)(b) which provides that "the district court may make an allowance of  
21 attorney's fees to a prevailing party if it finds that the claim of the opposing party "was brought without  
22

23  
24 <sup>2</sup> *Singer v. Chase Manhattan Bank*, 111 Nev. 289 (Nev. 1995).

25 <sup>3</sup> NRS 18.010(2) provides for an award of attorney's fees in two circumstances only. Pursuant to NRS 18.010(2)(b), the  
26 district court may make an allowance of attorney's fees to a prevailing party if it finds that the claim of the opposing  
27 party "was brought without reasonable ground or to harass the prevailing party." In this case, the district court's  
28 judgment included an express finding that appellants' claims were not brought in bad faith. Therefore, it is apparent that  
the district court did not award attorney's fees pursuant to NRS 18.010(2)(b). *Singer v. Chase Manhattan Bank*, 111 Nev.  
289, 293 (Nev. 1995)

1 reasonable ground or to harass the prevailing party." " *Singer v. Chase Manhattan Bank*, 111 Nev.  
2 289, 293 (Nev. 1995). *See also* Defendants' Motion for Attorneys' Fees and Costs at page 14, line 10  
3 – page 16, line 14.

4 "In *Bergmann*, this court stated: "In assessing a motion for attorney's fees under NRS  
5 18.010(2)(b), the trial court must determine whether the plaintiff had reasonable grounds for its claims.  
6 Such an analysis depends upon the actual circumstances of the case. . . ." " *Semenza v. Caughlin*  
7 *Crafted Homes*, 111 Nev. 1089, 1095 (Nev. 1995). Here, the reality that Plaintiffs had actual  
8 knowledge of the very facts which defeated their claim at the time of filing the complaint establishes  
9 that the circumstances here warrant an award of fees and costs. The decision to pursue this case when  
10 the very evidence that disproves it is known to Plaintiffs at the time of filing – and in this case even  
11 attached to the complaint itself – is clear evidence of the frivolity of the claim. It is actually difficult  
12 to imagine a more blatant example of a "lack of reasonable grounds" for a lawsuit than when the very  
13 allegations in the complaint, and the documents attached to it, are fatal to the Plaintiffs' cause.

14 Plaintiffs' arguments that this case can be seriously distinguished from *Nelson* have no merit.  
15 If anything, the facts in *Nelson*, where a cabin was virtually destroyed by major flooding and required  
16 a near total re-build, were much more egregious than any possible set of facts in this case where minor  
17 leaks, fully repaired by licensed contractors, had no material effect on the value of a \$3,000,000 luxury  
18 home. If, under Nevada law, the seller in *Nelson* was not required to disclose the near total destruction  
19 of that property and the corresponding massive re-build, then Plaintiffs could have had no reasonable  
20 belief that Defendants here were obligated to disclose a minor leak which was immediately discovered  
21 and timely repaired to like new condition by a licensed contractor.

22 Plaintiffs aver that the few drops of a water spotted in the basement bathroom on a single  
23 occasion in May 2015 constitutes "credible evidence" that Defendants failed to disclose a condition  
24 that materially affected the value of this \$3,000,000.00 home, thus justifying their filing of the  
25

1 complaint in this case. See Opposition at page 22, line 20-Page 23, line 5. Notwithstanding the  
2 uncontroverted fact that Plaintiffs didn't become aware of those drops of water until more than a year  
3 after filing the complaint, the mere discovery of a few drops of water in a bathroom during a home  
4 inspection does not rise to the level of a condition materially affecting the value of this property.  
5 Further, Dr. Swanson testified that he reported the finding by his home inspector to the builder and  
6 that, despite looking for it, a licensed plumber could not identify a leak in the area. Added to that is  
7 Dr. Swanson's testimony that in the ensuing 2 ½ years he used that bathroom regularly and never saw  
8 evidence of a leak as well as the fact that Plaintiffs themselves have had possession for more than two  
9 years and have not presented any evidence of an unrepaired leak at that location. These facts do not  
10 constitute "credible evidence" that there has been an unrepaired (apparently invisible) leak in the  
11 basement bathroom for 5 years which has materially affected the value of the property. Rather, it is  
12 the slimmest of probabilities, with no factual basis, representing a Hail Mary by the Plaintiffs to justify  
13 their stubborn prosecution of this case without any credible evidence to support it.  
14

15  
16 ***Defendants are Entitled to Fees and Costs as the Prevailing Party***

17 Plaintiffs cannot argue Defendants did not prevail in this case. Yet, Plaintiffs cite to the 1997  
18 Nevada Supreme Court decision in the case of *Parodi v. Budetti* for the proposition that since  
19 Defendants herein did not receive a money judgment then they are not the prevailing party. But *Parodi*  
20 doesn't say that at all. It is clear that the reason the Supreme Court decided *Parodi* was because it  
21 represented a case of first impression with respect to the issue of multiple consolidated cases with  
22 variable outcomes. That is not the case here. Under Plaintiffs' reasoning it would be virtually  
23 impossible for a defendant to ever be a "prevailing party" since a defense verdict or decision rarely  
24 includes a money judgment.  
25  
26  
27  
28



1 But many cases have awarded costs to a prevailing defendant. In the matter of *Coker*  
2 *Equipment Co. v. Wittig*, 366 F. App'x 729 (9th Cir. 2010), the Ninth Circuit affirmed an award of  
3 costs under NRS 18.020 to a defendant who had prevailed on summary judgment.

4 In Nevada, even third-party defendants may recover their costs after prevailing on summary  
5 judgment. *Copper Sands Homeowners Ass'n, Inc. v. Flamingo*, 94 Ltd. Liab., 335 P.3d 203 (Nev.  
6 2014).

7  
8 Even a voluntary dismissal by a plaintiff may confer "prevailing party" status upon a  
9 defendant for the purposes of NRS 18.020 treatment. *145 E. Harmon II Tr. v. Residences at MGM*  
10 *Grand - Tower A Owners' Ass'n*, 136 Nev., Advance Opinion 14 (Nev. Apr. 2, 2020). In that very  
11 recent case the Nevada Court of Appeals held that the voluntary dismissal by the plaintiff in the face  
12 of a dispositive motion which was likely to be granted "was substantively a judgment on the merits.  
13 Accordingly, the [defendant] was the prevailing party for purposes of NRS 18.010(2) and 18.020."  
14 *Id.* at 10 (Nev. Apr. 2, 2020)  
15

16 Under the circumstances of this case there can be no question that Defendants are the  
17 "prevailing party" and are entitled to costs and fees under NRS 18.010(2) as well as 18.020.

### 18 CONCLUSION

19 Pursuant to NRS 18.020, Defendants must be awarded their costs incurred in the amount of  
20 \$6,427.26. Pursuant to NRS 18.010(2)(b) Defendants should be awarded their attorney's fees incurred  
21 since the inception of this case in the amount of \$82,021.50. In the alternative, pursuant to NRCP 68  
22 Defendants should be awarded their attorney's fees accrued since December 11, 2019 in the amount  
23

24 ///

25 ///

26 ///

27 ///

GALLIHER LEGAL P.C.  
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1 of \$39,447.00.

2 DATED this 2nd day of June 2020.

3 GALLIHER LEGAL P.C.

4 */s/ Jeffrey L. Galliher*

5 Jeffrey Galliher, Esq.

6 Nevada Bar No. 8078

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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 3rd day of June 2020 and pursuant to NRCP 5(b), I caused the foregoing **REPLY IN SUPPORT OF MOTION FOR ATTORNEYS FEES AND COSTS** to be served upon the following through the Court's electronic filing system:

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*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC



# EXHIBIT J

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*  
JOSEPH FOLINO, an individual  
and NICOLE FOLINO, an  
individual,  
Plaintiffs,  
vs. Case No. A-18-782494-C  
Dept. No. XXIV  
TODD SWANSON, an individual;  
TODD SWANSON, Trustee of the  
SHIRAZ TRUST; SHIRAZ TRUST, a  
Trust of unknown origin; LYONS  
DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES  
I through X; and ROES I through  
X,  
Defendants.  

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VIDEO TELECONFERENCE DEPOSITION OF  
TODD SWANSON, M.D.  
VOLUME II  
Taken on February 6, 2020  
at 9:34 a.m.  
By a Certified Court Reporter  
Las Vegas, Nevada  
Stenographically reported by:  
Heidi K. Konsten, RPR, CCR  
Nevada CCR No. 845 - NCRA RPR No. 816435  
JOB NO. 604719

1 Video teleconference deposition of TODD  
2 SWANSON, M.D., Volume 2, stenographically taken at  
3 10777 West Twain, Las Vegas, Nevada, on Thursday,  
4 February 6, 2020, at 9:34 a.m., before Heidi K.  
5 Konsten, Certified Court Reporter in and for the  
6 State of Nevada.

7

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24

25 \* \* \* \* \*

26

27

28

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31

1 Q And it goes through 1831. And then in  
2 that same e-mail is 1832 through 1837, which will  
3 be Exhibit 36, which is the report you've already  
4 seen, the December 7th report.

5 A Okay.

6 Q So Exhibit 35 is the November 24, 2017,  
7 Infinity Environmental Services report. And it  
8 says "To whom it may concern. Rakeman Plumbing,"  
9 and it's "Fungal Indoor Air Quality Assessment  
10 Report: Visual, Airborne and Surface Fungal  
11 Assessment. Water-damaged master bedroom closet  
12 set, 42 Meadowhawk Lane, Las Vegas, Nevada 89135."

13 And that's the address of this home;  
14 correct, Doctor?

15 A Yes.

16 Q Have you ever seen this report before,  
17 Doctor?

18 A I have not.

19 Q Were you ever told by Rakeman Plumbing  
20 that the home had tested positive for mold?

21 A Not that I recall.

22 Q Okay. Would you have done anything  
23 differently with the seller's real property  
24 disclosure form if you were made aware of this  
25 report?