

IN THE SUPREME COURT STATE OF NEVADA

Electronically Filed
Mar 12 2021 03:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Appellant,

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,

Respondent.

Case No. 81252

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

Appellant,

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,

Respondent.

Case No. 81831

**APPEAL
FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JIM CROCKETT CASE NO. A-18-782494-C**

**JOINT
APPENDIX ON APPEAL
VOLUME XVII OF XIX
INDEX TO APPELLANTS' APPENDIX OF RECORD**

VOLUMES

No.	Date of Item	Description	Vol.	Bates Nos.
------------	---------------------	--------------------	-------------	-------------------

VOLUME I

1.	08/05/2006	Appellant's Appendix from Nelson v. Heers Appeal No. 45571 (Part 1)	I	JA000001 JA000200
----	------------	---	---	----------------------

VOLUME II

2.	08/05/2006	Appellant's Appendix from Nelson v. Heers Appeal No. 45571 (Part 2)	II	JA000201 JA000248
3.	10/09/2018	Complaint	II	JA000249 JA000325
4.	10/12/2018	Summons – Todd Swanson	II	JA000326 JA000327
5.	10/12/2018	Summons – Lyons Development	II	JA000328 JA000329
6.	10/12/2018	Summons – Shiraz Trust	II	JA000330 JA000331

7.	10/23/2018	Declaration of Service – Summons - Lyons Development	II	JA000332
8.	01/04/2019	Acceptance of Service on Behalf of Defendant Todd Swanson, an individual, Todd Swanson, Trustee of the Shiraz Trust, and Shiraz Trust	II	JA000333 JA000334
9.	02/04/2019	Defendant’s Initial Appearance Fee Disclosure	II	JA000335 JA000336
10.	02/04/2019	Defendant’s Motion to Dismiss and/or Motion for More Definite Statement	II	JA000337 JA000349
11.	02/07/2019	Plaintiff’s Request for Exemption from Arbitration	II	JA000350 JA000355
12.	02/13/2019	Plaintiffs’ Opposition to Defendant’s Motion to Dismiss and/or Motion for More Definite Statement; Countermotion to Amend Complaint	II	JA000356 JA000368
13.	02/13/2019	[Proposed] First Amended Complaint (Part 1)	II	JA000369 JA000407

VOLUME III

14.	02/13/2019	[Proposed] First Amended Complaint (Part 2)	III	JA000408 JA000446
15.	03/26/2019	Notice of Re-Hearing re: Defendant’s Motion to Dismiss and/or Motion for More Definite Statement and Plaintiff’s Countermotion to Amend the Complaint	III	JA000447 JA000449

16.	04/02/2019	Defendant's Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss and/or Motion For More Definite Statement; Countermotion to Amend the Complaint	III	JA000450 JA000458
17.	04/18/2019	Notice of Entry of Order on Defendants' Motion to Dismiss and/or Motion for More Definite Statement; Countermotion to Amend the Complaint	III	JA000459 JA000461
18.	04/18/2019	Order on Defendants' Motion to Dismiss and/or Motion for More Definite Statement; Countermotion to Amend the Complaint	III	JA000462 JA000465
19.	05/20/2019	Defendant's Motion to Dismiss Plaintiff's First Amended Complaint	III	JA000466 JA000486
20.	05/21/2019	Clerk's Notice of Hearing re: Defendant's Motion to Dismiss Plaintiff's First Amended Complaint	III	JA000487 JA000488
21.	06/05/2019	Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	III	JA000489 JA000501
22.	07/03/2019	Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	III	JA000502 JA000507

23.	07/18/2019	Minute Order - Defendant's Motion to Dismiss Plaintiff's First Amended Complaint	III	JA000508
24.	08/14/2019	Notice of Entry of Order Defendants' Motion to Dismiss the Plaintiff's First Amended Complaint	III	JA000509 JA000511
25.	08/14/2019	Order - Defendants' Motion to Dismiss the Plaintiff's First Amended Complaint	III	JA000512 JA000525
26.	9/03/2019	Plaintiff's Second Amended Complaint	III	JA000526 JA000595
27.	09/24/2019	Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	III	JA000596 JA000621
28.	09/25/2019	Clerk's Notice of Hearing re: Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	III	JA000622 JA000623

VOLUME IV

29.	10/03/2019	Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint	IV	JA000624 JA000645
30.	10/31/2019	Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint	IV	JA000646 JA000658
31.	11/20/2019	Notice of Early Case Conference	IV	JA000659 JA000661

32.	11/20/2019	Plaintiffs' Initial List of Witnesses and Production of Documents Pursuant to NRCP 16.1	IV	JA000662 JA000724
33.	11/26/2019	Notice of Association of Counsel	IV	JA000725 JA000727
34.	12/06/2019	Declaration of Service of SDT COR Rakeman Plumbing, Inc.	IV	JA000728
35.	12/09/2019	Affidavit of Service - Frontsteps	IV	JA000729 JA000730
36.	12/10/2019	Declaration of Service – Lyons Development LLV – SDT COR	IV	JA000731
37.	12/10/2019	Declaration of Service – The Summerlin Association COR	IV	JA000732
38.	12/10/2019	Declaration of Service – Ivan Sher Group – SDT COR	IV	JA000733
39.	12/19/2019	Declaration of Service – Americana LLC – SDT COR		JA000734
40.	12/19/2019	Declaration of Service – Las Vegas Homes and Fine Estates – SDT COR	IV	JA000735
41.	12/19/2019	Declaration of Service – Repipe Specialist – SDT COR	IV	JA000736
42.	12/19/2019	Declaration of Service – The Ridges Community Assoc. – SDT	IV	JA000737
43.	12/26/2019	Declaration of Service – Uponor, Inc.	IV	JA000737
44.	12/30/2019	Production of Documents - PLT000054 – PLT000064	IV	JA000739 JA000749
45.	12/30/2019	Plaintiffs' First Supplemental Lists of Witnesses and Production of Documents Pursuant to NRCP 16.1	IV	JA000750 JA000759

46.	01/02/2020	Plaintiff's Notice of Subpoena Pursuant to NRCP 45(A)(4)(A)	IV	JA000760 JA000798
47.	01/02/2020	Video Taped Deposition Subpoena – Kelly Contenta	IV	JA000799 JA000802
48.	01/02/2020	Video Taped Deposition Subpoena – Ivan Sher	IV	JA000803 JA000806
49.	01/02/2020	Video Taped Deposition Subpoena – Nicole Whitfield	IV	JA000807 JA000810
50.	01/13/2020	Declaration of Service – Galliher- Rescheduled Videotaped Depo of Swanson, PMK Shiraz and PMK Lyons	IV	JA000811
51.	01/13/2020	Declaration of Service – Young - Rescheduled Videotaped Depo of Swanson, PMK Shiraz and PMK Lyons	IV	JA000812
52.	01/14/2020	Plaintiffs' Second Supplemental List of Witnesses and Production of Documents Pursuant to NRCP 16.1	IV	JA000813 JA000822
53.	01/14/2020	Declaration of Service SDT – Absolute Closets & Cabinetry	IV	JA000823

VOLUME V

54.	01/14/2020	Document Production – PLT000065 – PLT0000156	V	JA000824 JA000915
55.	01/14/2020	Galliher – Declaration of Service Rescheduled Depositions of William Gerber and Aaron Hawley	V	JA000916
56.	01/14/2020	Misc Filing Kirby C. Gruchow Jr. (Part 1 Pgs 1-107)	V	JA000917 JA001023

VOLUME VI

57.	01/14/2020	Misc Filing Kirby C. Gruchow Jr. (Part 2)	VI	JA001024 JA001066
58.	01/14/2020	Misc Filing Kirby C. Gruchow Jr. (Part 3)	VI	JA001067 JA001223

VOLUME VII

59.	01/14/2020	Misc Filing Kirby C. Gruchow Jr. (Part 4)	VII	JA001224 JA001315
60.	01/14/2020	Misc Filing Kirby C. Gruchow Jr. (Part 5)	VII	JA001316 JA001423

VOLUME VIII

61.	01/14/2020	Misc Filing Kirby C. Gruchow Jr. (Part 6)	VIII	JA001424 JA001524
62.	01/14/2020	Plaintiffs' Third Supplemental List of Witnesses and Production of Documents Pursuant to NRCP 16.1	VIII	JA001525 JA001534
63.	01/14/2020	SDT Decl Srv Video Depo Sher Group	VIII	JA001535
64.	01/14/2020	SDT Decl Srv Video Depo Absolute	VIII	JA001536
65.	01/14/2020	Young – Decl Srv Reschedule Depo Aaron Hawley	VIII	JA001537
66.	01/15/2020	Amd Cert of Srv Plt Production of Fourth Supp List of Witnesses and Documents	VIII	JA001538 JA001540
67.	01/15/2020	Decl Srv SDT – EH Designs	VIII	JA001541
68.	01/15/2020	Decl Srv SDT – Infinity Environmental Srv.		JA001542

69.	01/15/2020	Decl Srv SDT – Kelly Cotenta	VIII	JA001543
70.	01/15/2020	Plaintiffs’ Fourth Supplemental List of Witnesses and Production of Documents Pursuant to NRCP 16.1	VIII	JA001544 JA001553
71.	01/23/2020	Declaration of Service re SDT and Video Depo – Nicole Whitfield	VIII	JA001554
72.	01/24/2020	Plaintiffs’ Fifth Supplemental List of Witnesses and Production of Documents Pursuant to NRCP 16.1	VIII	JA001555 JA001565
73.	02/04/2020	Notice of Continuance of (Zoom Conferencing) Deposition of Swanson	VIII	JA001566 JA001570
74.	02/05/2020	Plaintiffs’ Sixth Supplemental Lists of Witnesses and Production of Documents Pursuant to NRCP 16.1	VIII	JA001571 JA001582
75.	02/07/2020	Stipulation and Order for Sixty (60) Day Continuing Production of Plaintiffs’ Brief and Hearing Date	VIII	JA001583 JA001587
76.	02/11/2020	Notice of Entry of Stipulation and Order for Sixty (60) Day Continuing Production of Plaintiffs’ Brief and Hearing Date	VIII	JA001588 JA001594
77.	02/13/2020	Plaintiffs’ Supplemental List of Witnesses and Production of Documents	VIII	JA001595 JA001610
78.	02/13/2020	Plaintiffs’ Supplemental Brief to Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Second Amended Complaint	VIII	JA001611 JA001634

VOLUME IX

79.	02/27/2020	Defendants Todd Swanson; Todd Swanson as, Trustee of the Shiraz Trust; and Lyon Development, LLC's Supplemental Reply in Support of Motion for Summary Judgment	IX	JA001635 JA001825
-----	------------	---	----	----------------------

VOLUME X

80.	02/27/2020	Defendants Todd Swanson; Todd Swanson as, Trustee of the Shiraz Trust; and Lyon Development, LLC's Supplemental Reply in Support of Motion for Summary Judgment	X	JA001826
81.	03/10/2020	Acceptance of Service – Amended – Videotaped Deposition Subpoena for Ashely Oakes-Lazosky	X	JA001827
82.	03/20/2020	Transcript of Hearing Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	X	JA001828 JA001850
83.	04/07/2020	Transcript of Hearing Defendant's Motion To Dismiss Plaintiff's Second Amended Complaint	X	JA001851 JA001868
84.	04/22/2020	Defendants' Motion for Attorney's Fees and Costs	X	JA001869 JA001946

85.	04/22/2020	Defendants' Verified Memorandum of Costs and Disbursements	X	JA001947 JA001950
86.	04/23/2020	Notice of Hearing re: Defendants' Motion for Fees and Costs	X	JA001951
87.	04/24/2020	Plaintiffs' Motion to Retax Costs	X	JA001952 JA002042
88.	04/27/2020	Clerks Notice of Hearing re: Plaintiffs' Motion to Retax Costs	X	JA002043
89.	04/29/2020	Status Check Order re: Continue Hearing Motion to Retax and Motion for Fees and Costs	X	JA002044
90.	05/11/2020	Order Granting Dismissal of Plaintiffs' Second Amended Complaint	X	JA002045 JA002064

VOLUME XI

91.	05/11/2020	Opposition to Defendants' Motion for Attorney's Fees and Costs	XI	JA002065 JA002206
92.	05/13/2020	Errata to Opposition to Defendants' Motion for Attorney's Fees and Costs	XI	JA002207 JA002211
93.	05/13/2020	Notice of Entry of Order Granting Motion to Dismiss Plaintiffs' Second Amended Complaint	XI	JA002212 JA002234
94.	05/26/2020	Notice of Appeal	XI	JA002235 JA002237
95.	05/26/2020	Case Appeal Statement	XI	JA002238 JA002268

96.	06/03/2020	Defendants' Reply in Support of Motion for Attorney's Fees	XI	JA002269 JA002288
-----	------------	--	----	----------------------

VOLUME XII

97.	06/04/2020	Notice of Entry re: Stipulation and Order to Continue the Hearing For: 1) Plaintiffs' Motion to Retax Costs and 2) Defendants' Motion for Attorney's Fees and Costs	XII	JA002289 JA002294
98.	06/04/2020	Stipulation and Order to Continue the Hearing For: 1) Plaintiffs' Motion to Retax Costs and 2) Defendants' Motion for Attorney's Fees and Costs	XII	JA002295 JA002298
99.	06/18/2020	Errata to Case Appeal Statement	XII	JA002299 JA002310
100.	06/25/2020	Transcript of Hearing Defendants' Motion for Fees and Costs and Plaintiffs' Motion to Retax Costs	XII	JA002311 JA002325
101.	08/18/2020	Order Regarding Defendants' Motion for Attorney's Fees, Verified Memorandum of Costs and Disbursements and Plaintiffs' Motion to Retax	XII	JA002326 JA002343
102.	08/21/2020	Notice of Name Change of Law Firm	XII	JA002344 JA002346
103.	08/24/2020	Notice of Entry of Order Regarding Defendants' Motion for Attorney's Fees, Verified Memorandum of Costs and Disbursements and Plaintiffs' Motion to Retax	XII	JA002347 JA002368

104.	09/17/2020	Appellants' Case Appeal Statement	XII	JA002369 JA002380
105.	09/17/2020	Notice of Appeal	XII	JA002381 JA002406
106.	09/17/2020	Motion for Stay of Execution of Judgment on an Order Shortening Time	XII	JA002407 JA002483

VOLUME XIII

107.	09/24/2020	Stipulation and Order to Stay Execution of Judgment	XIII	JA002484 JA002490
108.	09/25/2020	Notice of Entry of Order – Stipulation and Order to Stay Execution of Judgment	XIII	JA002491 JA002497
109.	09/30/2020	Notice of Posting Cash Bond	XIII	JA002498 JA002502
110.	10/07/2020	Notice of Compliance with Court Order		JA002503 JA002506
111.	12/08/2020	Plaintiff's Request for Transcripts of Proceedings	XIII	JA002507 JA002509
112.	01/24/2019	Swanson Deposition Transcript 1/24/2020 (Part 1)	XIII	JA002510 JA002581

VOLUME XIV

113.	01/24/2019	Swanson Deposition Transcript 1/24/2020 (Part 2) w/Exhibit "1"	XIV	JA002582 JA002776
------	------------	--	-----	----------------------

VOLUME XV

114.	01/24/2019	Swanson Deposition Transcript 1/24/2020 Exhibits 2 – 14	XV	JA002777 JA002977
------	------------	---	----	----------------------

VOLUME XVI

115.	01/24/2019	Swanson Deposition Transcript 1/24/2020 Exhibits 15 – 28	XVI	JA002978 JA003038
116.	01/29/2020	Nicole Whitfield Deposition Transcript 1/29/2020	XVI	JA003039 JA003194

VOLUME XVII

117.	01/31/2020	Aaron Hawley Deposition Transcript 1/31/2020	XVI	JA003195 JA003296
118.	01/31/2020	William Gerber Deposition Transcript 1/31/2020	XVI	JA003297 JA003386

VOLUME XVIII

119.	02/03/2020	Ivan Sher Deposition Transcript 2/3/20	XVIII	JA003387 JA003539
------	------------	---	-------	----------------------

VOLUME XIX

120.	02/03/2020	Kelly Contenta Deposition Transcript 2/3/2020	XIX	JA003540 JA003583
121.	02/06/2020	Todd Swanson Deposition Transcript Volume II 2/6/20	XIX	JA003584 JA003701
122.	01/13/2021	Hearing Transcript of March 3, 2020 of Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	XIX	JA003702 JA003724
123.	01/13/2021	Hearing Transcript of April 7, 2020 of Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint	XIX	JA003725 JA003742

124.	01/13/2021	Hearing Transcript of June 20, 2020 of Defendants' Motion for Fees and Costs and Plaintiffs' Motion to Retax Costs	XIX	JA003743 JA003757
------	------------	--	-----	----------------------

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

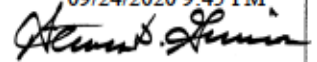
I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 9th, 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 9th day of March 2021.

BLACK & WADHAMS

/s/ Rusty Graf
 Rusty Graf, ESQ
 Nevada Bar No. 6322
 10777 W. Twain Ave., Ste 300.
 Las Vegas, Nevada 89135
Attorneys for Appellants


CLERK OF THE COURT

SAO
RUSTY GRAF, ESQ.
Nevada Bar No. 6322
BLACK & WADHAMS
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
rgraf@blackwadhams.law
Attorney 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

**STIPULATION AND ORDER TO STAY
EXECUTION OF JUDGMENT**

Plaintiffs Joseph Folino and Nicole Folino ("Plaintiffs"), by and through their attorney of record, Rusty Graf, Esq. of the law firm Black & Wadhams, and Defendants Todd Swanson, as an individual, the Shiraz Trust, Todd Swanson, as Trustee of the Shiraz Trust, and Lyons Development, LLC (collectively the "Defendants"), by and through their attorneys of record, Christopher M. Young, Esq. and Jay T. Hopkins, Esq., of the law firm Christopher M. Young, PC, hereby submit the following STIPULATION AND ORDER TO STAY EXECUTION OF JUDGMENT.

///

///

///

STIPULATION

On or about May 13, 2020, Defendants filed a Notice of Entry of Order for a Judgment dismissing Plaintiffs' Second Amended Complaint. On or about August 24, 2020, Defendants filed a Notice of Entry of Order for Judgment which granted Defendants' Motion for Attorney's Fees and Costs and denied Plaintiffs' Motion to Retax. This Order awarded Defendants attorney's fees in the amount Thirty-Nine Thousand Four Hundred and Forty-Seven Dollars (\$39,447.00) and costs in the amount of Five Thousand Eight Hundred and Forty Dollars and 41/100 Cents (\$5,840.41). On May 26, 2020, Plaintiffs filed Notice of their appeal to the Supreme Court of the State of Nevada of the Order granting Defendants' Motion to Dismiss. On September 17, 2020, Plaintiffs filed Notice of their appeal to the Supreme Court of the State of Nevada for Remittitur of the Order granting Defendants' Motion for Attorney's Fees and Costs and denying Plaintiffs' Motion to Retax.

The Parties hereby stipulate that execution of the Judgment entered August 24, 2020 which awarded Defendants attorney's fees in the amount Thirty-Nine Thousand Four Hundred and Forty-Seven Dollars (\$39,447.00) and costs in the amount of Five Thousand Eight Hundred and Forty Dollars and 41/100 Cents (\$5,840.41) is stayed pending the conclusion of Plaintiffs' appeal for Remittitur to the Supreme Court of the State of Nevada.

///

///

///

///

///

///

///

///

///

///

///

The Parties further stipulate that within five (5) business days of the entry of this Stipulation and Order, Plaintiffs will post a supersedeas bond in the amount of Forty-Five Thousand Two Hundred and Eighty-Seven Dollars and 41/100 Cents (\$45,287.41) for the attorney's fees and costs awarded to Defendants in the August 24, 2020 Judgment.

So stipulated this 24th day of September, 2020.

BLACK & WADHAMS


RUSTY GRAF, ESQ.

Nevada Bar No. 6322

10777 W. Twain Ave., 3rd Fl.

Las Vegas, Nevada 89135

(702) 869-8801

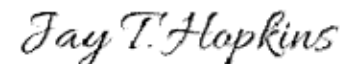
(702) 869-2669 (fax)

rgraf@blackwadhams.law

Attorney for Plaintiffs

15271

CHRISTOPHER M. YOUNG, PC.


Jay T. Hopkins

Christopher M. Young, Esq.

Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

2640 Professional Court, #200

Las Vegas, Nevada 89128

Attorneys for Defendants

///

///

///

///

///

///

///

ORDER

The Court, having reviewed the Parties' stipulation, and for good cause appearing,
FINDS, ORDERS, AND DECREES AS FOLLOWS:

It is hereby **ORDERED** that Plaintiffs will post a supersedes bond in the amount of
Forty-Five Thousand Two Hundred and Eighty-Seven Dollars and 41/100 Cents (\$45,287.41)
within five (5) business days of the entry of this Order.

The August 24, 2020, Judgment in this matter is hereby **STAYED** pending the
conclusion of Plaintiffs' appeal for Remittitur to the Supreme Court of the State of Nevada.

All pending motions in this matter are hereby **WITHDRAWN**.

All hearings on pending motions in this matter are hereby **VACATED**.

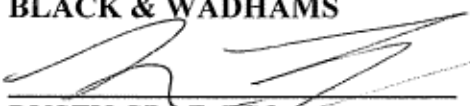
Dated this 24th day of September, 2020

IT IS SO ORDERED this ____ day of _____, 2020.


DISTRICT COURT JUDGE

Respectfully submitted this 24th day of September, 2020.

BLACK & WADHAMS


RUSTY GRAF, ESQ.

Nevada Bar No. 6322
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
rgraf@blackwadhams.law
Attorney for Plaintiffs

#15271

448 9C6 7289 DA3A
Jim Crockett
District Court Judge

///

///

///

1 *Accepted as to form and content:*

2 **CHRISTOPHER M. YOUNG, PC.**

3 *Jay T. Hopkins*

4 Christopher M. Young, Esq.

5 Nevada Bar No. 7961

6 Jay T. Hopkins, Esq.

7 Nevada Bar No. 3223

8 2640 Professional Court, #200

9 Las Vegas, Nevada 89128

10 *Attorneys for Defendants*

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Joseph Folino, Plaintiff(s)

CASE NO: A-18-782494-C

7 vs.

DEPT. NO. Department 24

8 Todd Swanson, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/24/2020

15 Jerri Hunsaker

jhunsaker@blacklobello.law

16 Mariella Dumbrique

mdumbrique@blacklobello.law

17 Christopher Young

mhyde@cotomlaw.com

18 Diane Meeter

dmeeter@blacklobello.law

19 J. Graf

Rgraf@blacklobello.law

20 Christopher Young

cyoung@cotomlaw.com

21 Jeffrey Galliher

jgalliher@galliherlawfirm.com

22 Jeffrey Galliher

jgalliher@galliherlawfirm.com

23 Jay Hopkins

jaythopkins@gmail.com

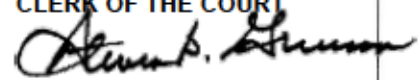
24 Kimalee Goldstein

kgoldstein@galliherlawfirm.com

25 Marsha Stallsworth

mstallsworth@blackwadhamslaw.law
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 **NOE**
2 J. RUSTY GRAF, ESQ.
3 Nevada Bar No. 6322
4 **BLACK & WADHAMS**
5 10777 W. Twain Ave., 3rd Fl.
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 (702) 869-2669 (fax)
9 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

10 Plaintiff,

11 v.

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

18 Defendants.

NOTICE OF ENTRY OF ORDER

19 **PLEASE TAKE NOTICE** that a STIPULATION AND ORDER TO STAY
20 EXECUTION OF JUDGMENT was entered on September 24, 2020. A true and correct copy is
21 attached hereto.

22 Dated this 25th day of September 2020.

BLACK & WADHAMS

/s/ Rusty Graf
RUSTY GRAF, ESQ., 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 & WADHAMS and that on the 4th day of June 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:

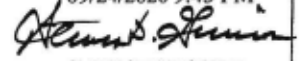
Christopher M. Young, Esq.
Nevada Bar No. 7961
Jay T. Hopkins, Esq.
Nevada Bar No. 3223
Christopher M. Young, PC
2640 Professional Court, #200
Las Vegas, Nevada 89128
Attorneys for Defendants

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.

/s/ Diane Meeter

An Employee of Black & Wadhams


CLERK OF THE COURT

1 **SAO**
2 RUSTY GRAF, ESQ.
3 Nevada Bar No. 6322
4 **BLACK & WADHAMS**
5 10777 W. Twain Ave., 3rd Fl.
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 rgraf@blackwadhams.law
9 *Attorney 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

**STIPULATION AND ORDER TO STAY
EXECUTION OF JUDGMENT**

18 Plaintiffs Joseph Folino and Nicole Folino ("Plaintiffs"), by and through their attorney of
19 record, Rusty Graf, Esq. of the law firm Black & Wadhams, and Defendants Todd Swanson, as
20 an individual, the Shiraz Trust, Todd Swanson, as Trustee of the Shiraz Trust, and Lyons
21 Development, LLC (collectively the "Defendants"), by and through their attorneys of record,
22 Christopher M. Young, Esq. and Jay T. Hopkins, Esq., of the law firm Christopher M. Young,
23 PC, hereby submit the following STIPULATION AND ORDER TO STAY EXECUTION OF
24 JUDGMENT.

25 ///

26 ///

27 ///

STIPULATION

On or about May 13, 2020, Defendants filed a Notice of Entry of Order for a Judgment dismissing Plaintiffs' Second Amended Complaint. On or about August 24, 2020, Defendants filed a Notice of Entry of Order for Judgment which granted Defendants' Motion for Attorney's Fees and Costs and denied Plaintiffs' Motion to Retax. This Order awarded Defendants attorney's fees in the amount Thirty-Nine Thousand Four Hundred and Forty-Seven Dollars (\$39,447.00) and costs in the amount of Five Thousand Eight Hundred and Forty Dollars and 41/100 Cents (\$5,840.41). On May 26, 2020, Plaintiffs filed Notice of their appeal to the Supreme Court of the State of Nevada of the Order granting Defendants' Motion to Dismiss. On September 17, 2020, Plaintiffs filed Notice of their appeal to the Supreme Court of the State of Nevada for Remittitur of the Order granting Defendants' Motion for Attorney's Fees and Costs and denying Plaintiffs' Motion to Retax.

The Parties hereby stipulate that execution of the Judgment entered August 24, 2020 which awarded Defendants attorney's fees in the amount Thirty-Nine Thousand Four Hundred and Forty-Seven Dollars (\$39,447.00) and costs in the amount of Five Thousand Eight Hundred and Forty Dollars and 41/100 Cents (\$5,840.41) is stayed pending the conclusion of Plaintiffs' appeal for Remittitur to the Supreme Court of the State of Nevada.

///

///

///

///

///

///

///

///

///

///

///

1 The Parties further stipulate that within five (5) business days of the entry of this
2 Stipulation and Order, Plaintiffs will post a supersedeas bond in the amount of Forty-Five
3 Thousand Two Hundred and Eighty-Seven Dollars and 41/100 Cents (\$45,287.41) for the
4 attorney's fees and costs awarded to Defendants in the August 24, 2020 Judgment.

5 So stipulated this 24th day of September, 2020.

6 **BLACK & WADHAMS**

7 

15271

8 RUSTY GRAF, ESQ.

9 Nevada Bar No. 6322

10 10777 W. Twain Ave., 3rd Fl.

11 Las Vegas, Nevada 89135

12 (702) 869-8801

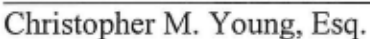
(702) 869-2669 (fax)

rgraf@blackwadhamslaw.com

Attorney for Plaintiffs

13 **CHRISTOPHER M. YOUNG, PC.**

14 *Jay T. Hopkins*

15 

16 Christopher M. Young, Esq.

17 Nevada Bar No. 7961

18 Jay T. Hopkins, Esq.

19 Nevada Bar No. 3223

20 2640 Professional Court, #200

21 Las Vegas, Nevada 89128

Attorneys for Defendants

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

The Court, having reviewed the Parties' stipulation, and for good cause appearing,
FINDS, ORDERS, AND DECREES AS FOLLOWS:

It is hereby **ORDERED** that Plaintiffs will post a supersedes bond in the amount of Forty-Five Thousand Two Hundred and Eighty-Seven Dollars and 41/100 Cents (\$45,287.41) within five (5) business days of the entry of this Order.

The August 24, 2020, Judgment in this matter is hereby **STAYED** pending the conclusion of Plaintiffs' appeal for Remittitur to the Supreme Court of the State of Nevada.

All pending motions in this matter are hereby **WITHDRAWN**.

All hearings on pending motions in this matter are hereby **VACATED**.

IT IS SO ORDERED this ____ day of _____, 2020.

DISTRICT COURT JUDGE

Respectfully submitted this 24th day of September, 2020.

BLACK & WADHAMS



RUSTY GRAF, ESQ.

Nevada Bar No. 6322

10777 W. Twain Ave., 3rd Fl.

Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (fax)

rgraf@blackwadhamslaw.com

Attorney for Plaintiffs

///

///

///

1 *Accepted as to form and content:*

2 **CHRISTOPHER M. YOUNG, PC.**

3 *Jay T. Hopkins*

4 Christopher M. Young, Esq.

5 Nevada Bar No. 7961

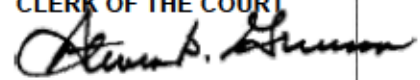
Jay T. Hopkins, Esq.

6 Nevada Bar No. 3223

2640 Professional Court, #200

7 Las Vegas, Nevada 89128

8 *Attorneys for Defendants*



1 **NOTC**
2 RUSTY GRAF, ESQ.
3 Nevada Bar No. 6322
4 **BLACK & WADHAMS**
5 10777 W. Twain Ave., 3rd Fl.
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 rgraf@blackwadhamslaw.com
9 *Attorney for Plaintiffs*

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

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

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

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.

20 **NOTICE OF POSTING CASH BOND**

21 Please take notice that Plaintiffs, JOSEPH FOLINO and NICOLE FOLINO posted a cash
22 bond in the sum of Forty Five Thousand Two Hundred Eighty Seven Dollars and 71/100
23 (\$45,287.41) on September 30, 2020, pursuant to the Order for Judgment which granted
24 Defendants' Motion for Attorney's Fees and Costs filed on August 24, 2020.

25 ///

26 ///

1 A true and correct copy of the cash bond receipt is attached as Exhibit 1.

2 Dated this 30th day of September 2020.

3 **BLACK & WADHAMS**

4
5 
6 Rusty Graf, Esq.
7 Nevada State Bar No.6322
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 Attorneys for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 30th day of September 2020, I caused the above and foregoing document entitled NOTICE OF POSTING CASH BOND 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, PC.

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

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

/s/ Marsha Stallworth
An Employee of Black & Wadhams

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “1”

Folino Family Trust
Joseph R Folino
Nicole M Folino
42 Meadowhawk Ln
Las Vegas, NV 89135

678

94-7074/3212 6795

9-25-20 Date

Pay to the
Order of

Clerk of The Court, 8th Judicial District \$ 45,287.41
forty five thousand two hundred eighty seven and 41/100
Dollars



Wells Fargo Bank, N.A.
Nevada
wellsfargo.com

For

Court Fees

N. Folino

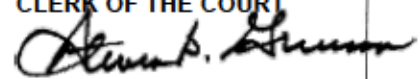
MP

⑆321270742⑆ 6044384342⑈ 00678

Harland Clarke

MESSAGERS OF THE HEART

JA002502



NOC
RUSTY GRAF, ESQ.
Nevada Bar No. 6322
BLACK & WADHAMS
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
Attorney for Plaintiffs/Appellants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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,

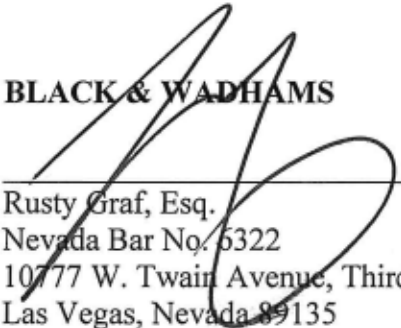
Defendants.

NOTICE OF COMPLIANCE WITH COURT ORDER

JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual, (hereinafter
"Plaintiff") by and through their attorney of record Rusty Graf, Esq., of the law firm of BLACK
& WADHAMS, hereby submits proof of compliance with the Stipulation and Order to Stay
Execution of Judgment dated, September 24, 2020, attached hereto, Receipt of deposit of
Supersedes Bond in the amount of \$45,287.41 (see Exhibit "1").

DATED this 6th day of October 2020.

BLACK & WADHAMS



Rusty Graf, Esq.
Nevada Bar No. 6322
10777 W. Twain Avenue, Third Floor
Las Vegas, Nevada 89135

CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 7th day of October 2020, I caused the above and foregoing document entitled **NOTICE OF COMPLIANCE WITH COURT 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;

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

CHRISTOPHER M. YOUNG, PC.

Christopher M. Young, Esq.

Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

2640 Professional Court, #200

Las Vegas, Nevada 89128

Attorneys for Defendants


An Employee of Black & Wadhams

EXHIBIT “1”

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Folino Family Trust, Joseph R Folino, Nicole M Folino
42 Meadowhawk Ln
Las Vegas NV 89136

Receipt No.
2020-56009-CCCLK

Transaction Date
10/6/2020

Description	Amount Paid
-------------	-------------

On Behalf Of Folino, Joseph
A-18-782494-C
Joseph Folino, Plaintiff(s) vs. Todd Swanson, Defendant(s)
Supersedeas Bond

Supersedeas Bond	45,287.41
SUBTOTAL	45,287.41

PAYMENT TOTAL **45,287.41**

Check (Ref #678) Tendered	45,287.41
Total Tendered	45,287.41
Change	0.00

Stipulation and Order to Stay Execution of Judgment - Filed 9/24/2020

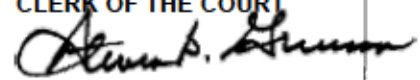
10/06/2020
12:33 PM

Cashier
Station RJCC1

Audit
37655012

OFFICIAL RECEIPT

JA002506



TRAN
J. RUSTY GRAF, ESQ.
Nevada Bar No. 6322
BLACK & WADHAMS
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
Attorney for Plaintiffs/Appellants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiff,

v.

**PLAINTIFFS REQUEST FOR
TRANSCRIPTS OF PROCEEDINGS**

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.

TO: Ms. NANCY MALDONADO, Court Reporter Dept. 24, Eighth Judicial Dist. Ct.
Appellants, JOSEPH FOLINO and NICOLE FOLINO ("Folino") respectfully requests
preparation of transcript of before the District Court Judge Jim Crockett, as follows:

1. Transcript of March 3, 2020, continued hearing on *Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint*.
2. Transcript of April 7, 2020, continued hearing on *Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint*.
3. Transcript of April 29, 2020, Status Check hearing on *Order Granting Summary Judgment* and continued hearing on *Motion to Retax – Motion for Fees*.
4. Transcript of June 25, 2020, hearing on *Defendants' Motion for Fees and Costs –*

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

1 *Plaintiff's Motion to Retax Costs.*

2 One (1) copy of the entire transcript of each proceeding is being requested.

3 I hereby certify that on the 1st day of December 2020, I ordered the transcripts listed above
4 from the court reporter named above, no deposit was required.

5 Dated this 7th day of December 2020.

6 Respectfully Submitted By,

7
8 **BLACK & WADHAMS**

9 By: /s/ Rusty Graf
10 Rusty Graf, Esq. (Bar No. 6322)
11 rgraf@blackwadhamslaw

12 *Attorneys for Plaintiffs Joseph Folino and Nicole Folino*

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 7th day of December 2020, I caused the above and foregoing document entitled **NOTICE OF APPEAL** 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.

/s/ Diane Meeter
An Employee of Black & Wadhams

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

VIDEOTAPED DEPOSITION OF
TODD SWANSON, M.D.
Taken on January 24, 2020
at 8:58 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. 597894

1 Videotaped deposition of TODD SWANSON,
2 M.D., Volume 1, stenographically taken at 10777
3 West Twain, Las Vegas, Nevada, on Friday, January
4 24, 2020, at 8:58 a.m., before Heidi K. Konsten,
5 Certified Court Reporter in and for the State of
6 Nevada.

7

8 APPEARANCES OF COUNSEL

9 For the Plaintiffs:

10 RUSTY GRAF, ESQ.
11 Black & LoBello
12 10777 West Twain Avenue
13 Third Floor
14 Las Vegas, Nevada 89135
15 (702) 869-8801
16 (702) 869-2669 Fax

17 For the Defendants:

18 JEFFREY L. GALLIHER, ESQ.
19 Galliher Legal, P.C.
20 1850 East Sahara Avenue
21 Suite 107
22 Las Vegas, Nevada 89104
23 (702) 735-0049

24 Also present: Terrell Holloway, Videographer

25

26 * * * * *

27

28

29

30

31

1	INDEX		
2			Page
3	TODD SWANSON, M.D.		
4	Examination by Mr. Graf		6
5			
6	* * * * *		
7	EXHIBITS		
8	No.	Description	Page
9	Exhibit 1	Notice of deposition	6
10	Exhibit 2	Defendant Swanson's	17
11		Responses to Plaintiffs'	
12		First Request for Production	
13		of Documents	
14	Exhibit 3	Seller's Real Property	55
15		Disclosure Form	
16	Exhibit 4	Residential Purchase	55
17		Agreement	
18	Exhibit 5	Curriculum Vitae	78
19	Exhibit 6	Defendant Swanson's	80
20		Responses to Plaintiffs'	
21		First Request for	
22		Interrogatories	
23	Exhibit 7	Defendant Swanson, as	80
24		Trustee of the Shiraz Trust,	
25		Responses to Plaintiffs'	
		First Request for	
		Interrogatories	
	Exhibit 8	Defendant Lyon Development's	80
		Responses to Plaintiffs'	
		First Request for	
		Interrogatories	
	Exhibit 9	Verification	80

1	EXHIBITS (continued)		
2	No.	Description	Page
3	Exhibit 10	Verification	80
4	Exhibit 11	Verification	80
5	Exhibit 12	Home inspection report	117
6	Exhibit 13	Executive Summary of Findings	147
7			
8	Exhibit 14	Executive Summary of Findings	147
9	Exhibit 15	November 16, 2017, letter	199
10	Exhibit 16	December 13, 2017, e-mail	204
11	Exhibit 17	November 17, 2017, e-mail	208
12	Exhibit 18	December 7, 2017, letter	213
13	Exhibit 19	December 15, 2017, e-mail	220
14	Exhibit 20	November 16, 2017, e-mail	222
15	Exhibit 21	November 21, 2017, e-mail	224
16	Exhibit 22	August 9, 2015, e-mail	225
17	Exhibit 23	Affidavit of Todd V. Swanson, M.D.	231
18			
19	Exhibit 24	Receipt	235
20	Exhibit 25	August 25, 2015, e-mail	237
21	Exhibit 26	Invoice	237
22	Exhibit 27	Invoice	237
23	Exhibit 28	Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint	238
24		* * * * *	
25			

1 LAS VEGAS, NEVADA

2 Friday, January 24, 2020

3 8:58 a.m.

4 DEPOSITION OF TODD SWANSON, M.D.

5 * * * * *

6

7 THE VIDEOGRAPHER: This is the beginning
8 of media No. 1 in the deposition of Todd Swanson
9 in the matter of Folino, Joseph vs. Swanson, Todd,
10 held at Black & LoBello on January 24, 2020, at
11 8:58 a.m.

12 The court reporter is Heidi Konsten.
13 I'm Terrell Holloway, the videographer, an
14 employee of Litigation Services.

15 This deposition is being videotaped at
16 all times, unless specified to go off the video
17 record.

18 Would all present please identify
19 themselves, beginning with the witness?

20 THE WITNESS: Todd Swanson.

21 MR. GALLIHER: Jeff Galliher, counsel
22 for the witness and all defendants.

23 MR. GRAF: Rusty Graf, representing the
24 plaintiffs, the Folinos.

25 THE VIDEOGRAPHER: Will the court

1 reporter please swear in the witness.

2

3 Whereupon,

4 TODD SWANSON, M.D.,

5 was called as a witness, and having been first duly

6 sworn to testify to the truth, was examined and

7 testified as follows:

8

9 EXAMINATION

10 BY MR. GRAF:

11 Q Good morning, Doctor. My name is Rusty

12 Graf. I represent the Folinos in this matter.

13 We've met previously.

14 A Yes.

15 Q So we're here to take your deposition in

16 a case captioned Joseph and Nicole Folino versus

17 yourself in various capacities, as well as the

18 Shiraz Trust and Lyons Development.

19 You're aware of that, sir?

20 A Yes.

21 Q All right. And I'm going to hand you

22 what we'll mark as Plaintiffs' 1, the notice of

23 deposition in this matter.

24 (Exhibit No. 1 was marked for

25 identification.)

1 THE WITNESS: I'm going to silence my
2 phone before we get started.

3 BY MR. GRAF:

4 Q Sure.

5 So you've been handed what's been marked
6 as Exhibit 1 for purposes of this deposition.
7 It's a notice of videotaped deposition of you
8 as -- in your individual capacity, as PMK for
9 Shiraz Trust, but you're -- you're the trustee of
10 the Shiraz Trust; sir?

11 A One of them, yes.

12 Q Okay. Who are the other trustees?

13 A Shannon Evans.

14 Q Anybody else?

15 A No.

16 Q Okay. All right. And you've also
17 been -- and this deposition is also noticed up as
18 your capacity of the PMK for Lyons Development,
19 LLC. And now under the new rules -- or rules that
20 have been promulgated recently, it's the NRCP
21 30(b)(6) designation, the person who knows what's
22 going on with Lyons Development.

23 You're aware of that?

24 A Well, I wasn't aware of that, but I
25 understand I'm being deposed --

1 Q Okay.

2 A -- as the PMK for Lyons.

3 Q And this deposition had been previously
4 noticed as three separate sessions: You as an
5 individual, you as a trustee, and you as the
6 representative on behalf of Lyons Development.

7 Are you aware of that?

8 A Yes.

9 Q And that we've agreed to take your
10 deposition in one session as to all three
11 capacities.

12 Are you aware of that?

13 A Yes.

14 Q All right. So, sir, if you would,
15 please state your name and spell your last name
16 for the record.

17 A Todd Swanson, S-W-A-N-S-O-N.

18 Q Okay. Mr. -- or, excuse me, you're a
19 medical doctor?

20 A Yes.

21 Q All right. So I'll probably call you
22 doctor as we go through this process, just a
23 vestige of doctor depos for years.

24 A I'm not particular.

25 Q Yeah.

1 A You can call me Todd.

2 Q All right. So if you would, have you
3 ever had your deposition taken before, Doctor?

4 A Yes.

5 Q How many times?

6 A Maybe, oh, a dozen.

7 Q Okay. And in terms of those dozen
8 depositions, were those as a witness, were those
9 as an expert, or were they as a treating physician
10 or all three?

11 A I think all three.

12 Q Okay. How many times were you deposed
13 as a witness in a case?

14 A Well, I will have to take that back. I
15 can't think of a time that I was deposed as a
16 witness.

17 Q Okay. What about as a party?

18 A As a party, oh, I'm just going to
19 estimate three, maybe.

20 Q Okay. So as an expert, how many times
21 have you testified at deposition as an expert?

22 A Maybe ten -- it may even be more than
23 that. It may be -- it's hard -- hard to keep
24 track. Maybe 15 or even 20.

25 Q And in what jurisdictions were those 15

1 to 20 depositions as an expert?

2 A I think as an expert, they were all here
3 with the exception of maybe one that I recall in
4 Arkansas.

5 Q Okay. So I'm going to go over what we
6 call the admonitions, which is just basically the
7 ground rules. You'll notice that we have a court
8 reporter to my right. We also have a videographer
9 to my right, so it's important that we have a
10 clear record here today.

11 Despite the fact that we're going to
12 have a video record of the proceeding, we want to
13 make sure that all of your responses are clear and
14 audible. So as we go through this process, if I
15 ask you is that a yes or a no or to otherwise
16 verbalize your response, I'm not trying to be rude
17 or curt. I'm just trying to make sure, again,
18 that we have a clear record.

19 Do you have that understanding, Doctor?

20 A Yes.

21 Q All right. So I'm also going to assume
22 that if you answer the question, you've answered
23 the question that I've posed. Is that a fair
24 assumption?

25 A Yes.

1 Q So along those lines, if you don't
2 understand a question that I've stated to you, you
3 don't hear it or you simply would like me to
4 rephrase it because it's a poorly phrased
5 question, please ask me to do so, and I will.
6 Okay?

7 A Yes.

8 Q Because if not, I'm going to have that
9 understanding that you're answering the question
10 that I posed. Fair?

11 A Yes.

12 Q All right. Now, you're going to have
13 the opportunity in approximately ten business days
14 to go through your record and make any changes
15 that you deem appropriate. The one thing that
16 I'll caution you on is if you do make any changes,
17 material or otherwise, those changes can be
18 brought to the attention of the trier of fact,
19 whether that's a judge or a jury in this
20 proceeding.

21 You're aware of that, sir?

22 A I am now.

23 Q Okay. So is there any reason why you
24 cannot give your best testimony here today?

25 A No. I'm just a little hoarse from this

1 bronchitis, but otherwise I'm fine.

2 Q So this is not a -- this isn't a
3 marathon or some sort of test of wills. If you
4 need to take a break at any point in time, just --
5 just say so and we'll take a break. The only
6 thing that I will say is if there's a question
7 pending, if you'd answer the question before we
8 take a break. Okay?

9 A Yes.

10 Q All right. So you were sworn in by the
11 court reporter just now.

12 You're aware of that?

13 A Yes.

14 Q That oath that you just took and that
15 you substantiated is the same oath that you would
16 take in front of a judge or jury in this action.

17 You're aware of that?

18 A Yes.

19 Q And you're going to be held to the same
20 level of truthfulness as you would be in front of
21 that judge or jury.

22 You're aware of that?

23 A Yes.

24 Q Okay. Is there any questions that you
25 have about the process or this proceeding this

1 morning before we get started?

2 A No.

3 Q Okay. Are you ready to proceed?

4 A Yes.

5 Q All right. So let's see.

6 If you would, tell me about your
7 educational background, Doctor. And let's start
8 with where you graduated from high school, and
9 then you can go through your college. Then we'll
10 go through medical school, and then you can tell
11 me where you did your residency or fellowships or
12 anything like that. Okay?

13 A Okay.

14 Q All right.

15 A Well, I grew up on a farm in South
16 Dakota, so I went to Tri-Valley High School near
17 Sioux Falls, South Dakota. And went to college at
18 Augustana College in Sioux Falls. Then medical
19 school at Washington University in St. Louis,
20 Missouri. Then I did my orthopedic internship and
21 residency at UC Davis Medical Center in
22 Sacramento, California. And then I did an
23 additional year of training in hip and knee
24 replacements at Hennepin County Medical Center in
25 Minneapolis, Minnesota. And thereafter I moved

1 here to start my practice.

2 Q And what year approximately did you come
3 to Las Vegas, Doctor?

4 A 1991.

5 Q Was there a reason why you -- other than
6 a job or something like that, was there a reason
7 why you moved to Las Vegas in 1991?

8 A It was only for the job. There was a
9 great job opportunity for me.

10 Q Okay.

11 A I never thought I would end up here.

12 Q All right. Let's talk about -- well, a
13 couple of other things before we get started.

14 You're being represented by counsel
15 today?

16 A Yes.

17 Q Okay. Mr. Galliher and you also have
18 associated counsel, Mr. Young's office; correct?

19 A Yes.

20 Q And that's still the case?

21 A Yes.

22 Q Okay. So let's talk about what you did
23 in preparation for your deposition today. Let me
24 preface these next set of questions with the
25 following statement. I don't want to know, at

1 this juncture, what you talked to your attorneys
2 about. So -- but I am entitled to know if you met
3 with them and then I'll ask when and how long.
4 But I don't want to know the content of any of
5 those conversations.

6 Okay. So what did you do in preparation
7 for your deposition here today, Doctor?

8 A I tried to review as many of the
9 documents that we submitted as possible and I met
10 with Mr. Galliher and Mr. Hopkins, who has also
11 been involved when I was first supposed to be
12 deposed a couple of weeks ago, I think.

13 Q I think January 7th was the previous
14 day.

15 A That's sounds about right.

16 Q So you met with him sometime prior to
17 that?

18 A Yes.

19 Q Okay. And did -- anything else? And in
20 terms of the documents that you reviewed, did you
21 review the pleadings in the case?

22 A The -- tell me what documents those
23 would be.

24 Q So there's a complaint, there's a first
25 amended complaint, and there's a second amended

1 complaint.

2 Did you review any of those?

3 A I didn't review those for this, no.

4 Q Okay. And then there's been a series of
5 three different motions to dismiss filed by your
6 counsel.

7 Did you have a chance to review any of
8 those?

9 A I did not for this deposition, no.

10 Q Okay. There was an affidavit that you
11 had prepared at some point in time, I think
12 approximately August of 2019.

13 Did you review that affidavit?

14 A Yes, I read that -- reread it.

15 Q Okay. Any of the other -- the documents
16 that you're referring to, you're talking about the
17 sale documents?

18 A I'm talking about the documents that we
19 provided for -- to you.

20 Q Okay. So there were a series of written
21 discovery requests that were propounded to you as
22 an individual on the trust and then on Lyons
23 Development, is that the discovery responses that
24 you're referring to?

25 A Yes.

1 Q And then in response to one of the
2 requests to produce, I think it's your -- we can
3 go ahead and have this marked.

4 (Exhibit No. 2 was marked for
5 identification.)

6 MR. GRAF: That's for your counsel.
7 Sorry. I'll get it eventually.

8 BY MR. GRAF:

9 Q So you've been handed what's been marked
10 as Plaintiffs' Exhibit 2 for purposes of this
11 deposition. Is this one of the documents that you
12 reviewed in preparation for your deposition here
13 today?

14 A Well, I didn't review this particular
15 document, but I reviewed the documents submitted
16 under this request.

17 Q So if you look at the last page of this
18 document, Exhibit A.

19 A The very last page?

20 Q Yes, sir.

21 A Yes.

22 Q There's a picture of a -- a disk that's
23 there that has a Swanson 0001-000484.

24 Do you see that, sir?

25 A Yes.

1 Q The documents that are being referenced
2 there that are Bates-stamped 1 through 484, are
3 those the documents or part of the documents that
4 you reviewed in preparation for your deposition
5 here today?

6 A I don't know how my attorneys got the
7 documents to you, but if they put them on this CD,
8 then I would say yes.

9 Q Yeah, they're -- there were those 484
10 pages on that CD.

11 So I'm just trying to clarify in my mind
12 what documents you reviewed in preparation for
13 your deposition today. Those were the documents
14 that were produced in response to I think this
15 request to produce and the request to produce from
16 Shiraz Trust.

17 So I just want to confirm, those were
18 the documents that you reviewed prior to today?

19 A Yes.

20 Q Okay. And you reviewed them within the
21 last couple of days or was that prior to
22 January 7?

23 A I basically tried to review them -- as
24 much of them -- as many of them as I could
25 yesterday afternoon.

1 Q Okay. All right. Anything that you
2 wanted to review that you didn't review in
3 preparation for your deposition here today?

4 A Well, nothing I can think of at the
5 moment.

6 Q All right. Was there any documents that
7 you requested to review that you weren't given?

8 A Not that I recall.

9 Q Okay. Did you bring any documents with
10 you here today?

11 A No.

12 Q Any notes or outlines, timeline,
13 anything like that that you would have prepared
14 for yourself to -- to refresh your recollection as
15 to what you're going to testify to today?

16 A No.

17 Q Okay. So other than your attorneys
18 prior to the deposition today, did you talk to --
19 your testimony or this deposition with anybody
20 else, any third parties?

21 MR. GALLIHER: Object to the form.

22 THE WITNESS: I discussed it with my
23 fiance.

24 BY MR. GRAF:

25 Q And what's her name?

1 A Roxanne Campbell.

2 Q C-A-M-P --

3 A -- B-E-L-L.

4 Q Okay. Congratulations.

5 So -- and what did you talk to

6 Ms. Campbell about in terms of the deposition?

7 A I just told her why I was coming here.

8 Q Okay. So that's a -- that's probably a
9 good indicator of something else. Doctor, where
10 do you currently live?

11 A Well, I'm currently in Toronto most of
12 the time, but not all of the time.

13 Q Okay. And why is that?

14 MR. GALLIHER: Object to the form.

15 THE WITNESS: Well, that's where she
16 lives.

17 BY MR. GRAF:

18 Q Okay. How long have you been living in
19 Toronto, Canada?

20 A Since the early part of July 2019.

21 Q Okay. And what is the physical address
22 in Toronto, Canada?

23 A 39 Queens Quay, Q-U-A-Y, East, Townhome
24 113, and that's Toronto, Ontario. I don't recall
25 the postal code.

1 Q Okay. And is that your current
2 residence or do you still have a residence here in
3 Nevada?

4 A No. I still have a residence just
5 around the corner from here in Red Rock Country
6 Club.

7 Q Okay. And what's that address?

8 A 11267 La Madre Ridge Drive, 89135.

9 Q Okay. And how long have you lived at
10 that address?

11 A Since November 27th, 2017.

12 Q So since you sold the 42 Meadowhawk Lane
13 residence?

14 A Since I sold it, and then I had a
15 leaseback. So when my leaseback rent was done and
16 my -- and that house was done being renovated, at
17 least enough that I could move my stuff over.

18 Q Okay. And you own the La Madre Ridge
19 property?

20 A Yes.

21 Q Okay. And prior to November 27, 2017,
22 you were residing at the 42 Meadowhawk Lane
23 residence?

24 A Prior to the November 27th?

25 Q Yep.

1 A I was residing most of the time in
2 Denver, Colorado.

3 Q Okay. And what was the address in
4 Denver?

5 A Oh, gosh. 2360, and I may have the
6 numbers transposed, but I think this is it, 2360
7 East Evans Avenue, Denver, Colorado 80210, I
8 believe.

9 Q 80210, did you say?

10 A I think so.

11 Q Okay. And did you own or rent that
12 residence?

13 A That was just a little studio apartment.

14 Q Okay. And how long did you reside
15 there?

16 A About two years. Almost two years.

17 Q Okay. So what years would that have
18 been?

19 A So I moved there in September of 2017,
20 and I moved out July of 2019.

21 Q Okay. All right. And prior to that,
22 where were you living?

23 A Prior to then, I was living at 42
24 Meadowhawk.

25 Q Okay. And then prior to 42 Meadowhawk,

1 **where did you live?**

2 A I lived across the street at 51
3 Meadowhawk.

4 Q And did you own 51 Meadowhawk?

5 A Yes.

6 Q And how long did you live at 51
7 Meadowhawk?

8 A I think it was about two years, give or
9 take.

10 Q So approximately what years?

11 A It would be easier if I had a pen and
12 paper. I could sort of write down the dates to
13 keep them straight.

14 Q I can give you a piece of paper.

15 MR. GALLIHER: I've got a pen.

16 THE WITNESS: But I think it was --
17 let's see. I was there for two years, so I think
18 it was about --

19 BY MR. GRAF:

20 Q There you go, Doctor.

21 A -- January of 2014. Or was it 2013?
22 Now I've got to think.

23 Q That's all right.

24 MR. GALLIHER: Does that pen not work?

25 THE WITNESS: Yeah, it works well

1 enough.

2 2015. Yeah, so it would have been

3 January of 2013, I think.

4 BY MR. GRAF:

5 Q To September of 2017?

6 A Well, I lived at 51 Meadowhawk from
7 January of 2013 until I moved into 42 Meadowhawk
8 in about April of 2015.

9 Q Okay.

10 A And I moved -- lived in 42 Meadowhawk
11 until I moved to Denver in September of 2017.

12 Q Okay. And 51 Meadowhawk, did you own
13 that property?

14 A Yes.

15 Q Okay. Did you have that home built?

16 A No.

17 Q Okay. And when you say you owned 51
18 Meadowhawk, was it in an individual capacity? Was
19 it as the Shiraz Trust? How was it owned?

20 A I think it was held in an LLC, but I
21 don't recall which one offhand.

22 Q Okay. Did you buy that from an
23 individual or did you buy it from the builder?

24 A An individual.

25 Q Okay. Do you recall who that is?

1 A No, I don't.

2 Q Okay. Prior to 51 Meadowhawk, where did
3 you live?

4 A I lived in a rental house in Red Rock,
5 and I can't think of the address now.

6 Q That's okay.

7 How long were you there?

8 A I'm guessing about six months, give or
9 take.

10 Q And prior to that rental property, where
11 were you living?

12 A At 38 Meadowhawk.

13 Q And how long did you live there?

14 A I -- I only lived there for a -- I think
15 it was less than a year, so --

16 Q And did you own that property?

17 A Yes.

18 Q Okay. You like that street.

19 A I made some bad real estate investments.

20 Q Okay.

21 A Before the crash.

22 Q All right. What years -- what
23 approximate year did you live there?

24 A I'm going to say, like, 2011.

25 Q Okay. That seems to work.

1 All right. So prior to 38 Meadowhawk,
2 where did you live?

3 A I've lived so many places, I've got to
4 think. Oh, I lived where I am now at 11267 La
5 Madre.

6 Q Did you own that property then?

7 A Yes.

8 Q Okay. So how long have you owned the La
9 Madre property?

10 A I bought that in -- let's see, towards
11 the end of 2007.

12 Q Okay. So prior to 2007 and the La Madre
13 property, where did you live?

14 A I lived in -- in -- again, in the Ridges
15 at -- it was either 14 or 15 Promontory something,
16 court or way.

17 Q Isn't there a Promontory Point in there?

18 A Yeah, it wasn't a -- it wasn't point.
19 It was just Promontory.

20 Q Okay. And did you own that property?

21 A Yes.

22 Q And how long did you live there?

23 A As I recall, about two and a half years.

24 Q So what years would that have been?

25 A Well, I moved in I think in 2005

1 sometime.

2 Q Okay. So --

3 A Through 2007 when I sold it and moved to
4 La Madre.

5 Q Okay. So prior to that, where did you
6 live?

7 A In a rental house on Artistry Court.

8 Q Okay. And how long did you live in the
9 rental?

10 A That, I don't recall. It was a year or
11 two.

12 Q So one of the admonitions I didn't give
13 to you, and you did a good job just now, I don't
14 want you to guess here today. It's not a memory
15 test or anything like that either. But if you can
16 give me your best -- I'm entitled to your best
17 estimate. This is the only time I'm going to get
18 to depose you potentially, and I'm entitled to
19 your best testimony here today.

20 So if I ask you for a time period and
21 you say just like you did now, you know,
22 approximately two and a half years, that's a
23 completely acceptable response. If you feel like
24 you have to guess, tell me, because otherwise I'm
25 going to assume that you understood and that you

1 were not guessing when you responded to my
2 question.

3 Is that a fair assumption, Doctor?

4 A Yes.

5 Q All right. So prior to the Artistry
6 Court rental house, where did you live?

7 A I lived in another rental, and that was
8 on Imperial Purple Court.

9 Q Okay. And how long did you live there?

10 A Again, I don't recall exactly. Not more
11 than a year or two.

12 Q Okay. And then prior to that, where did
13 you live?

14 A In a house on Planting Fields Place.

15 Q Do you know the address?

16 A I think it was 8123 Planting Fields
17 Place.

18 Q And was that Las Vegas or was that
19 Henderson?

20 A Las Vegas.

21 Q Okay. Did you own that home?

22 A Yes.

23 Q How did you own that home?

24 MR. GALLIHER: Object to the form.

25 THE WITNESS: Meaning what?

1 BY MR. GRAF:

2 Q Was it an LLC? A trust? Did you own it
3 with -- I'm going to get into whether or not you
4 were married at the time, that sort of thing here
5 in a second. So --

6 A I was married at the time and I don't
7 recall how it was held.

8 Q Okay. We can find out. That's not a
9 big deal.

10 Do you know what years approximately you
11 lived in that residence?

12 A Not exactly, but around the year 2000.

13 Q Okay. Do you know how long you lived
14 there?

15 A Approximately -- it was approximately
16 two years, but I could be off by a year.

17 Q Okay. And prior to Planting Fields,
18 where did you live?

19 A Oh, my gosh. I think we were in another
20 rental.

21 Q Okay.

22 A And I think the street was Family Court,
23 but I can't -- again, I think that's the street,
24 but I can't -- I'm not positive it is.

25 Q Okay. Let's -- so what year

1 approximately was that?

2 A It would have been the late '90s,
3 sometime.

4 Q And how long do you think you lived
5 there, Doctor?

6 A Somewhere around a year, I'm going to
7 estimate.

8 Q Okay. So I'm trying to go back to '91
9 when you got here. How many houses are we between
10 Family Court and 1991 when you got here?

11 A I think there's just one more.

12 Q Okay. So what is it?

13 A So that was on Elk Canyon Court.

14 Q Okay. And is that Las Vegas?

15 A Yes.

16 Q Okay. Did you own that residence?

17 A Yes.

18 Q And do you know the -- the street
19 number?

20 A I don't recall it at this time, no.

21 Q Okay. Approximately where is that?

22 A It's in an area called Section 10, and
23 the ZIP code is 89117.

24 Q Sahara Rainbow area?

25 A Yeah.

1 Q Okay. All right. And you lived there
2 from '91 until what?

3 A Until I believe we moved from there to
4 the Family Court residence.

5 Q So to the late '90s, '97, '98?

6 A I would say so, yes.

7 Q Okay. And you owned that residence?

8 A Yes.

9 Q Did you own it as an individual? In a
10 trust or an LLC?

11 A I don't recall.

12 Q Okay. And, Doctor, are you -- you're
13 not currently married because you're engaged.

14 Have you been previously married, sir?

15 A Yes.

16 Q When were you married?

17 A From 1983 through 2005.

18 Q To whom were you married?

19 A Julie Brown.

20 Q And did you have any children?

21 A Yes.

22 Q How many?

23 A Four.

24 Q Okay. Can you give me names and ages?

25 A Taylor, he is -- well, he was born in

1 1987. I can give you the years easier than --

2 Q That's fine. That's fine. I'll do the
3 math later.

4 A Adam was born in 1988. Kelsey was born
5 in 1989, and Audrey was born in 1991.

6 Q Okay. And -- all right. What is your
7 date of birth, Doctor?

8 A January 16, 1959.

9 Q Happy birthday.

10 So that makes you --

11 A Sixty-one.

12 Q Sixty-one. Okay.

13 And so what is your current business or
14 occupation?

15 A I am retired because I am disabled.

16 Q Okay. I know you're a medical doctor.
17 What was your area of practice or specialty?

18 A Orthopedic surgery.

19 Q And did you have any -- any specialty
20 within that specialty?

21 A Hip and knee replacements.

22 Q Okay. So let's backtrack here just a
23 second.

24 Your -- what was the name of or did you
25 have a name of your practice when you were

1 practicing?

2 A I was with Desert Orthopedics Center.

3 Q Okay. How long were you with Desert
4 Orthopedics?

5 A About 25 years.

6 Q So is that -- is that the job you came
7 to Las Vegas for?

8 A Yes.

9 Q Okay. So 1991 to 2016?

10 A Yes.

11 Q Okay. Did you have any ownership in
12 Desert Orthopedics in 2016 when you retired?

13 A Yes.

14 Q Okay. What happened to your ownership?

15 A It was bought out.

16 Q Okay. You don't currently have any
17 ownership interest in Desert Orthopedics?

18 A No.

19 Q So you testified that you're retired.
20 So did you -- when did you retire?

21 A Well, I -- I planned on just going on
22 a -- a leave of absence in 2016, but as things
23 turned out, I wasn't able to return.

24 Q Okay. So explain that to me a little
25 bit more.

1 What is the difference between a leave
2 of absence and actually retiring, hanging up your
3 scrubs?

4 A Because I -- I took a leave of absence
5 because I was having a medical issue, and so I
6 needed to find out what was going on with that.
7 And it turned out to be something that currently
8 doesn't allow me to go back to practicing.

9 Q Okay. Generally, what is that? I don't
10 want to know diagnosis or anything, but was it
11 your back? Was it hands? Was it something like
12 that? Because you were a surgeon; correct?

13 A Yes.

14 Q Okay. So what -- what was the specific
15 ailment that caused you to be disabled?

16 A I had a complication related to my
17 ulcerative colitis.

18 Q Okay. So it's an internal
19 gastrointestinal-type condition?

20 A Yes.

21 Q Okay. And when you say that you're
22 disabled, are you disabled in terms of you filed a
23 workers' compensation claim with the state of
24 Nevada?

25 MR. GALLIHER: Object to form.

1 THE WITNESS: No, it had nothing to do
2 with my work, per se. I just couldn't do surgery
3 anymore.

4 BY MR. GRAF:

5 Q Okay. When you say -- disabled has a
6 connotation, though. You worked in the orthopedic
7 industry. You did probably evaluations of
8 patients in the past; right?

9 A Yes.

10 Q Okay. For workers' compensation claims?

11 A Sure.

12 Q Okay. So when you say that you're
13 disabled, did you get a rating as to your
14 disability at any point in time?

15 A Well, I'm not on workers' compensation,
16 so I don't know to -- the -- the short answer is
17 no.

18 Q Okay. I'm just trying to understand.
19 You -- you used the word "disabled." I want to
20 make sure that I understand it. It has somewhat
21 of a legal connotation, so I want to make sure
22 that I'm clear as to what you're saying.

23 Did you have, like, a private insurance
24 long-term-care-type coverage that you made a claim
25 under where you were determined to be disabled?

1 A Yes.

2 Q Okay. And in terms of that claim, who
3 did you make that claim with?

4 A Unum.

5 Q And what was the type of policy that you
6 made the claim under?

7 A Disability policy.

8 Q Okay. Does the disability policy have
9 any conditions as to whether or not you can or
10 cannot work? So let me ask a better question.
11 I'll ask some foundational type of questions.

12 So Unum has made a determination that
13 you are disabled under their policy; correct?

14 A Yes.

15 Q Okay. Does that policy allow you to
16 have any employment?

17 MR. GALLIHER: Hold on. I think it
18 calls for a legal conclusion and calls for
19 speculation.

20 But if you know, you can answer.

21 BY MR. GRAF:

22 Q I just want to know what you know,
23 Doctor.

24 A So -- yeah, so can you rephrase the
25 question, because I'm not --

1 Q Can you go get a job and get a paycheck
2 right now?

3 A Can I work and still collect --

4 Q Disability.

5 A -- disability? I can as long as it
6 doesn't violate any of the restrictions that my
7 doctors have put on me.

8 Q Okay. So what types of restrictions are
9 those?

10 A I'm not allowed to stand in one position
11 for periods longer than one hour or thereabouts.

12 Q Okay. Anything else?

13 A That's the main -- that's the main issue
14 that resulted in me having to give up surgery.

15 Q All right. Any other things that -- any
16 other restrictions on being able to work?

17 A Well, I guess along with that, I have to
18 have the ability to move around somewhat freely if
19 I have an abdominal symptom in order to alleviate
20 the symptom.

21 Q Okay. Does -- so since 2016, the
22 disability policy has been paying you income;
23 correct?

24 A Yes.

25 Q Do you have any other sources of income

1 **since 2016?**

2 A Just since 2016, I still had some
3 collections coming in from my practice. And then
4 I have some investments, so I have some investment
5 income. That's it.

6 Q In terms of your investment income, you
7 were -- you were bought out of Desert Orthopedics;
8 correct?

9 A Yes.

10 Q Are they still -- are they paying you
11 over time? Did they pay you a lump sum? Is that
12 all done?

13 A It was a small payment. They just paid
14 me a lump -- one check.

15 Q Okay. And here is a question I didn't
16 ask you. Even though you're disabled, do you have
17 the ability to consult or do any of other type of
18 medical work?

19 A Yes.

20 Q Okay. Do you do that?

21 A No.

22 Q Okay. Included in your investment
23 income, does that include either royalties or any
24 other types of payments as a result of any patents
25 that you may own?

1 A Yes.

2 Q Okay. So how many patents do you own?

3 A Well, I'm at least named on -- and I
4 didn't look -- I haven't looked at this for a
5 while, but I think around three, maybe.

6 Q Okay. And what types of patents are
7 those?

8 A They're generally related to hip and
9 knee replacements.

10 Q Do you have a patent on a procedure or
11 do you have a patent on a device? What are those?

12 A They're mainly devices.

13 Q Okay. And what types of devices are
14 they?

15 A Well, related to hip and knee implants.

16 Q Okay. Is it the hip? What is it? Just
17 generally. I mean, I'm not going to understand it
18 if you get much past that, Doctor, so --

19 A So I'll just give you one that I recall
20 is a special type of flute on a long revision hip
21 stem prosthesis --

22 Q Okay.

23 A -- that I developed in conjunction with
24 the company.

25 Q And are those -- that patent has been

1 issued or is it pending?

2 A It's been issued.

3 Q Okay. And you earn royalties when
4 people use that device?

5 A No, not -- not that device.

6 Q Okay. Do you earn any royalties
7 regarding that device?

8 A No.

9 Q Okay. Why is that?

10 A There was -- I can't remember exactly
11 what happened, but there was an issue where they
12 just bought out my royalties several years ago.

13 Q Okay. So the manufacturer of that
14 device is who?

15 A Smith & Nephew Orthopedics.

16 Q Okay. Do you have any other patents
17 that you still earn royalties on?

18 A They aren't patents, per se. I was on
19 development teams to develop a prosthesis where
20 they would pay a royalty, so I still have a few
21 small royalties --

22 Q Okay.

23 A -- filtering in.

24 Q And what is an -- are you paid the
25 royalties from the manufacturer?

1 A Yes.

2 Q Okay. And who is the manufacturer of
3 the ones that you still earn royalties on?

4 A Smith & Nephew Orthopedics.

5 Q Okay.

6 A And also a very small one from DJA --
7 DJO Orthopedics.

8 Q Okay. So some of the other investment
9 income that you have besides royalties, what --
10 what other types of investment income are we
11 talking about?

12 A Well, I have the -- an investment
13 account, so securities and things like that. My
14 retirement account. I have some interests in
15 various LLCs. Most of them are real estate --
16 pieces of real estate that are used for something.

17 Q Okay. So we'll go over some of those
18 LLCs.

19 But do you own an interest in CLS?

20 A No.

21 Q Okay. Do you still have an ownership
22 interest in Serenity?

23 A Serenity what?

24 Q Actually, it's CLSH, which is a Canadian
25 company.

1 Are you aware of that?

2 MR. GALLIHER: What was -- is he aware
3 of what? That it's a Canadian company?

4 BY MR. GRAF:

5 Q No, no, no. Do you have an ownership
6 interest in CLS Holdings USA, Inc.?

7 A No. I only own some of their stock.

8 Q Okay. How much of their stock do you
9 own?

10 A How many shares or --

11 Q Sure.

12 A 13 million, something like that.

13 Q Okay. And is it more than 10 percent of
14 the stock?

15 A Just barely, yes.

16 Q Okay. And you have to report as an
17 insider when you buy or sell your stock; correct?

18 A Yes.

19 Q Okay. And do you receive income from
20 that stock ownership, distributions?

21 A No.

22 Q Okay. So they haven't issued any
23 distributions since you've had ownership of that
24 stock?

25 A Like a dividend, do you mean?

1 Q Dividend, distribution.

2 A Well, I don't know what you mean by a
3 distribution from stock ownership.

4 Q Sure. That would normally be in an LLC.
5 So, yeah, have they issued any dividends as a
6 result of your stock ownership?

7 A No.

8 Q Okay. All right. Let's talk about, do
9 you hold -- still hold any professional licenses?

10 A Yes.

11 Q Okay. What licenses and in what
12 jurisdictions?

13 A I have a medical license here in Nevada,
14 and I have a medical license in the state of
15 Texas.

16 Q Okay. Did you ever practice in Texas?

17 A No.

18 Q Okay. Any other jurisdictions that you
19 have a medical license?

20 A No.

21 Q Or have had a medical license in the
22 past?

23 A Yes.

24 Q Where is that?

25 A So I had my first medical license in

1 California when I was in my training, and then I
2 had a medical license in Minnesota when I did my
3 additional training.

4 Q Okay. Did you ever have a medical
5 license in South Dakota?

6 A No.

7 Q Okay. Is -- it is South Dakota, right,
8 not North Dakota?

9 A Yes.

10 Q I know, I don't -- it's like the
11 Nevada/Nevada type of thing. I don't mean to
12 offend by asking you if it's one or the other. I
13 just don't know the difference. I'll hopefully
14 will know by the end.

15 A Well, most people do make that mistake.
16 Thank you.

17 Q Yeah, so I don't want to do that.
18 Have any of those licenses ever been
19 suspended or revoked?

20 A No.

21 Q Okay. Have you ever had any malpractice
22 claims?

23 A Yes.

24 Q Okay. How many?

25 A Five or six, maybe.

1 Q And in what jurisdictions were those?

2 A In Clark County.

3 Q So those were all in Clark County?

4 A Yes. Oh, I'm sorry, one of them was in
5 California during my residency.

6 Q Okay. All right. Do you hold any board
7 certifications?

8 A Yes.

9 Q What board certifications do you hold?

10 A In orthopedics.

11 Q Any others?

12 A No.

13 Q Okay. Is that -- I know that they have
14 to renew them every ten years now.

15 Were you grandfathered in in terms of
16 that board certification?

17 A No, I was not.

18 Q So you have to recertify every ten
19 years?

20 A Yes.

21 Q Is that board certification current?

22 A Yes.

23 Q Okay. Any other board certifications?

24 A No.

25 Q Okay. Any other licenses other than

1 your medical license? Other than your driver's
2 license, of course.

3 A I can't think of any.

4 Q Okay. Do you currently have privileges
5 at any hospitals?

6 A No.

7 Q Okay. When was the last time you had
8 privileges at a hospital in Clark County, Nevada?

9 A Well, I had privileges in March of 2016
10 when I took a leave of absence, and I can't
11 remember when those expired and I didn't renew
12 them.

13 Q Okay.

14 A Maybe 2017 or thereabouts.

15 Q And it's your understanding as you sit
16 here today that those have all expired?

17 A Yes.

18 Q Okay. And you don't have privileges at
19 any other hospitals anywhere else?

20 A No.

21 Q Okay. All right. Do you have a current
22 employer?

23 A No.

24 Q Okay. Do you do anything in terms of
25 the operations of CLS Holdings?

1 A No.

2 Q Okay. Do you hold any positions on the
3 board of CLS Holdings?

4 A No.

5 Q Do you hold any positions as an officer
6 of that company?

7 A No.

8 Q Okay. How about, you talked about other
9 investments being the LLCs that had ownership in
10 real estate.

11 Are you the manager of any of those
12 LLCs?

13 A Well, my house is in an LLC, so I'm the
14 manager of that.

15 Q Okay. The La Madre property?

16 A Yes, indirectly a manager through the
17 Shiraz Trust.

18 Q Okay. And what is that LLC?

19 A That one is Zymax Forensics, LLC.

20 Q Can you spell that for me?

21 A Z-Y-M-A-X Forensics.

22 Q Okay. Any other LLCs that you are the
23 manager of?

24 A Not that I can think of.

25 Q And when I say "manager," you -- you

1 made a distinction actually as to Zymax, that
2 Shiraz Trust is the manager of that LLC, and that
3 you're the trustee of that trust. So are there
4 any other LLCs that are similarly structured?

5 A No.

6 Q Okay. I think that there was -- I ran
7 across another management trust -- you know, it
8 may come in my notes here in a minute. I guess
9 I'll ask about it then.

10 What about SWC Real Estate?

11 A I'm sorry.

12 Q Is that an LLC that you're associated
13 with?

14 A Yes, it is.

15 Q And who's the manager of that entity?

16 A I think that is also the Shiraz Trust.

17 Q What is -- well, let me backtrack a
18 second.

19 Does Zymax own anything other than your
20 home?

21 A No.

22 Q Okay. SWC Real Estate, what does it
23 own?

24 A It owns a piece of property up in Apex.

25 Q Okay. Is that dirt? Does it have a

1 building on it?

2 A It's dirt.

3 Q Okay. And is that investment property?

4 A Yes.

5 Q Or do you intend on developing it?

6 A No. I hope to sell it.

7 Q Okay. What about ILJ, LLC?

8 A That is an LLC that is -- it's an LLC
9 that holds -- it's -- well, let's see. I need to
10 think about this. It is the member of several
11 other LLCs.

12 Q Okay. And that LLC, do you own that
13 LLC? Are you a member? Let's put it that way.

14 A My trust is a member.

15 Q Okay.

16 A The member.

17 Q And what percentage of that --

18 A And I'll have to think about this.
19 There might be another entity that's a member of
20 that. I wish I had it all in front of me, because
21 I have trouble keeping track of it.

22 My trust -- my trust is the member of
23 ILJ, LLC, I'm quite sure.

24 Q Okay. And what does ILJ own?

25 A ILJ is the member -- oh, gosh -- of --

1 of some of my investments, so --

2 Q Is one of those investments Alternative
3 Solutions, LLC?

4 A It was at one time. We don't own that
5 anymore.

6 Q Okay. Does ILJ hold the member -- or
7 your ownership interest in the stock in CLS
8 Holdings?

9 A I think that -- no, that stock I believe
10 is -- I'm sorry, yes, it does.

11 Q Okay. And when approximately did you
12 purchase the interest in CLS Holdings?

13 A Well, we applied for medical marijuana
14 licenses unfortunately in 2014, and, you know, we
15 were lucky enough to eventually sell to CL -- we
16 sold our company to CLS Holdings in 20 -- well,
17 the contract was signed the end of 2017.

18 Q And did that sale -- was it ultimately
19 consummated and approved by the state?

20 A Yes.

21 Q Okay. And were you paid moneys or did
22 you get stock in exchange for your ownership in
23 the previous company?

24 A It was a combination.

25 Q And what was the previous company, the

1 **medical marijuana license holder entity name?**

2 A The licenses were held by three
3 subsidiary companies.

4 Q Okay.

5 A And they were all members of the parent
6 company, which is Alternative Solutions that you
7 referred to.

8 Q Okay. And did you have -- what types of
9 medical marijuana licenses did you have? Was it
10 cultivation? Was it production? Was it
11 dispensary? What were they?

12 A Yes, we had one of each.

13 Q Okay. And what dispensary name did it
14 operate as?

15 A Oasis.

16 Q Okay. And in that group, you had
17 various partners or members -- other members
18 that -- that you practiced with? Is that a fair
19 statement? Practiced medicine with?

20 A Did I have partners that were -- I'm
21 sorry. Can you -- can you ask that again? I'm
22 not sure what you --

23 Q It's probably a bad question.

24 Did you subsequently purchase additional
25 shares in CLS Holdings other than the sale of

1 Oasis?

2 A No.

3 Q Okay. So in -- in exchange for your
4 agreement to sell whatever you owned in the Oasis
5 three entities, you got the 13 million shares in
6 CLS Holdings?

7 A Yes.

8 MR. GALLIHER: I just want to object to
9 this line of questioning. I want to let you ask
10 your questions, but I'm struggling to find -- to
11 try to determine what any of this has to do with
12 the sale or real property disclosure form for 42
13 Meadowhawk and what interests your clients have in
14 any of his investments or anything else.

15 MR. GRAF: It goes to the sophistication
16 of the witness and the fact that it's a -- kind of
17 a simple thing on a form that he was asked to say
18 whether or not there was moisture or wasn't
19 moisture, and then whether or not we'll get into
20 if he had counsel to help him with these other
21 transactions, if he had counsel to help him with
22 this transaction, and the -- whether or not he
23 received any advice of counsel, which it appears
24 is what his response is in his interrogatory
25 responses as to responding to the question in the

1 SRPD. So this goes to his level of
2 sophistication, the fact that, you know, he's a
3 doctor, he's a medical doctor, he's a surgeon, he
4 owns several different LLCs, they own several
5 things, he's got millions of shares in
6 multi-million dollar companies, that sort of
7 thing, so I'm just trying to show the level of
8 sophistication of Dr. Swanson. That's it. You
9 asked me, I'll tell you.

10 MR. GALLIHER: Well, we'll stipulate
11 that he's -- you know, that he's a medical doctor
12 and that he owns -- or he has interests in
13 investments and he has interests in real estate,
14 but, you know, when you're asking him about
15 numbers of shares and who your partners were and
16 all of that stuff, it seems to me that we're well
17 beyond anything that you would need to establish
18 his sophistication in this lawsuit.

19 MR. GRAF: Okay. Will you stipulate
20 that he's a sophisticated investor under the IRS
21 code?

22 MR. GALLIHER: I'll consider it after
23 consultation with my client.

24 MR. GRAF: Okay. I appreciate that.
25 All right.

1 MR. GALLIHER: And we've gone an hour.

2 Can we take a break?

3 MR. GRAF: We can most definitely do
4 that.

5 Did we have a question pending?

6 THE COURT REPORTER: No.

7 MR. GALLIHER: I try not to do that.

8 MR. GRAF: No, no, you're fine.

9 MR. GALLIHER: All right. We're off the
10 record then.

11 THE VIDEOGRAPHER: Off the record at
12 10:00.

13 (Whereupon, a recess was taken.)

14 THE VIDEOGRAPHER: Back on the video
15 record at 10:07.

16 BY MR. GRAF:

17 Q Okay. So let's backtrack just here for
18 a second.

19 On those -- so we went through the
20 litany of houses that you have owned here in the
21 Clark County area. When you owned all of those
22 homes, did you execute an SRPD, a Seller's Real
23 Property Disclosure form in each one of those
24 transactions?

25 A I presume so. That's been the law since

1 then.

2 MR. GRAF: Okay. So let's go ahead and
3 have this marked as Plaintiffs' 3.

4 (Exhibit No. 3 was marked for
5 identification.)

6 MR. GRAF: And then at the same time,
7 let's go ahead and have this marked as 4.

8 (Exhibit No. 4 was marked for
9 identification.)

10 BY MR. GRAF:

11 Q Okay. Doctor, you've been handed what's
12 been marked as Plaintiffs' 3 and 4 for purposes of
13 this deposition.

14 Do you recognize Exhibit 3?

15 A Yes.

16 Q What is Exhibit 3, Doctor?

17 A It's the SRPD.

18 Q Okay. And did you fill this document
19 out?

20 A Yes.

21 Q Okay. It appears to be a -- or use or
22 utilize an electronic signature.

23 Did you use Adobe or some other form to
24 complete this document?

25 A I think so, yes.

1 Q Okay. But in terms of the information
2 that's provided in the document and checking
3 whether it was yes or no as the response, you did
4 that yourself?

5 A Yes.

6 Q Okay. And then the signature or, excuse
7 me, the initials on each of the first -- what is
8 it? Well, it's on all five pages, actually,
9 besides the signature page. The initials where it
10 says sellers, are those your initials?

11 A Yes.

12 Q And did you cause those to be affixed to
13 this document?

14 A Yes.

15 Q Did you read this document before you
16 completed it, Doctor?

17 A I didn't read the -- the whole thing. I
18 didn't read the last couple of pages probably.

19 Q And by "the last couple of pages,"
20 you're talking about the recitation of NRS
21 113.100, et cet?

22 A Yes.

23 Q Okay. And why is that?

24 A Well, because I had -- with previous
25 homes I had sold, I had discussed this form with

1 my Realtors and they had generally instructed me
2 how to answer questions.

3 Q Okay.

4 A So I assumed that I knew how to complete
5 it.

6 Q All right. The -- at the bottom of each
7 of these pages, there's a Seller's Real Property
8 Disclosure Form 547. It says revised July 25th,
9 2017.

10 Do you see that, Doctor, at the bottom
11 right?

12 A Yes.

13 Q Did you -- and that's approximately
14 three months before you executed this document.
15 That's a fair statement?

16 A Yes.

17 Q Okay. Did you ever ask your Realtor or
18 any other person as to whether or not there were
19 any material or other changes to this form?

20 A No.

21 Q Okay. As you sit here today, are you
22 aware as to whether or not there were any material
23 or other changes -- excuse me -- that occurred on
24 that revision, July 25th, 2017?

25 A No.

1 Q Okay. And in terms of -- on the first
2 page where it says "instructions to seller" and
3 it's in all caps in bold, do you see that?

4 A Yes.

5 Q Did you read that prior to filling out
6 this document, Doctor?

7 A I don't recall.

8 Q You don't recall whether or not you read
9 it or you don't recall whether or not you reviewed
10 it prior to executing the document?

11 A I don't recall reading that.

12 Q Okay. It -- do you contest the fact
13 that you were responsible for adhering to the
14 instructions that are stated on this document?

15 MR. GALLIHER: Object to the form.
16 Calls for a legal conclusion. It also implicates
17 the ultimate cause in the case.

18 You can answer, if you understand it.

19 THE WITNESS: What was the question?

20 MR. GRAF: Can you read it back?

21 (Whereupon, the record was read.)

22 THE WITNESS: No.

23 BY MR. GRAF:

24 Q Okay. So the first instruction, it says
25 answer all questions. Doctor, do you believe you

1 answered all the questions in this document?

2 A I believe so.

3 Q Okay. The No. 2 says, "report known
4 conditions affecting the property."

5 Do you believe that you did that and
6 complied with that request?

7 A Yes.

8 Q Okay. It says, "Attach additional pages
9 with your signature if additional space is
10 required."

11 Did you attach any additional pages,
12 Doctor?

13 A No.

14 Q Number 4 says, "Complete this form
15 yourself."

16 Did you complete this form yourself,
17 Doctor?

18 A Yes.

19 Q Okay. And "if some items do not apply
20 to your property, check NA, not applicable.
21 Effective January 1st, 1996, failure to provide a
22 purchaser with a signed disclosure statement will
23 enable the purchaser to terminate an otherwise
24 binding purchase agreement and seek other remedies
25 as provided by the law."

1 So did you -- I think you did mark NA in
2 a couple of these different provisions, and you
3 believe that those were applicable given the 42
4 Meadowhawk property?

5 A Yes.

6 Q Okay. So, like, for instance, in where
7 it says systems and appliances, just below that,
8 you hit -- or you marked NA where it says well and
9 pump.

10 Do you see that?

11 A It may have been the first -- yes.

12 Q Okay. So you believe that that was not
13 applicable to this property?

14 A Yes.

15 Q You would agree with me, though, that
16 there is a sump pump that is located in the
17 basement of 42 Meadowhawk property; correct?

18 A If there is, I don't know where it is.

19 Q Okay. In the restroom in the basement
20 of the 42 Meadowhawk property, is there an ejector
21 pump for that toilet?

22 A I have no idea.

23 Q Okay. You also marked not applicable
24 where it says fountains.

25 Do you see that?

1 A Yes.

2 Q There is a fountain in this property,
3 isn't there? The water feature that's in the --
4 from the pool to the basement?

5 A Well, I guess I wouldn't consider that a
6 fountain. It's a waterfall.

7 Q Okay. All right. So in terms of the --
8 your responses here and on page -- what is it,
9 five of five, is that your signature at the
10 bottom?

11 A On which page? Five of five?

12 Q Five of 5 where it says "cotrustee, the
13 Shiraz Trust, manager, Lyons Development, LLC."

14 A Yes.

15 Q And then it's dated 10/24 of 2017.

16 Is that a fair statement?

17 A Yes.

18 Q And you caused that signature, that
19 electronic signature to be affixed to this
20 document?

21 A Yes.

22 Q And you -- by affixing that signature,
23 you were acknowledging the statement above it?

24 A Yes.

25 Q Okay. And that the information that's

1 being provided on pages one, two and three was
2 true and correct to the best of your knowledge?

3 A Yes.

4 Q Okay. And that the seller has a duty to
5 disclose to buyer as new defects are discovered
6 and/or known defects become worse?

7 A Yes.

8 Q And you agreed to be bound by that
9 statement; correct?

10 A Yes.

11 Q All right. So on the first page where
12 it says "systems and appliances" and it asks "are
13 you aware of any problems and/or defects with any
14 of the following," do you see that?

15 A Yes.

16 Q Okay. And you marked no or NA on all of
17 those systems and appliances; correct?

18 A Correct.

19 Q All right. Did you previously have any
20 problems at 42 Meadowhawk with the plumbing
21 system?

22 A I had some leaks in the plumbing.

23 Q Okay. You had a -- I think it's four or
24 five leaks that you had at 42 Meadowhawk from 2015
25 until you sold it in November of 2017?

1 A I think there were four, to my
2 recollection.

3 Q Okay. So why didn't you mark yes as to
4 the plumbing system that you were aware of
5 problems?

6 A Because there was no problem with the
7 plumbing system at the time I filled this out.

8 Q Okay. All right. On the next page, it
9 says "property conditions, improvements, and
10 additional information." It says, "Are you aware
11 of any of the following, structure, subpart A,
12 previous or current moisture conditions and/or
13 water damage?" And what did you note there?

14 A No.

15 Q Okay. Now, Doctor, you just testified
16 two minutes ago that there were four previous
17 incidents of water loss in the house; correct?

18 A Leaks, yes.

19 Q Okay. You would agree that those leaks,
20 they leaked water; right?

21 A That's what a water leak is, yes.

22 Q I agree. I'm trying to break this down
23 to a base level, and I know you're kind of giving
24 me a look and I want to make sure that we're all
25 clear here before we move on to other questions.

1 So the term "previous," were you
2 confused at all as to what previous means?

3 A No.

4 Q Okay. Previous means prior to you
5 filling out this form; right?

6 A Yes.

7 Q Okay. So you would agree that those
8 four previous instances of water losses could
9 denote the fact that that would be a previous
10 condition; right?

11 MR. GALLIHER: Object to the form.
12 Lacks foundation.

13 THE WITNESS: I didn't consider those
14 leaks conditions.

15 BY MR. GRAF:

16 Q Okay. So the moisture conditions, what
17 was your understanding as to that definition?

18 A A moisture condition, my understanding
19 at the time anyway, was that it was something that
20 was an ongoing or chronic problem. Maybe it goes
21 to my medical training. When you talk about a
22 condition, usually it's something that is not an
23 acute episode but a chronic episode.

24 Q Okay.

25 A And I was I think aware that this was --

1 this form is to inform a buyer of any ongoing
2 problem that would diminish the value of the home.
3 And in my opinion, those leaks were incidents that
4 were caught quickly and dried out and fixed and
5 didn't constitute a condition such as, say, a roof
6 that continues to leak for years or water
7 accumulation that causes some ongoing problem.

8 Q Okay. Let's -- and I appreciate your
9 responses.

10 Where did you get the language that it
11 must diminish the value of the home?

12 A Well, I don't even know. Maybe I used
13 poor wording when I said that, but at least affect
14 the home.

15 Q Okay. And it seems to be very specific
16 wording, "diminish the value of the home." So
17 were you ever -- let me ask a better question.

18 So did you -- when you were filling out
19 this form, did you seek the advice of any
20 attorney --

21 A No.

22 Q -- in how you should respond?

23 A No.

24 Q Okay. And let's talk about the phrase
25 itself. It says -- you would agree with me that

1 the way that this document is worded where it says
2 "previous or current moisture conditions," that
3 means you're supposed to talk about either things
4 that are ongoing as to current moisture
5 conditions; correct?

6 A (Nodding head.)

7 Q Is that a "Yes," Doctor?

8 A Yes.

9 Q Okay. And/or you're supposed to talk
10 about previous moisture conditions; correct?

11 A Yes.

12 Q Okay. And -- and/or water damage, so
13 that includes previous water damage, you would
14 agree with me, right, Doctor?

15 A Yes.

16 Q And it includes current water damage;
17 correct, Doctor?

18 A Yes.

19 Q Okay. Doctor, you would agree with me
20 that there were two separate incidents of water
21 loss in the master bedroom in generally the same
22 area in 2015 and 2017; right, Doctor?

23 MR. GALLIHER: Object to the form.
24 Foundation.

25 THE WITNESS: Repeat the question.

1 BY MR. GRAF:

2 Q You would agree with me that there were
3 two separate incidents of water loss in the master
4 bedroom bathroom in 2015 and 2017; correct?

5 MR. GALLIHER: Same objection.

6 THE WITNESS: In the master closet is
7 where there were two that were in close proximity.
8 One was just a fitting that came off the sink --

9 BY MR. GRAF:

10 Q Okay.

11 A -- in the bathroom.

12 Q And what was the second loss? Was that
13 another fitting that had failed?

14 A In 2015?

15 Q Yes.

16 A In 2015, it was a recirculating pump, I
17 guess, that failed.

18 Q Was it the pump that failed or was it
19 the fitting and the attachment of the pipe to the
20 recirculating pump?

21 MR. GALLIHER: Foundation. Speculation.

22 THE WITNESS: I was told it was the
23 pump, because that's what they replaced.

24 BY MR. GRAF:

25 Q Okay. But the water loss in 2015, you

1 would agree that that was a previous moisture
2 condition; right?

3 MR. GALLIHER: Object to the form.

4 THE WITNESS: Again, I was reading this
5 as meaning something different. I would say there
6 was a water episode or something like that. In
7 other words, I had a toilet overflow once. I
8 wouldn't consider that a moisture condition
9 either.

10 BY MR. GRAF:

11 Q We're not talking about a toilet
12 overflowing, though, in 2015, are we, Doctor?

13 A No.

14 Q There was approximately \$2,495 in
15 repairs as a result of the 2015 water loss;
16 correct?

17 A Yes, I believe so.

18 Q And that included taking out cabinets
19 and repairing those cabinets; right?

20 A I think -- well, the kick plates.

21 Q And that included taking out and
22 replacing carpet that was in the -- in that
23 bathroom; right?

24 A They just dried it out. They didn't
25 take it out and replace it.

1 Q And it included repairing and replacing
2 the drywall that was on the wall adjacent to the
3 circulating pump; correct?

4 A That, I don't recall. I thought all of
5 the drywall was underneath the cabinets.

6 Q But, Doctor, the point I'm trying to
7 make is you would agree, though, that the water
8 loss that occurred in the master bathroom closet
9 or master bedroom closet in 2015 was more than
10 just a toilet that overflowed; right?

11 MR. GALLIHER: Object to the form.

12 THE WITNESS: Yes.

13 BY MR. GRAF:

14 Q There was extensive repairs that were
15 required?

16 A It was a -- an acute leak that required
17 access to dry it out, and that's what caused the
18 drywall damage and the cabinet damage, because
19 they had to get to the area. And when they dried
20 it out, they put it back together.

21 Q Sure.

22 A I don't know that the water itself
23 caused any of that damage.

24 Q So when you filled out this form on
25 October 24th of 2017, you would agree that that

1 condition in 2015 was previous water damage;
2 right?

3 MR. GALLIHER: Object to the form. It
4 misstates his testimony.

5 THE WITNESS: Say it again.

6 BY MR. GRAF:

7 Q You would agree with me that that damage
8 in 2015 in the master bathroom closet caused by
9 the failure of the recirculating pump was previous
10 water damage that was repaired by you in 2015;
11 right?

12 MR. GALLIHER: Same -- same objection.

13 THE WITNESS: I don't know that there
14 was any water damage. It was wet.

15 BY MR. GRAF:

16 Q Wet from what, Doctor?

17 A Water.

18 Q Okay. So the damage that was caused to
19 the drywall, to the toe kick, to the recirculating
20 pump itself, and any adjacent appurtenances to the
21 structure, that was all water damage, wasn't it,
22 Doctor?

23 MR. GALLIHER: Foundation. Speculation.
24 Misstates his testimony.

25 THE WITNESS: No, the recirculating pump

1 was the cause of the water leak, and those other
2 items were caused by the remediating company's
3 best efforts to make sure all of the water was
4 dried. They took the kick plate out. They cut
5 the hole in the drywall to make sure everything
6 was dry. They lifted up the carpet to dry out the
7 carpet, to make sure it was completely dry. The
8 water didn't damage those. The water made it wet.

9 BY MR. GRAF:

10 Q Okay. So that condition of being wet
11 and everything, that was a previous moisture
12 condition; right?

13 MR. GALLIHER: Misstates his testimony.

14 THE WITNESS: Again, I interpreted this
15 as -- as a condition being something that would be
16 ongoing. It was a -- it was a moisture or water
17 episode.

18 BY MR. GRAF:

19 Q Okay. Do you see any designation on
20 this document that says anything about --
21 actually, strike that.

22 So where it says previous moisture
23 conditions, you don't think the episode in 2015
24 was a previous moisture condition?

25 MR. GALLIHER: Asked and answered.

1 THE WITNESS: At the time I did not, no.

2 BY MR. GRAF:

3 Q Okay. What about the water loss in the
4 garage in 2015, August of 2015?

5 MR. GALLIHER: Object to the form.

6 BY MR. GRAF:

7 Q Was that a previous moisture condition,
8 Doctor?

9 A I don't believe so, no.

10 Q Why don't you believe that that was a
11 previous moisture condition, Doctor?

12 A Because that was a similar episode.
13 There was a sudden water leak, and it was caught
14 immediately and it was dried out and fixed. I
15 don't know that there was even any damage, other
16 than I think it shorted out a couple of speakers
17 and a control panel.

18 Q So was that incident in the garage in
19 August of 2015, did that cause water damage?

20 A To the electrical equipment?

21 Q Yes.

22 A Yes.

23 Q Okay. And those electrical appliances,
24 that sort of thing, they were damaged to the
25 extent that they had to be replaced; correct?