

IN THE SUPREME COURT STATE OF NEVADA

Electronically Filed
Sep 23 2021 10:51 a.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 III OF XIX
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CERTIFICATE OF SERVICE

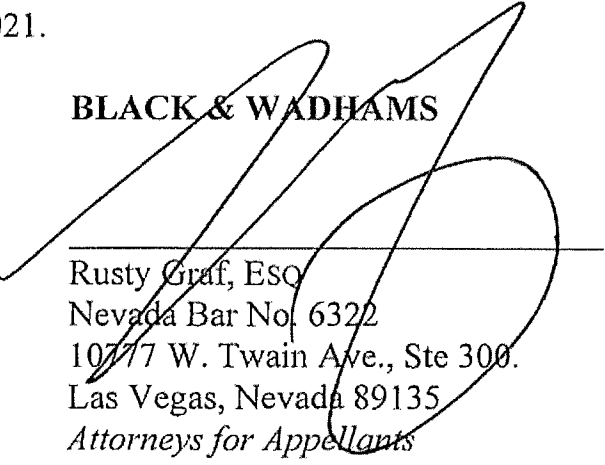
When All Case Participants are Registered for the Appellate CM/ECF System

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


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

Condensed Report Version Prepared For: Joe & Nicole Solino

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

Notes:

[R] 3770.02: Filter case leaks.

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

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

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

Plumbing Findings:

[R] 4684: Tub drains slow.

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

Electrical Findings:

[C] 5645: Electrical faceplate missing.

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

Bathroom(s) Findings:

General Interior Findings:

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

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

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JA000408

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

needed by a licensed and qualified Door Contractor.
See Photo(s) 7424.

Kitchen / Appliance Findings:

Structure Findings:

Notes:

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JA000409

Condensed Report Version Prepared For: Joe & Nicole Solino

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Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

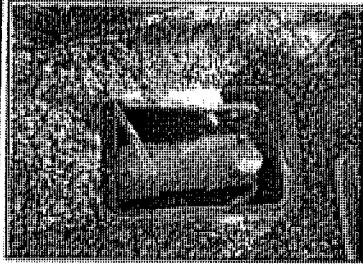


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Photo: 0313 (1)



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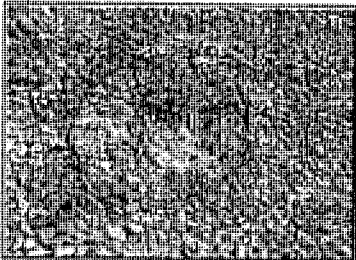


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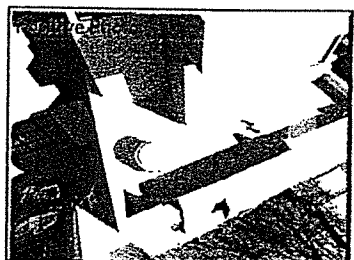


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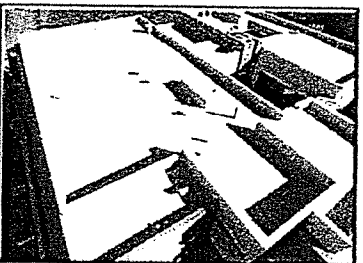


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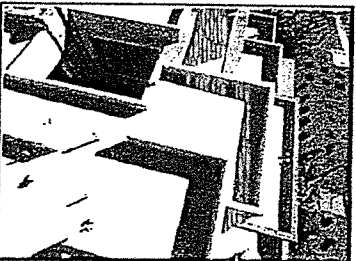


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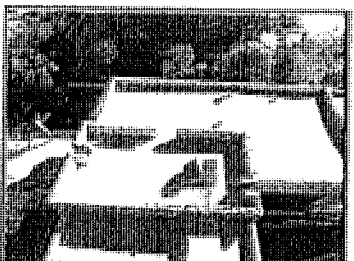


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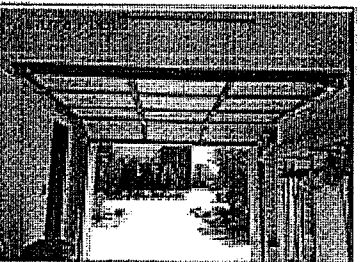


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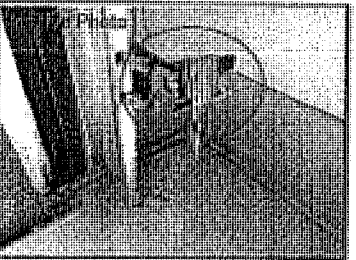


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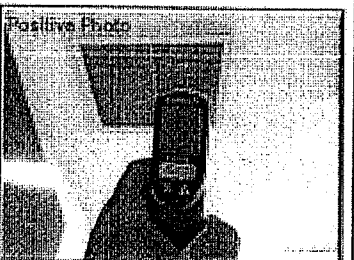


Photo: 2.02 (1)

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JA000410

Condensed Report Version Prepared For: Joe & Nicole Solino

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Date of Inspection: 10/27/2017 Start Time: 9:00:00 AM Report Number: 1027170900RP

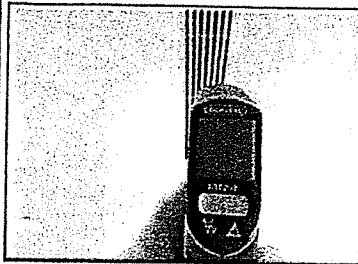


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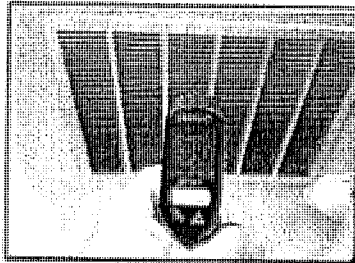


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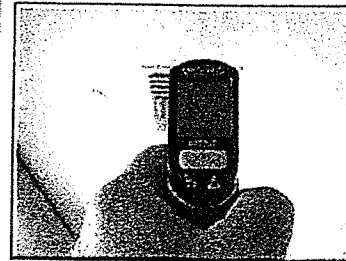


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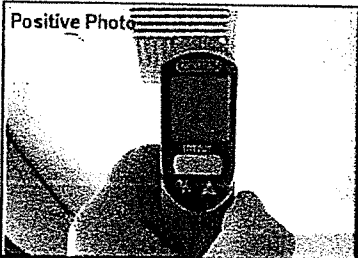


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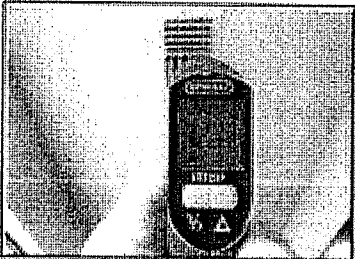


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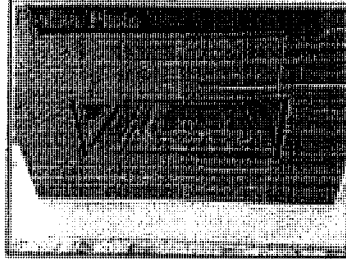


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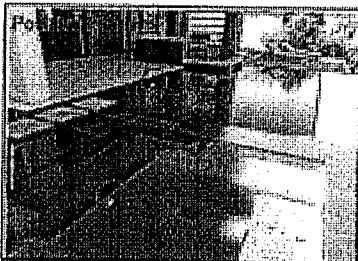


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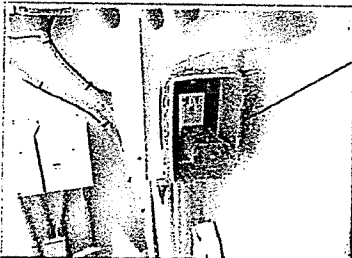


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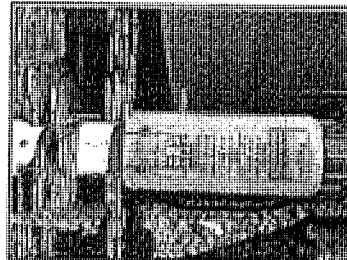


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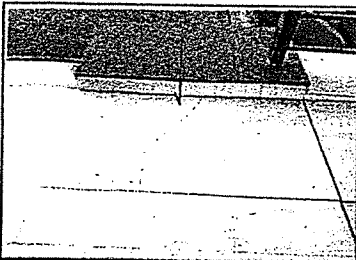


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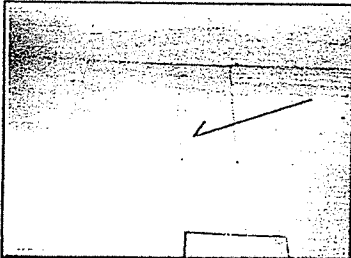


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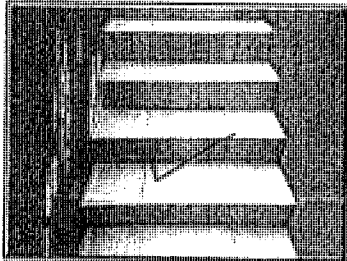


Photo: 3162 (3)

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JA000411

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

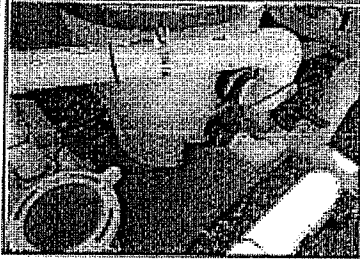


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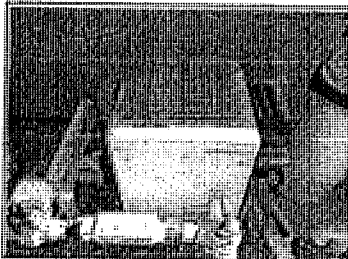


Photo: 3800 (1)

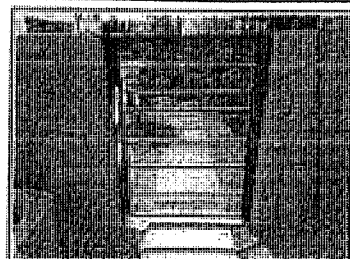


Photo: 3911 (1)

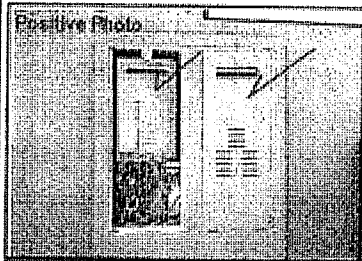


Photo: 4.07 (1)

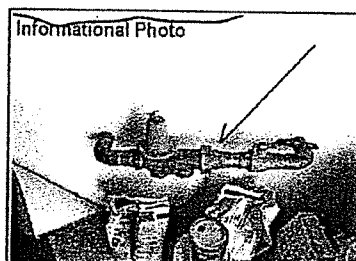


Photo: 4.16 (1)

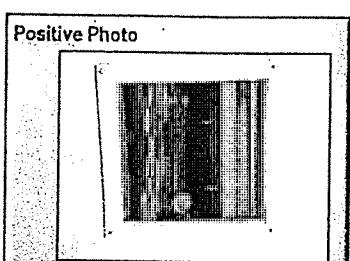


Photo: 4.171 (1)

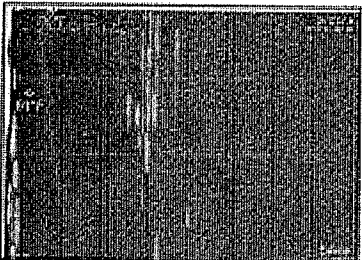


Photo: 4.18 (1)

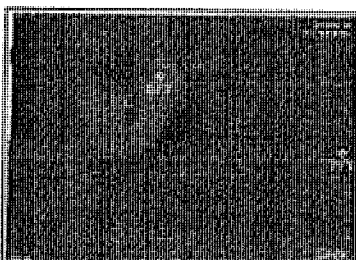


Photo: 4.18 (2)

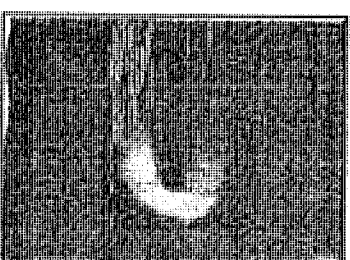


Photo: 4.18 (3)



Photo: 4.18 (4)



Photo: 4.21 (1)



Photo: 4.96 (1)

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

Caveat Emptor LV

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Condensed Report Version Prepared For: Joe & Nicole Solino

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

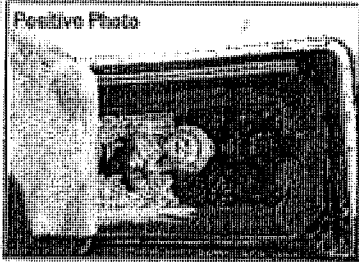


Photo: 4500 (1)

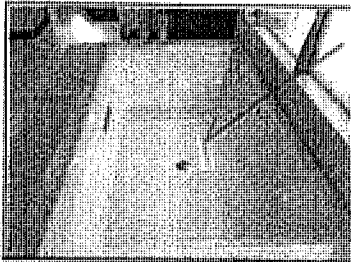


Photo: 4684 (1)



Photo: 5.2 (1)

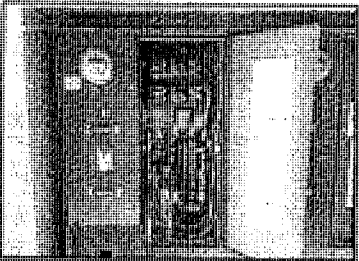


Photo: 5.2 (2)

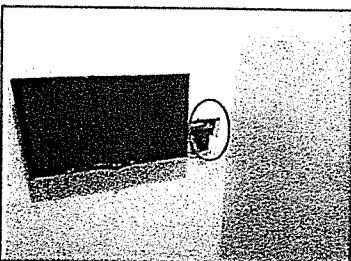


Photo: 5645 (1)

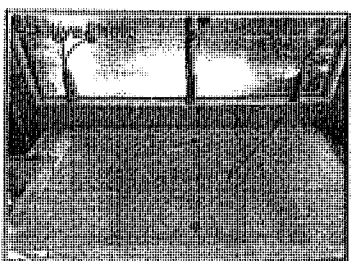


Photo: 6.15 (1)

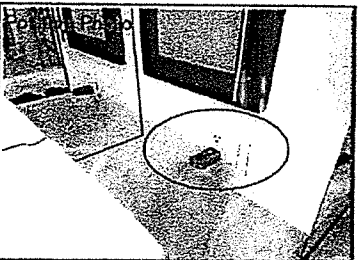


Photo: 6.410 (1)

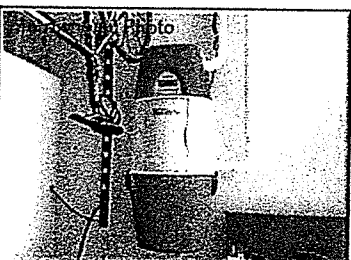


Photo: 7.82 (1)

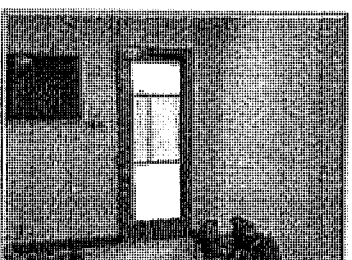


Photo: 7424 (1)



Photo: 8.04 (1)

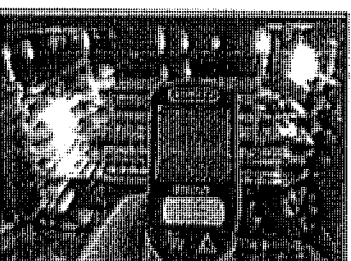


Photo: 8.04 (2)

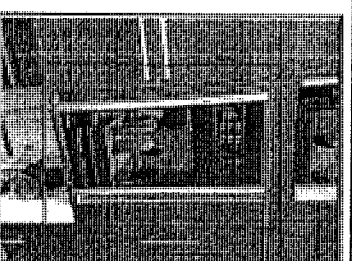


Photo: 8.07 (1)

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

Caveat Emptor LV

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Page 9 of 10

JA000413

Condensed Report Version Prepared For: Joe & Nicole Solino

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

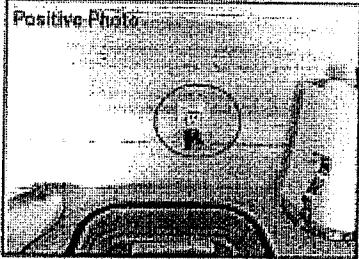


Photo: 8.110 (1)

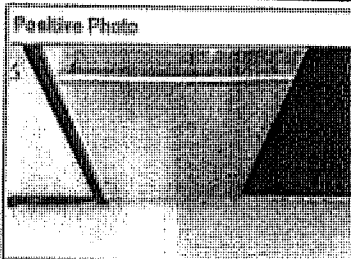


Photo: 8.2003 (1)

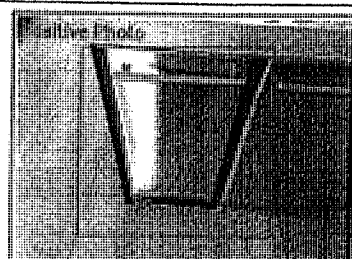


Photo: 8.31 (1)



Photo: 8.91 (1)

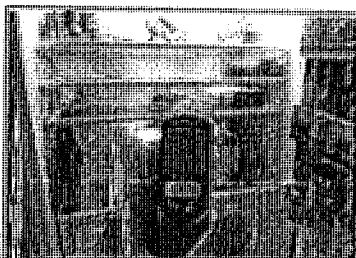


Photo: 8.91 (2)

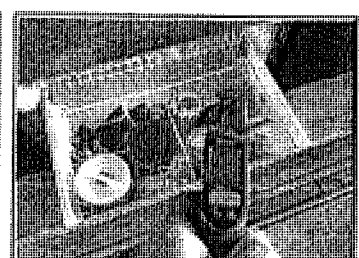


Photo: 8.91 (3)

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

Caveat Emptor LV

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Page 10 of 10

JA000414

EXHIBIT 6

JA000415



REQUEST FOR REPAIR No. 1

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

1. BUYER'S NOTICE: (Check one)

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

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

(see inspection report for details)

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

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

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

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

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

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

(See provided amended report and photos)

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

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

11/09/17
11:55AM EST

11/13/17
12:17PM EST

Copies of the following reports are attached:

☒ Inspection Report

☐ _____

☐ _____
DocuSigned by:

Buyer Joseph Folino

10/30/17

Date

☐ _____
DocuSigned by:

Buyer Nicole Folino

10/30/17

Date



EXHIBIT 7

JA00041B

APN NO.: 164-14-414-014

RECORDING REQUESTED BY:
EQUITY TITLE OF NEVADA

WHEN RECORDED MAIL TO:

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

MAIL TAX STATEMENTS TO:
SAME AS ABOVE

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

Inst #: 20171117-0003032

Fees: \$40.00

RPTT: \$15300.00 Ex #:

11/17/2017 03:21:08 PM

Receipt #: 3262384

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: RYUD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH THAT:

Lyons Development, LLC, a Nevada Limited Liability Company

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

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

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

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

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

SUBJECT TO:

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

SELLER:

Lyons Development, LLC

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

STATE OF Colorado)
COUNTY OF Denver) SS:

On November 11, 2017

personally appeared before me, a Notary Public

Todd Swanson

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

Karen Coffey
Notary Public

My commission expires: 3/29/18

KAREN COFFEY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064012163
MY COMMISSION EXPIRES 03-29-18

JA000420

EXHIBIT "A"
LEGAL DESCRIPTION

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

ASSESSOR'S COPY

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a. 164-14-414-014

b. _____

c. _____

d. _____

2. Type of Property:

a. ☐ Vacant Land

b. ☒ Single Fam. Res.

c. ☐ Condo/Twnhse

d. ☐ 2-4 Plex

e. ☐ Apt. Bldg

f. ☐ Comm'l/Ind'l

g. ☐ Agricultural

h. ☐ Mobile Home

i. Other _____

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property:

\$ 3,000,000.00

b. Deed in Lieu of Foreclosure Only (value of property)

\$

c. Transfer Tax Value

\$ 3,000,000.00

d. Real Property Transfer Tax Due:

\$ 15,300.00

4. If Exemption Claimed

a. Transfer Tax Exemption, per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100%

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

Signature _____

Capacity _____

Signature _____

Capacity _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Lyons Development, LLC

Address: 10120 W Flamingo Road Ste. 4333

City: Las Vegas

State: NV Zip: 89147

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Joseph R Folino and Nicole Folino

Address: 42 Meadowhawk Lane

City: Las Vegas

State: NV Zip: 89135

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

Print Name: Equity Title of Nevada

Escrow No.: 17840471-084-TGR

Address: 2475 Village View Dr., Suite 250

City, State, Zip: Henderson, NV 89074

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

EXHIBIT 8

JA000423

**INVOICE**

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

INVOICE NO
232809

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

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

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

ORDER 13382, PO

RESOLUTION RMA # 747000

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

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

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

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

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

Your Business is Appreciated!

* means item is non-taxable



INVOICE

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

INVOICE NO
232809

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

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

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

TOTAL AMOUNT 2,496.00

EXHIBIT 9

JA000426



June 9, 2017

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

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Christy Wegner".

Christy Wegner
Claims Coordinator
Christy.Wegner@uponor.com

Enclosure: Check

Uponor North America

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

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

JA000427

014805

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

109098 RAKEMAN PLUMBING Jun 7, 2017 14805

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

UPONOR 014805

5925 148TH STREET WEST
APPLE VALLEY, MN 55124

PNC Bank
National Association
Jeannette, PA
60-162/433

Check Date
07-Jun-2017

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

Check Amount
\$2,496.00

TO THE ORDER OF RAKEMAN PLUMBING
4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
United States

[Signature]

⑈014805⑈ ⑆043301627⑆ 1001149485⑈

JA000428

EXHIBIT 10

JA000429

Rusty Graf

From: Beissel, Stacey <Stacey.Beissel@uponor.com>
Sent: Wednesday, December 13, 2017 12:39 PM
To: Nicole Folino
Cc: Joe Folino
Subject: Uponor Warranty Claim - RMA 746512 (42 Meadowhawk)
Attachments: 746512_As_Received__2_.JPG; Rakeman_746512_42_meadowhawk_invoice.pdf; 746512_-_payout.pdf

Hi Nicole,

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

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

Claimant And Jobsite Information

Claimant Information

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

Jobsite Information

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

Past Occurrences

Estimated Claim Amount

Past Occurrences

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

Installation Information

Application

Application

Plumbing

Recirculation

Yes

Recirc Type

Timed/On Demand

Failure Location

Supply

Location Detail

master bed room closet

Contractor Information

rakeman plumbing

aaron hawley

4075 losee rd

NORTH LAS VEGAS, NV

US

aaron@rakeman.com

Ph 702 642 8553

Installing? Yes

Temperature/Pressure

Temperature

Hot

System Temp Hot

120 F

System Pressure

65 PSI

Other Information

Present for destructiv

Phase of Construction

Builder

Water Source

Water Source

Municipal

Customer Comment(s)

tubing split at fitting. Cu

Dates

Est. Installed Date

19-JUN-2013

Failure Date

16-FEB-2017

Product Information

Item Number	Description	Return
Q4751775	ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX	
Problem: tubing split at fitting		
Review Result: No Failure		
F2060750	3/4" Uponor AquaPEX Red, 300-ft. coil	
Problem: tubing split at fitting		
Review Result: Manufacturing		
F3060750	3/4" Uponor AquaPEX Blue, 300-ft. coil	
Problem: tubing split at fitting		
Review Result: Manufacturing		
F1041000	1" Uponor AquaPEX White, 100-ft. coil	
Problem: tubing split at fitting		
Review Result: No Failure		
Q4690756	ProPEX Ring with Stop, 3/4"	
Problem: tubing split at fitting		
Review Result: No Failure		
Q4691000	ProPEX Ring with Stop, 1"	
Problem: tubing split at fitting		
Review Result: No Failure		

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

Thank you
Stacey

uponor

Stacey Beissel
Warranty Manager
Uponor North America

T +19529978984
M +16512531956

www.uponor-usa.com
www.uponorpro.com

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

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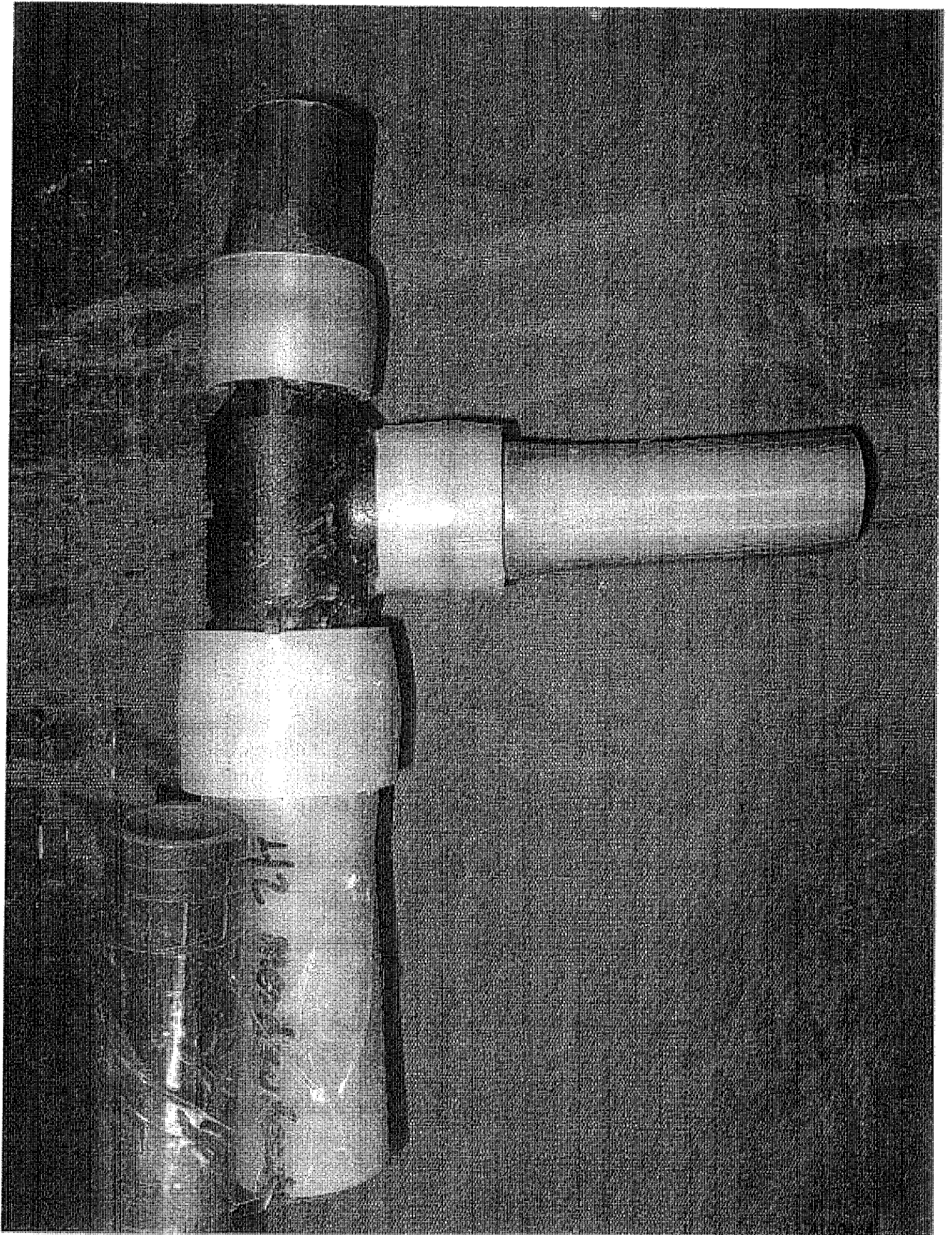


EXHIBIT 11

JAC00435

Rusty Graf

From: Beissel, Stacey <Stacey.Beissel@uponor.com>
Sent: Wednesday, December 13, 2017 12:47 PM
To: Nicole Folino
Cc: Joe Folino
Subject: Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)
Attachments: 748395 As Received (1) (1).JPG; 748395_As_Received__2_ (1).JPG

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

Claimant And Jobsite Information

Claimant Information

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

Jobsite Information

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

Estimated Claim Amount

Amount	\$1000 to \$2500
Preferred Reimbursement	Cash

Past Occurrences

Past Occurrences

Past Occurrences Ref

Installation Information

Application

Application

Plumbing

Recirculation

No

Location Detail

master bath closet below water heater

Temperature/Pressure

Temperature

Cold

System Temp

70 F

System Pressure

65 PSI

Water Source

Water Source

Municipal

Dates

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017

Contractor Information

rakeman plumbing

alison brooks

4075 losee rd

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Ph 702 642 8553

Installing? Yes

Other Information

Present for destructive

Phase of Construction

Builder

Customer Comment(s)

Blue pipe split at fitting

Product Information

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

Thank you
Stacey

Uponor

Stacey Beissel
Warranty Manager
Uponor North America

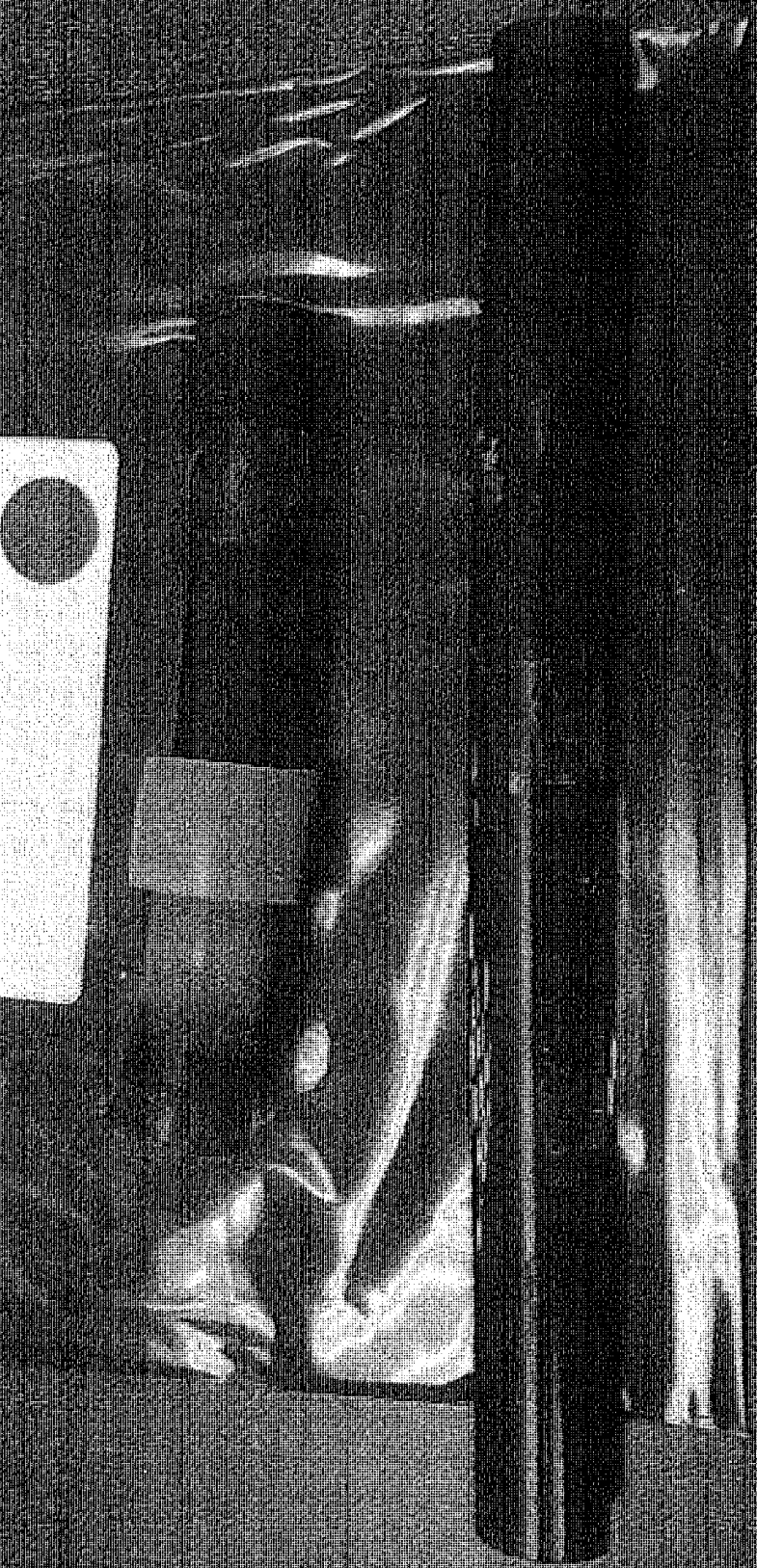
T +19529978984
M +16512531956

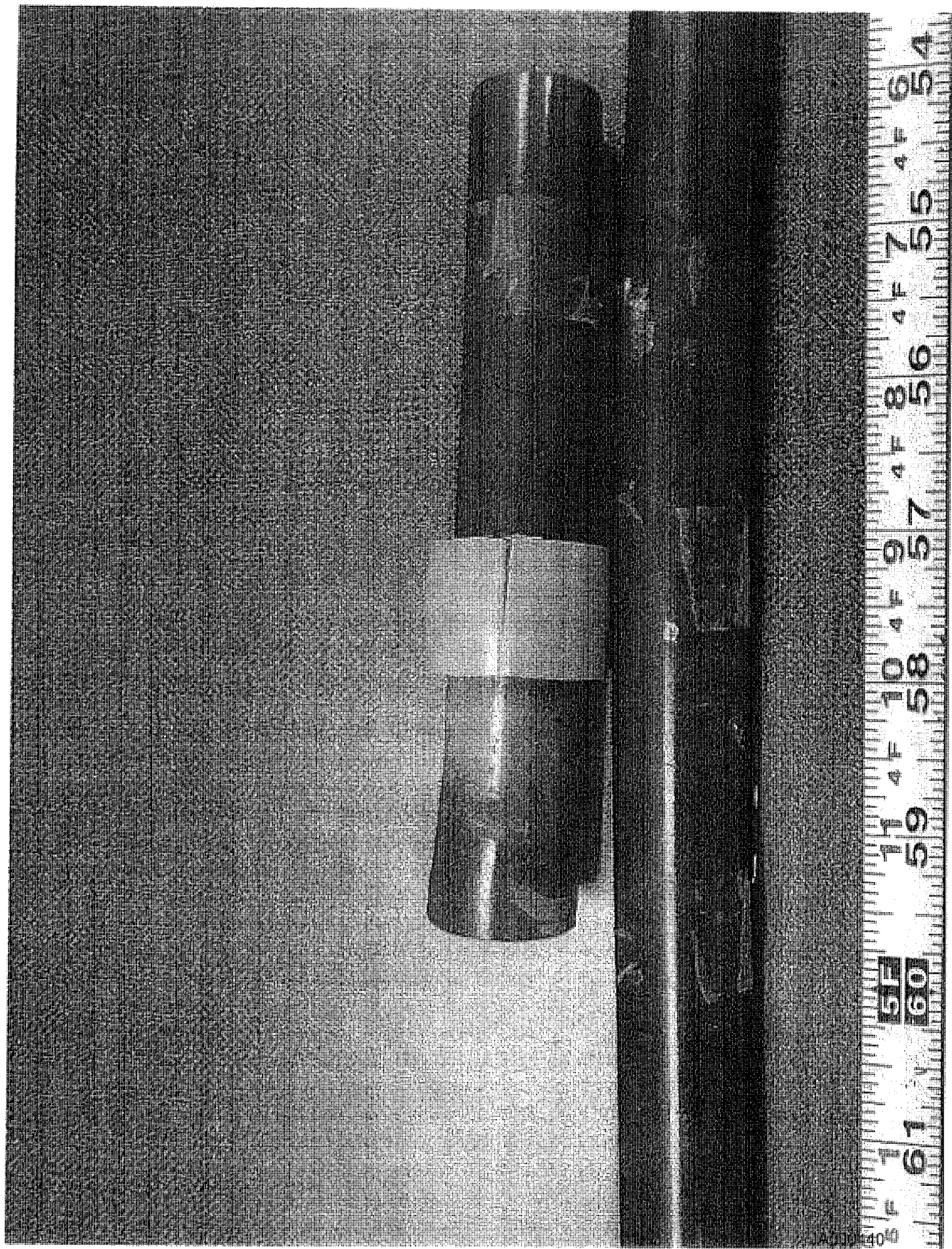
www.uponor-usa.com
www.uponorpro.com

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

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RMA748395





Rusty Graf

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

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

Thanks
Stacey

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

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

Claimant And Jobsite Information

Claimant Information

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

Jobsite Information

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

Estimated Claim Amount

Amount	\$1000 to \$2500
Preferred Reimbursement	Cash

Past Occurrences

Past Occurrences

Past Occurrences Ref

Installation Information

Application

Application

Plumbing

Recirculation

No

Location Detail

master bath closet below water heater

Temperature/Pressure

Temperature

Cold

System Temp

70 F

System Pressure

65 PSI

Water Source

Water Source

Municipal

Dates

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017

Contractor Information

rakeman plumbing

alison brooks

4075 losee rd

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Ph 702 642 8553

Installing? Yes

Other Information

Present for destructive

Phase of Construction

Builder

Customer Comment(s)

Blue pipe split at fitting

Product Information

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

Thank you
Stacey

Uponor

Stacey Beissel
Warranty Manager
Uponor North America

T +19529978984
M +16512531956

www.uponor-usa.com
www.uponorpro.com

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

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PLUMBING SYSTEMS

WARRANTY

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

This Warranty is Effective For Installations Made After October 15, 2012

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

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

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

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

Exclusions From Limited Warranty:

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

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

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

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

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

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

Exclusive Remedies:

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

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

Warranty Claim Dispute Process:

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

Transferability:

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

Miscellaneous:

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

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

UPONOR FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY.

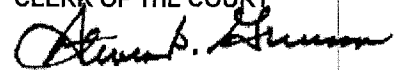
EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LIMITED WARRANTY, UPONOR FURTHER DISCLAIMS ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, AND SPECIAL, INDIRECT, SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OR RESULTING IN ANY MANNER FROM THE PRODUCTS COVERED HEREUNDER. SOME STATES DO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

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

Revised as of 8/2012

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

Uponor



1 CHRISTOPHER M. YOUNG, ESQ.
Nevada Bar No. 7961
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Nevada Bar No. 3223
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6 jaythopkins@gmail.com
Attorneys for Todd Swanson, et al.

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

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

11 Plaintiff(s),

12 v.

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

17 Defendant(s).

18
19 NOTICE OF REHEARING

20 TO ALL INTERESTED PARTIES AND THEIR COUNSEL:

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned
22 will bring DEFENDANT'S MOTION TO DISMISS AND/OR MOTION FOR MORE
23 DEFINITE STATEMENT AND PLAINTIFF'S COUNTERMOTION TO AMEND THE
24 COMPLAINT ON FOR HEARING before this Honorable Court, District Court Department

25 ///

26 ///

27 ///

28 ///

1 24, Courtroom 116, on the 9th day of April, 2019, at 9:00 a.m.

2 DATED this 26th day of March, 2019.

3 Respectfully Submitted,

4 CHRISTOPHER M. YOUNG, PC

5 
6 _____
7 CHRISTOPHER M. YOUNG, ESQ.

8 Nevada Bar No. 7961

9 JAY T. HOPKINS, ESQ.

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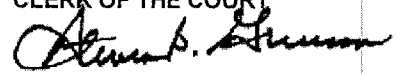
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CERTIFICATE OF E-SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and N.E.F.C.R. 9, I hereby certify that on the 26th day of March, 2019, service of the foregoing **NOTICE OF REHEARING** was electronically filed and served on counsel through the Court's electronic filing system as follows:

Rusty Graf, Esq.
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Attorneys for Plaintiff

/s/ Myra Hyde
An Employee of
CHRISTOPHER M. YOUNG, PC



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Attorneys for Todd Swanson, et al.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

v.

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

Defendant(s).

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

**DEFENDANT'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND/OR MOTION FOR MORE DEFINITE STATEMENT;
COUNTERMOTION TO AMEND THE COMPLAINT**

Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee of the
SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,
LLC, (hereinafter referred to as "Defendants") by and through its counsel of record Christopher
M. Young, Esq., and JAY T. HOPKINS of the law firm of Christopher M. Young, P.C., hereby
submit the following Reply to Plaintiffs' opposition to Defendants' motion seeking dismissal of
the Plaintiff's action or, in the alternative, more definite statement; and, countermotion to amend
the complaint.

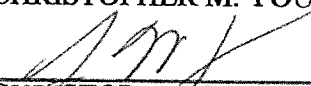
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1 This Reply is made and based upon the pleadings and papers on file, together with the
2 following Points and Authorities with exhibits and the arguments at the hearing.

3 DATED this 9th day of April, 2019.

4 Respectfully Submitted,

5 CHRISTOPHER M. YOUNG, PC

6 
7 CHRISTOPHER M. YOUNG, ESQ.

8 Nevada Bar No. 7961

9 JAY T. HOPKINS, ESQ.

10 Nevada Bar No. 3223

11 2460 Professional Court, Suite 200

12 Las Vegas, Nevada 89128

13 cyoung@cotomlaw.com

14 jaythopkins@gmail.com

15 Attorneys for Todd Swanson, et al.

16 I.

17 Introduction

18 In their Opposition, the Plaintiffs assert that 1. Fraud was properly pled; 2. Plaintiffs
19 punitive damages claim and DTPA were properly pled; 3. Plaintiffs should be allowed to amend
20 to assert *alter ego*; and 4. Plaintiffs properly pled Civil RICO. This Reply briefly addresses those
21 arguments.¹

22 II.

23 Argument

24 A. The Plaintiffs' Fraud Claim Fails

25 The Plaintiffs' Proposed First Amended Complaint did not amend or add any facts
26 supporting fraud. Indeed, the Plaintiffs' fraud claim and all the underlying factual allegations in
27 the Proposed First Amended Complaint are identical in the Complaint and Proposed First
28 Amended Complaint. The supplemental pleading continues Plaintiffs' reliance on one factual
allegation: that the Defendants checked the wrong box on the disclosure form. (See Complaint

¹ The Plaintiffs' Civil RICO section cited the general rule but did not apply the elements to this case. Therefore, Defendants' RICO argument in their Motion to Dismiss stands on its own and this Reply does not add further argument or rebuttal.

1 and Proposed First Amended Complaint ¶43). ¶43 identifies the date the SRPD was signed,
2 October 24, 2017. The rest of the allegations relating to fraud are conclusory.

3 Under Plaintiffs' theory, a fraud claim is established every time a Buyer alleges a Seller
4 checked the wrong box on the SRPD. The Plaintiffs' case is, at best, a negligent
5 misrepresentation case.

6 The general standards for pleading fraud are amply discussed in the instant motions.
7 Other than general "intent" allegations and ¶43, the Plaintiffs' only other purportedly fraudulent
8 allegations are that the Defendants received invoices and warranties regarding the prior water
9 leak. These documents actually negate the Plaintiffs' fraud allegations.

10 In a case very similar to this one, the Nevada Supreme Court found that when an owner
11 makes a repair, he has no duty to disclose. *Nelson v. Heer*, 123 Nev. 217, 220, 163 P.3d 420,
12 423 (2007). In *Nelson*, a water pipe on the third floor of the owner's cabin "burst, flooding the
13 cabin." *Id.* The property owner hired a general contractor, who repaired the broken water pipe.
14 The leak, however, caused extensive water damage, requiring the owner to replace "flooring,
15 ceiling tiles, several sections of wallboard, insulation, kitchen cabinets, bathroom vanities,
16 kitchen appliances, and certain furniture." *Id.* At that time, the owner did not conduct any mold
17 remediation. *Id.*

18 Four years later, the owner listed the cabin for sale and completed a Seller's Real
19 Property Disclosure Form (SRPD). The owner did not disclose the previous water damage.
20 Without being informed of *any* water leaks, the buyer closed on the property.

21 The buyer learned of the water damage after the sale when his homeowner's insurance
22 was canceled. "The carrier cited the prior water damage as the cause of the cancellation." *Id.*
23 The buyer received an \$81,000 estimate for repairs.

24 The issue in *Nelson* was whether the seller had a duty to disclose the earlier damages.
25 According to the court, "a seller is not required to 'disclose a defect in residential property of
26 which [she] is not aware.'" Awareness, according to the court, means "marked by realization,
27 perception, or knowledge." The court found that the seller did not violate the disclosure rules
28 because the earlier water flood and damages were repaired, and the seller could not have

1 knowledge of a defect. According to the court, “[o]nce the water damage was repaired . . . it no
2 longer constituted a condition that materially lessened the value or use of the cabin.” *Id.*

3 This case is exactly like *Nelson*. Here, the Plaintiffs allege the Defendants failed to
4 disclose a prior water leak, which occurred in February, 2017, about 6 months before the
5 Defendants made the October 24, 2017 disclosures. To prove the Defendants’ knowledge of the
6 prior water leak, the Plaintiffs cite to Exhibits 8-11 of their Opposition, which is an invoice from
7 Rakeman Plumbing and Uponor warranties. However, under *Nelson*, the invoices and warranties
8 actually show that the Defendants did not intentionally (or even negligently) fail to disclose the
9 earlier water leak. The invoices show that Rakeman repaired the previous water leak. The
10 invoice notes the Rakeman tech found “a 3/4 Uponor Tee leaking on the hot side of the system.”
11 See Exhibit 8 to Plaintiffs’ Opposition to Motion to Dismiss. The tech cut out the leaking fitting
12 and replaced it with a new fitting and restored the water with no further leaks. *Id.* The tech cut
13 out the drywall and the carpet in the closet and allowed it to dry. *Id.* Then, “after everything
14 was dry,” the Rakeman tech re-installed the carpet, and repaired the drywall and the damaged
15 built-in closets. *Id.*

16 As in *Nelson*, the Defendants could not have any “realization, perception or knowledge”
17 of a defective condition because the prior water leak was fixed. This negates the Plaintiffs’
18 allegations the Defendants had the “knowledge or belief” that answering “no” was a false
19 statement.

20 In the Plaintiffs’ Opposition, they rely on fraud to support their punitive damages claim.
21 However, as discussed above, and in the Defendants’ Motion to Dismiss, under Nevada law,
22 repairing the earlier water leak negated the fraud component of the Plaintiffs’ punitive damages
23 claim.

24 **B. The Plaintiffs’ Piercing the Corporate Veil Allegations Fail**

25 Plaintiffs request leave to amend to add an alter ego claim to maintain their claim against
26 Todd Swanson, an individual. Todd Swanson as an individual has never had any involvement in
27 this transaction. At all times, Lyons Development LLC acted as the developer in building 42
28 Meadowhawk Lane. The PSA has always been between the Seller, Todd Swanson, Co-trustee,

1 the Shiraz Trust, Manager, Lyons Development LLC, and the Buyers, Joseph Folino and Nicole
2 Folino. The Folinis want to pierce the trust to maintain their action against Todd Swanson,
3 individually.

4 “The party propounding the alter ego doctrine and attempting to pierce the corporate veil
5 must establish the elements” to assert an alter ego claim. *Lorenz v. Beltio, Ltd.*, 114 Nev. 795,
6 807, 963 P.2d 488, 496 (1998). Here, instead of arguing how each of the alter ego elements apply
7 to this case, the Plaintiffs ask for discovery. However, as discussed below, no discovery will
8 change that Todd Swanson, an individual, should not be a defendant in this case.

9 First, assuming the court considers the Plaintiffs’ request, the threshold question is
10 whether the Nevada rules for corporations apply equally to trusts. Courts have ruled they likely
11 do. *See Transfirst Group, Inc. v. Magliarditi*, 2017 U.S. Dist. LEXIS 80443 *14 (D. Nev. 2017).

12 So, again assuming the court considers the Plaintiffs’ request, under Nevada law, there
13 are three requirements for finding that the doctrines of alter ego and piercing the corporate veil
14 apply:

15 (1) The corporation must be influenced and governed by the person asserted to be its alter
16 ego; (2) There must be such unity of interest and ownership that one is inseparable from the
17 other; and (3) The facts must be such that adherence to the fiction of separate entity would, under
18 the circumstances, sanction a fraud or promote injustice. *Lorenz*, 114 Nev. at 807, 963 P.2d at
19 496. Here only the first element is present. However, there is no unity of interest and
20 recognizing the trust as a separate entity would not sanction a fraud or promote injustice.

21 1. There is No Unity of Interest

22 Primarily and most importantly, “to pierce the corporate veil, the findings pointing to a
23 unity of interest must have *caused* the *plaintiff’s injury* and must have sanctioned a fraud or
24 promoted an injustice.” *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602, 747 P.2d 884, 887
25 (1987). Here, presuming unity of interest, such purported unity did not cause the Plaintiffs’
26 injuries. Indeed, there is no connection, at all, between the Plaintiffs’ injuries and any purported
27 unity of interest. No discovery will change this fact.

28 ///

1 For the sake of argument, if Plaintiffs can clear the first hurdle, the courts may look to
2 several other factors.² For instance, the courts may consider whether the trust is being used “as a
3 mere shell . . . for . . . the business of . . . another corporation.” *Southwood v. Credit Card*
4 *Solution*, 2016 U.S. Dist. LEXIS 48039 *35 (D.N.C. 2016), citing *N. Arlington Med. Bldg., Inc.*
5 *v. Sanchez Const. Co.*, 86 Nev. 515, 522 n.3, 471 P.2d 240, 244 n.3 (1970). Here, the Shiraz
6 Trust is not a mere shell, but acts as the manager of Lyons Development LLC. No discovery will
7 change this fact.

8 Next, the courts may consider whether there is “concealment and misrepresentation of the
9 identity of the responsible ownership, management, and financial interest.” *Southwood*, 2016
10 U.S. Dist. LEXIS 48039 at *35. The Shiraz Trust has never concealed or misrepresented these
11 factors. No discovery will change this fact.

12 Last, courts may consider whether the trust has disregarded legal formalities and failed to
13 “maintain arm's length relationships among related entities.” *Southwood*, 2016 U.S. Dist. LEXIS
14 48039 at *35. Plaintiffs can point to no instance where the Shiraz Trust has failed to follow
15 corporate formalities. No discovery will change this fact, and corporate/trust filings are public
16 record.

17 **2. Recognizing the Trust Would Not Promote Injustice**

18 The last factor is whether recognizing the Shiraz Trust would promote injustice. *See*
19 *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1242 (2008); U.S. Dist. LEXIS 7769,
20 *16. As discussed above, the Folinos have always known that their contract was with Todd
21 Swanson, Co-trustee, the Shiraz Trust, Manager, Lyons Development LLC. The burden is on the
22 Folinos to show how recognizing the Trust would promote injustice. Yet, in their moving
23 papers, the Folinos did not even raise the issue.

24 ///

25
26 ² *See also, Mallard Auto. Group, Ltd. v. LeClair Mgmt. Corp.*, 153 F. Supp. 2d 1211, 1214 (D.
27 Nev. 2001) (citing *Lorenz*, 963 P.2d at 497) (courts consider “several factors that may indicate a
28 unity of interest and ownership between two entities: commingling of funds, undercapitalization,
unauthorized diversion of funds, treatment of corporate assets as the entity's own, and failure to
observe corporate formalities.”)

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III.

Conclusion

As discussed above, the Plaintiffs' fraud claim fails. The Plaintiffs continue to plead with insufficient particularity to maintain that claim. Further, the invoices and warranties show that the Defendants repaired the prior damage, which negates the knowledge or intent component of the fraud claim. Under this umbrella, the punitive damages claim also fails.


The Plaintiffs' request for leave to add an alter ego action should be denied. Primarily, the Plaintiffs cannot show unity of interest. But the other elements are also lacking.

The Defendants respectfully request that this Court grant their Motion to Dismiss.

DATED this 2nd day of April, 2019.

Respectfully Submitted,

CHRISTOPHER M. YOUNG, PC



CHRISTOPHER M. YOUNG, ESQ.

Nevada Bar No. 7961

JAY T. HOPKINS, ESQ.

Nevada Bar No. 3223

2460 Professional Court, Suite 200

Las Vegas, Nevada 89128

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Attorneys for Todd Swanson, et al.

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CERTIFICATE OF E-SERVICE

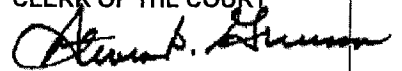
Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and N.E.F.C.R. 9, I hereby certify that on the 2nd day of April, 2019, service of the foregoing **DEFENDANT’S REPLY TO PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS AND/OR MOTION FOR MORE DEFINITE STATEMENT; COUNTERMOTION TO AMEND THE COMPLAINT** was electronically filed and served on counsel through the Court’s electronic filing system as follows:

Rusty Graf, Esq.
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Las Vegas, Nevada 89135
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Attorneys for Plaintiff

/s/ Myra Hyde
An Employee of
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1 **NOE**
2 J. RUSTY GRAF, ESQ.
3 Nevada Bar No. 6322
4 **BLACK & LOBELLO**
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7 (702) 869-8801
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9 *Attorneys for Plaintiffs*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 v.

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

19 Defendants.

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

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that an ORDER ON DEFENDANTS MOTION TO DISMISS
20 AND/OR MOTION FOR MORE DEFINITE STATEMENT; COUNTERMOTION TO
21 AMEND THE COMPLAINT was entered on April 18, 2019.

22 ///

23 ///

24 ///

25 ///

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A true and correct copy is attached here.

Dated this 18th day of April 2019.

BLACK & LOBELLO

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

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 18 day of April 2019, 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;

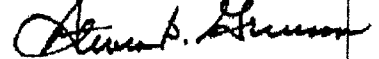
☐ pursuant to EDCR 7.26, to be sent via facsimile;

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.
2460 Professional Court #200
Las Vegas, NV 89128
Attorney for Defendant Todd Swanson

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 & LoBello



1 **ORD**

2 Rusty Graf, Esq.

3 Nevada Bar No. 6322

4 Shannon M. Wilson, Esq.

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

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

26 Defendants.

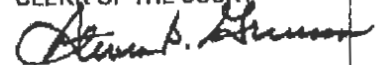
CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

**ORDER ON DEFENDANTS' MOTION TO
DISMISS AND/OR MOTION FOR MORE
DEFINITE STATEMENT;
COUNTERMOTION TO AMEND THE
COMPLAINT**

27 This matter came before the Court for hearing on the 9th day of April, 2019, for
28 Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5), by and through their counsel,
Christopher M. Young, Esq., and for Plaintiff's Opposition and Countermotion to Amend the
Complaint by and through their counsel, Rusty Graf, Esq.

The Court, having reviewed the Motion, the Plaintiffs' Opposition and Countermotion to
Amend Complaint, the Defendant's Reply, and examined all pleadings, exhibits, and documents
on file in this action, finds and orders as follows:

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1 **ORD**

2 Rusty Graf, Esq.

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4 Shannon M. Wilson, Esq.

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12 E-mail: swilson@blacklobello.law

13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

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21 SWANSON, Trustee of the SHIRAZ TRUST;
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on file in this action, finds and orders as follows:

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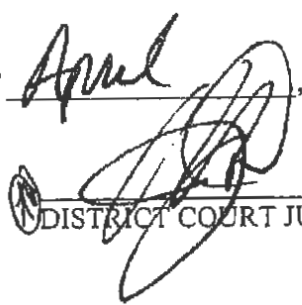
BLACK & LOBELLO
10777 W. Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-3801 FAX: (702) 869-2669

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Countermotion to Amend the Complaint is GRANTED, and Plaintiffs shall file the proposed amended complaint attached to its Countermotion to Amend the Complaint, and the Defendants shall have thirty (30) from the date of the filing of the Amended Complaint within which to answer or otherwise plead.


IT IS SO ORDERED.

DATED this 17 day of April, 2019.


DISTRICT COURT JUDGE JAMES CROCKETT

Approved as to form and content:

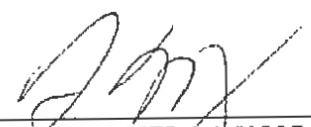
BLACK & LOBELLO



RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 West Twain Avenue, Third Floor
Las Vegas, Nevada 89135
Attorneys for Plaintiff

Approved as to form and content:

CHRISTOPHER M. YOUNG, PC



CHRISTOPHER M. YOUNG, ESQ.
Nevada Bar No. 7961
2460 Professional Court #200
Las Vegas, NV 89128
Attorney for Defendant Todd Swanson



1 **ORD**

2 Rusty Graf, Esq.

3 Nevada Bar No. 6322

4 Shannon M. Wilson, Esq.

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 JOSEPH FOLINO, an individual and NICOLE
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18 Plaintiff,

19 v.

20 TODD SWANSON, an individual; TODD
21 SWANSON, Trustec of the SHIRAZ TRUST;
22 SHIRAZ TRUST, a Trust of unknown origin;
23 LYONS DEVELOPMENT, LLC, a Nevada
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CASE NO.: A-18-782494-C
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**ORDER ON DEFENDANTS' MOTION TO
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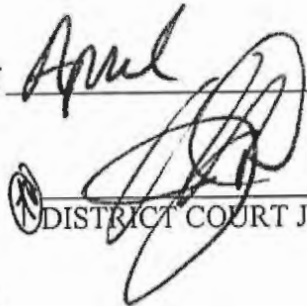
The Court, having reviewed the Motion, the Plaintiffs' Opposition and Countermotion to
Amend Complaint, the Defendant's Reply, and examined all pleadings, exhibits, and documents
on file in this action, finds and orders as follows:

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Countermotion to Amend the Complaint is GRANTED, and Plaintiffs shall file the proposed amended complaint attached to its Countermotion to Amend the Complaint, and the Defendants shall have thirty (30) from the date of the filing of the Amended Complaint within which to answer or otherwise plead.

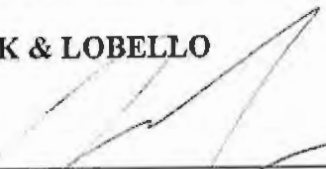
IT IS SO ORDERED.

DATED this 17 day of April, 2019.


DISTRICT COURT JUDGE JAMES CROCKETT

Approved as to form and content:

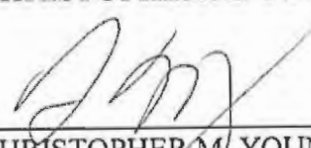
BLACK & LOBELLO



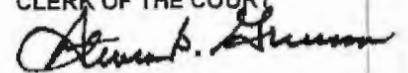
RUSTY GRAF, ESQ.
Nevada Bar No. 6322
10777 West Twain Avenue, Third Floor
Las Vegas, Nevada 89135
Attorneys for Plaintiff

Approved as to form and content:

CHRISTOPHER M. YOUNG, PC



CHRISTOPHER M. YOUNG, ESQ.
Nevada Bar No. 7961
2460 Professional Court #200
Las Vegas, NV 89128
Attorney for Defendant Todd Swanson



1 CHRISTOPHER M. YOUNG, ESQ.
Nevada Bar No. 7961
2 JAY T. HOPKINS, ESQ.
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3 CHRISTOPHER M. YOUNG, PC
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6 jaythopkins@gmail.com
Attorneys for Todd Swanson, et al.

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

11 Plaintiff(s),

12 v.

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

17 Defendant(s).

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

HEARING REQUESTED

18
19 **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S**
20 **FIRST AMENDED COMPLAINT**

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

26 ///

27 ///


28 ///

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

3 DATED this 20th day of May, 2019.

4 Respectfully Submitted,

5 CHRISTOPHER M. YOUNG, PC

6 
7 CHRISTOPHER M. YOUNG, ESQ.

8 Nevada Bar No. 7961

9 JAY T. HOPKINS, ESQ.

10 Nevada Bar No. 3223

11 2460 Professional Court, Suite 200

12 Las Vegas, Nevada 89128

13 cyoung@cotomlaw.com

14 jaythopkins@gmail.com

15 Attorneys for Todd Swanson, et al.

16 **NOTICE OF MOTION**

17 TO: TO ALL INTERESTED PARTIES AND THEIR COUNSEL:

18 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for
19 hearing on the ___ day of _____, 2019, at the hour of _____ a.m./p.m. or as soon
20 thereafter as counsel may be heard, in the Eighth Judicial District Court, Department XXIV,
21 Courtroom

22 DATED this 20th day of May, 2019.

23 Respectfully Submitted,

24 CHRISTOPHER M. YOUNG, PC

25 
26 CHRISTOPHER M. YOUNG, ESQ.

27 Nevada Bar No. 7961

28 JAY T. HOPKINS, ESQ.

Nevada Bar No. 3223

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Las Vegas, Nevada 89128

cyoung@cotomlaw.com

jaythopkins@gmail.com

Attorneys for Defendant Clark County Nevada
Department of Aviation

I.

INTRODUCTION

The Plaintiffs' First Amended Complaint asserts seven causes of action. None of Plaintiffs' claims can survive dismissal pursuant to N.R.C.P. 12(b)(5). The Plaintiffs were granted leave to cure pleading deficiencies in their original Complaint. However, the Plaintiffs' First Amended Complaint failed to cure any defects. In fact, the Plaintiffs' First Amended Complaint did not change - in any way - the allegations or claims raised in the original Complaint. Instead, the Plaintiffs simply added a Seventh Cause of Action for Piercing the Corporate Veil/Alter Ego.

The Plaintiffs' First Amended Complaint must be dismissed in its entirety, for the reasons discussed below.

II.

ARGUMENT SUMMARY

The Plaintiffs assert one wrong - the Defendants' failure to disclose a water leak during the sale of Defendants' home, purportedly concealing systemic plumbing defects. Nevada law provides a statutory remedy for failure to disclose a defect or condition of the property in a real estate transaction. *See* NRS §113.100 et seq. This claim is asserted in the Plaintiffs' Fourth Cause of Action. The statute preempts the Plaintiffs' other claims and provides the Plaintiffs with their sole remedy. *See e.g. Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000), *citing Casa Clara v. Charley Toppino and Sons*, 620 So. 2d 1244, 1247 (Fla. 1993) ("[t]here are protections for homebuyers . . . such as statutory remedies, the general warranty of habitability, and the duty of sellers to disclose defects, as well as the ability of purchasers to inspect houses for defects.") Because the Plaintiffs have a statutory remedy under NRS Chapter 113, their other claims are redundant and should be dismissed.

Nonetheless, as discussed below, not even NRS Chapter 113 provides a remedy for the Plaintiffs. The water leak which the Plaintiffs' claim was evidence of a systemic plumbing problem, was repaired long before the purported non-disclosure. Under Nevada law, the repair of the previous water leak negates damages and Defendants' duty to disclose. On this basis, the

1 Plaintiffs' statutory remedy under NRS Chapter 113 fails.

2 As discussed in detail below, assuming this Court does not grant an outright dismissal
3 based on NRS Chapter 113, each of the Plaintiffs' seven claims fail for independent reasons.

4 ***First Claim: Fraud***

5 The Plaintiffs' first claim is for fraud. However, their pleading does not contain the
6 specificity required by N.R.C.P. 9(b). Since the Plaintiffs have already had a court-ordered
7 opportunity to amend their fraud allegations, but failed to plead fraud with specificity, dismissal
8 is appropriate.¹

9 ***Second Claim: Negligent Misrepresentation***

10 Although not pled as a breach of contract action, the Plaintiffs' case is limited to
11 economic damages. The economic loss doctrine bars the Plaintiffs' second claim for negligent
12 misrepresentation.

13 ***Third Claim: Violation of the Nevada Deceptive Trade Practices Act***

14 The third claim is for violation of Nevada's Deceptive Trade Practices Act (DTPA).
15 However, the DTPA does not apply to this case. Although the Nevada Supreme Court has
16 footnoted that the DTPA applies in a narrow context relating to real estate "bait and switch" loan
17 transactions, in this case, the DTPA does not apply.

18 ***Fourth Claim: NRS Chapter 113***

19 The fourth claim is for violation of NRS Chapter 113.100, which provides the statutory
20 remedy for alleged failure to disclose known defects. The First Amended Complaint and its
21 accompanying exhibits together show the Defendants did not breach a duty to disclose the
22 previous water leak. Under Nevada law, when the Defendants fixed the previous water leak, the
23 Defendants' duty to disclose the leak was extinguished.

24 ***Fifth Claim: Civil RICO***

25
26 ¹ In response to an earlier filed Motion to Dismiss and/or Motion for More Definite Statement,
27 which in part asserted that the Plaintiffs failed to properly plead fraud, the Plaintiffs requested
28 leave to amend. The Court delayed consideration of the Defendants' motion but allowed the
Plaintiffs to file a First Amended Complaint. The Plaintiffs did not add any additional specifics,
or otherwise bolster their fraud claims.

1 The fifth claim is for Civil RICO, but contains none of the elements required for a Civil
2 RICO Claim. In addition, the fraud allegations in the fifth claim, like the first claim, are not
3 specifically pled.

4 ***Seventh Claim: Individual Liability and Alter Ego***²

5 The Plaintiffs name Todd Swanson as an individual defendant. As the Plaintiffs properly
6 allege, the Defendants signed all agreements as “Todd Swanson, Co-trustee Shiraz Trust,
7 Manager of Lyons Development, LLC.” At all times, Dr. Swanson acted in a representative
8 capacity and the transaction was, from its inception, between the Folinos and Lyons
9 Development, LLC. As such, Dr. Swanson, in his individual capacity, should be dismissed from
10 this action.

11 In an attempt to cure the deficiencies contained in their initial pleading, the Plaintiffs’
12 First Amended Complaint asserted a Seventh Cause of Action for Alter Ego. However, the
13 benchmarks for an alter ego claim are not properly pled, and that claim fails under N.R.C.P.
14 12(b)(5).

15 ***Plaintiffs’ Punitive Damages Allegations***

16 The Plaintiffs’ punitive damages allegations are not supported by the pleadings. With the
17 exception of generally alleging the collective Defendants acted willfully, fraudulently,
18 maliciously and oppressively, the Plaintiffs fail to plead any facts supporting entitlement to
19 punitive damages. All allegations asserting punitive conduct and Plaintiffs’ prayer for punitive
20 damages, should be dismissed.

21 **III.**

22 **BACKGROUND**

23 On October 9, 2018, the Plaintiffs, Joseph and Nicole Folino (the “Folinos”), sued four
24 Defendants: Todd Swanson, an individual; Todd Swanson, Trustee of the Shiraz Trust; Shiraz
25 Trust; and Lyons Development, LLC. The dispute emanates from a November 21, 2017

26
27 ² The Plaintiffs’ sixth claim is for Respondeat Superior. Defendants agree that if there is any
28 liability, it is limited to the Shiraz Trust and/or Lyons Development, LLC. But, as discussed
below, the punitive damages allegations in the sixth claim should be stricken.

1 Residential Purchase and Sale Agreement (PSA) in which the Folinos were the Buyers and
2 Lyons Development, LLC was the Seller.

3 The gist of the Folinos' lawsuit is that "the Defendants" failed to disclose "defects in the
4 plumbing system. Specifically, in support of their seven causes of action, the Plaintiffs' claim the
5 Defendants intentionally and/or negligently checked the "no" box on the Seller's Real Property
6 Disclosure Form (SRPD) regarding "[p]revious or current moisture conditions and/or water
7 damage."

8 As discussed herein, the Plaintiffs have already had the opportunity to attempt to cure
9 their pleading deficiencies. However, all claims in their First Amended Complaint fail to state a
10 claim upon which relief can be granted for the reasons discussed below.

11 IV.

12 ARGUMENT

13 A. Standards for Dismissal

14 Although the allegations in the Folinos' Complaint must be accepted as true, dismissal is
15 proper if their Complaint "fails to state a claim upon which relief can be granted." N.R.C.P.
16 12(b)(5). Under Rule 12(b)(5) standards, the trial court may dismiss the complaint only if it
17 appears to a certainty that a plaintiff can prove no set of facts which would entitle him to relief.
18 *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). While courts consider all factual
19 assertions in the complaint to be true and draw all reasonable inferences in favor of the plaintiff,
20 to survive dismissal, a complaint must contain "some set of facts which, if true, would entitle the
21 plaintiff to relief." *In re Amerco Derivative Litig.*, 127 Nev.196, 252 P.3d 681 (2011).

22 An N.R.C.P. 12(b)(5) motion *must be granted* if the plaintiff cannot recover under the
23 facts set forth in the complaint. *Morris v. Bank of America*, 110 Nev. 1274, 1277, 886 P.2d 454,
24 457 (1994) (emphasis added). While Nevada is a notice pleading state, the complaint *must* set
25 forth *sufficient facts* to establish *all necessary elements* of a claim for relief. *Hay v. Hay*, 100
26 Nev. 196, 678 P.2d 672 (1984) (emphasis added).

27 N.R.C.P. Rule 9(b) sets a higher pleading standard for fraud-based allegations. Fraud
28 allegations must be pled with particularity. *Rocker v. KPMG LLP*, 122 Nev. 1185, 1192, 148

1 P.3d 703, 707-708 (2006), citing *Ivory Ranch, Inc. v. Quinn River Ranch, Inc.* 101 Nev. 471,
2 472-73, 705 P.2d 673, 675 (1985). “To plead with particularity, plaintiffs must include in their
3 complaint ‘averments to the time, the place, the identity of the parties involved, and the nature of
4 the fraud.’” *Rocker*, 122 Nev. at 1192, 148 P.3d at 707-708. See also *Kearns v. Ford Motor Co.*,
5 567 F.3d 1120, 1125-1127 (9th Cir. 2009) (upholding dismissal of nondisclosure-based fraud
6 claim that were “couched in general pleadings”); *Franco v. Fannie Mae*, 2011 U.S. Dist. LEXIS
7 51795 *14-16 (D. Haw. May 13, 2011) (dismissing concealment-based fraudulent
8 misrepresentation claim for failing to plead “who, what, where, when, and how”); and *Lazar v.*
9 *Superior Court*, 909 P.2d 981, 989 (Cal. App. 1996) (Plaintiffs “must allege the names of the
10 persons who made the allegedly fraudulent representations, their authority to speak, to whom
11 they spoke, what they said or wrote, and when it was said or written.”)

12 The heightened pleading requirement “is intended to provide the defendants with
13 adequate notice of the specifics of the claims against them.” *Rocker, supra*. Requiring detailed
14 fraud-based allegations makes sense because requiring detailed facts permits the defendants to
15 actually “defend against *the charge* and not just deny that they have done anything wrong.” *Id.*

16 **B. The Folinis Failed to Plead Fraud with Particularity**

17 Under Plaintiffs’ theory, a fraud claim is established every time a Buyer alleges a Seller
18 checked the wrong box on the SRDF. But that is not the law in Nevada. “[t]o state a claim for
19 fraud, a plaintiff must allege three factors: (1) a false representation by the defendant that is
20 made with either knowledge or belief that it is false or without sufficient foundation; (2) an intent
21 to induce another’s reliance; and (3) damages that result from this reliance.” See *Nelson v. Heer*,
22 123 Nev. 217, 163 P.3d 420, 426 (2007), citing N.R.C.P. 9(b). As noted above, these elements
23 must be alleged “with particularity.” *Id.*

24 The Plaintiffs failed to comply with N.R.C.P. 9(b). First, there are no specific allegations
25 concerning the time or place of the Defendants’ purportedly false representations. The only
26 reference to any representation at a specific time is ¶16 of the First Amended Complaint. (See
27 First Amended Complaint ¶16 at 3:23-26). The reference simply identifies the date Defendant
28 Lyons Development LLC signed the Seller’s Real Property Disclosure Form (“SRPD”). The

1 Folinos then conclude that “[t]he SRPD executed by Swanson”³ failed to inform the Folinos
2 “regarding any problems or defects in the plumbing system,” and that the SRPD failed to provide
3 a description of any water event. . . .” (See First Amended Complaint ¶17 at 3:27-28, 4:1-2 &
4 ¶18 at 4:3-5).

5 Second, the Folinos fail to allege the identity of the parties involved. Instead, the Folinos
6 lump all Defendants together and generally allege fraudulent actions by “the Defendants, and
7 each of them” and claim fraudulent acts were committed by the collective Defendants “by and
8 through themselves and their employees and/or agents.” (See First Amended Complaint ¶43 at
9 14-16). A required component of identifying the actors is identifying which *specific defendant*
10 acted to induce the plaintiff to rely on the purportedly fraudulent statement. See *Jordan v. Slate*
11 *ex rel. Dept. of Motor Vehicles and Pub. Safety*, 141 Nev. 44, 75, 110 P.3d 30, 52 (2005).
12 Simply referring to the Defendants as a group or alleging fraud by employees or agents is not
13 enough to satisfy Rule 9(b).

14 Third, the Folinos do not specifically describe “the nature of the fraud.” The Folinos
15 generally allege wrongdoing, but no fraudulent actions are specifically described. The Folinos’
16 allegations speak in terms of “failure to disclose,” but they do not identify any actions alleging
17 intent to deceive.

18 The only allegations regarding wrongdoing are the Folinos’ unsupported, conclusory
19 claims. For instance, in their General Allegations, the Folinos state that the plumbing defects
20 “were known to the Defendants,” that “[t]he Defendants chose not to inform the Plaintiffs,” and
21 that “[t]he Defendants knew or should have known of the duty to inform a purchaser of real
22 property” of the defects. (See First Amended Complaint §38 at 5:27-28, §40 at 6:2-3 & §41 at
23 6:4-8). These claims are insufficient to plead a fraud claim.

24 The only allegations in the fraud claim itself are, similarly, general and conclusory
25 statements without any specific detail regarding the who, what, where and when components

26 ³ Preliminarily, the Folinos’ allegation is a misstatement of fact based, on the Exhibits
27 accompanying the Folinos’ Complaint. The SRPD was *not* signed by “Swanson.” It was signed
28 in a representative capacity by “Todd V. Swanson, Co-Trustee, the Shiraz Trust, Manager, Lyons
Development, LLC.” (See First Amended Complaint, Exhibit 4 at p. 5).

1 required for a fraud claim. The following are examples of claims made in the Folinós' fraud
2 claim:

- 3 • the Defendants "communicated, by and through themselves and their employees
4 and/or agents, on October 24, 2017 to the Plaintiffs [via the SRPD] that there
5 were no defects in the house, the systems or the structure." (See First Amended
6 Complaint §43 at 6:14-16). The Folinós, however, do not detail any
7 communications other than the SRPD;
- 8 • the Defendants "coerced" them to close on the property. However, the allegation
9 contains no detail *how* the Defendants coerced them. (See First Amended
10 Complaint §44 at 6:17-19);
- 11 • the Defendants "purposefully and with intent to deceive" failed to identify known
12 defects. But the Folinós do not describe any specifics regarding the Defendants'
13 purpose or intent. (See First Amended Complaint §45 at 6:20-22);
- 14 • the Defendants "made these intentional misrepresentations on the SRPD" and
15 intended by their false representations "to induce" the Folinós to close on the
16 property. (See First Amended Complaint §46 at 6:23-35 & §47 at 6:25-26).
17 There are, however, no specifics regarding how they were induced by the
18 purportedly false statement(s).

19 The Folinós' Civil RICO claim also inadequately alleges fraud. Without detail, the
20 Folinós allege the Defendants engaged in an "unlawful purpose, aim and/or goal . . . to defraud
21 the Plaintiffs out of their money." This general allegation does not satisfy the requirements for
22 pleading with specificity.

23 The Court granted leave to permit the Plaintiffs to cure their pleading defects, but their
24 First Amended Complaint is still deficient. Dismissal of the Plaintiffs' first claim for fraud and
25 the allegations in the first and fifth claims is warranted.

26 **C. Second Claim - Negligent Misrepresentation**

27 The Plaintiffs' negligent misrepresentation claim is barred by the economic loss doctrine.
28 It is not disputed that the Plaintiffs' case is premised on one allegation: that the Defendants failed

1 to disclose a previous water leak that, as admitted by the Plaintiffs, was repaired long before the
2 SRPD was completed.

3 Refined to its essence, the Plaintiffs' case is one for breach of contract, although the
4 Plaintiffs did not bring plead breach of contract. Nonetheless, their claim seeks damages to
5 remedy the defect or condition they claim was not disclosed. In short, the Plaintiffs' claims are
6 limited to economic damages and tort damages based on negligence are not allowed.

7 Nevada's primary economic loss case is *Calloway, supra*. Under the economic loss
8 doctrine "there can be no recovery in tort for purely economic losses." *Calloway*, 116 Nev. at
9 256, 993 P.2d at 1263, *citing* American Law of Products Liability (3d) § 60:39 at 69 (1991).
10 "Purely economic loss is generally defined as 'the loss of the benefit of the user's bargain . . .
11 including . . . pecuniary damage for inadequate value, the cost of repair and replacement of the
12 defective product, or consequent loss of profits, without any claim of personal injury or damage
13 to other property.'" *Id.*, American Law of Products Liability (3d) § 60:36, at 66. "The doctrine
14 serves to distinguish between tort, or duty-based recovery, and contract, or promise-based
15 recovery." *Calloway*, 116 Nev. at 258, 993 P.2d at 1259, *citing* *Seely v. White Motor Company*,
16 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (Cal. 1965). In concluding that the economic loss
17 doctrine barred the plaintiffs' tort based recovery, the court concluded that "[i]f a house causes
18 economic disappointment by not meeting a purchaser's expectations, the resulting failure to
19 receive the benefit of the bargain is a core concern of contract, not tort, law." *Calloway*, 116
20 Nev. at 258, 993 P.2d at 1266. The court stressed that a home-buyers contractual remedies,
21 together with their "power to bargain over price," provide adequate protection, "when compared
22 with the mischief that could be caused by allowing tort recovery for purely economic losses."
23 *Calloway*, 993 P.2d at 1266, 116 Nev. at 261.

24 Privity of contract is required, and it is not disputed that privity exists in this case. In
25 such cases, negligence-based claims are excluded, unless personal injuries are alleged, which
26 they are not in this case. The Plaintiffs' claims are for economic losses relating to what the
27 Plaintiffs characterize as a "systemic" defect in the plumbing system. *See e.g.* Plaintiffs' First
28 Amended Complaint at ¶¶ 38 & 41. The damages sought by the Plaintiffs are to fix these

1 purportedly non-disclosed defects.⁴ The Plaintiffs' remedy is purely economic, and their
2 negligent misrepresentation claim must be dismissed.

3 **D. The Folinos' Deceptive Trade Practices Act Claim Does Not Apply to this Case**

4 The Folinos' third claim consists of one allegation:

5 Defendants and each of them, committed deceptive trade practices in violation of
6 Nevada's Deceptive Trade Practices Act ("DTPA"), including but not limited to,
7 NRS §598.015(14) (sic) & (15)⁵, NRS §598.092(9) and NRS §598.0923(2), by
failing to inform the Plaintiffs that there were known defects in the house being
purchased by the Plaintiffs from the Defendants.

8 (See First Amended Complaint ¶70 at 9:10-14). That is the entire substance of the Folinos' third
9 claim.

10 Nevada's state and federal district courts are divided on whether the DTPA applies to real
11 estate transactions. In one isolated Nevada case, the Nevada Supreme Court rejected the
12 Defendants' argument that the DTPA does not apply to real estate transactions.⁶ *Betsinger v.*
13 *D.R. Horton*, 126 Nev. 162, 232 P.3d 433 (2010). However, the *Betsinger* case involved a
14 dispute "involv[ing] a financing 'bait and switch tactic' by a developer with regard to the interest
15 rate offered to a home-owner." In contrast, the instant case is about a seller's failure to disclose a
16 purported defect. "Bait and switch" tactics are exactly the type of deception that the DTPA is
17 designed to redress.

18 The Nevada Federal District Courts have had many opportunities to consider whether
19 NRS Chapter 598 applies to a real estate transaction like this one. According to rulings by the
20 Nevada federal courts, Nevada's DTPA only applies to "transactions for goods and services" and
21 real estate transactions do not involve "goods and services." *Harlow v. LSI Title Agency, Inc.*,
22 2012 U.S. Dist. LEXIS 158852, *13 (D. Nev. 2012).⁷

23
24 ⁴ It is conceded by the Plaintiffs that the plumbing system was under warranty and was
completely replaced, at no cost to the Folinos.

25 ⁵ It appears the Plaintiffs' allegation is a typo, and that the Plaintiffs intended to assert violation
of NRS §598.0915.

26 ⁶ The *Betsinger* ruling is found in fn. 4 of the opinion, where the court stated: "we reject
27 respondents' narrow interpretation of NRS Chapter 598 and conclude that this argument is
without merit."

28 ⁷ See also *Bank of N.Y. Mellon v. Christopher Cmtys. at Southern Highlands Golf Club*

1 The court in *Harlow* discussed the limitations of the *Betsinger* and discussed why
2 *Betsinger* and its dicta regarding the DTPA do not apply to real estate transactions like this one.

3 According to the court:

4 Subsection 598.0915(15) is a catch-all provision stating it is a deceptive trade
5 practice to '[k]nowingly make[] any other false representation in a transaction.'
6 Although §598.0915(15) is not specifically limited to transactions involving the
7 sale or lease of goods or services, the plain language and overall organization of §
598.0915 indicate that subsection fifteen, like the rest of the transactions
enumerated in the statute, applies to transactions involving the sale or lease of
goods or services.

8 *Id.*

9 Here, the Folinos' DTPA claim fails because it seeks to apply the DTPA in a straight real
10 estate transaction between a property owner and a buyer and does not involve "goods and
11 services." The real estate sale in this case is outside the parameters of Nevada's DTPA.

12 **E. Plaintiffs' NRS Chapter 113 Violation Claim Fails**

13 As noted above, NRS §113.100 et seq. provides the Plaintiffs' sole remedy for failure to
14 disclose. NRS §113.140 provides:

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

17 1. NRS §113.130 does not require a seller to disclose a defect in residential
18 property of which the seller is not aware.

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

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

23 The Disclosure Form signed by the Defendants embodies the Nevada disclosure statutes,
24 and the statutes are incorporated into the body of the Disclosure Form itself. NRS §113.140(1)
25 states that "NRS §113.130 does not require a seller to disclose a defect in residential property of
26 which the seller is *not aware*." What constitutes "awareness" or "knowledge" under the statute
27 has been specifically defined by the Nevada Supreme Court. In *Nelson v. Heer, supra*, the Court

28 (continued)

Homeowners Ass'n, 2018 U.S. Dist. LEXIS 49049 at *9-10 (D. Nev. March 23, 2018); *Morris v.*
Green Tree Servicing, LLC, 2015 U.S. Dist. LEXIS 89416 at *15 (D. Nev. July 8, 2015) *Baudoin*
v. Lender Processing Servs., 2012 U.S. Dist. LEXIS 85871 at *3 (D. Nev. June 21, 2012);
Archer v. Bank of Am. Corp., 2011 U.S. Dist. LEXIS 148159 at *2 (D. Nev. Dec. 23, 2011).

1 ruled that “[t]he term ‘aware’ means ‘marked by realization, perception, or knowledge.’”
2 Utilizing this definition, the court stated that “the seller of residential real property does not have
3 a duty to disclose a defect or condition which “materially affects the value or use of residential
4 property in an adverse manner,’ *if the seller does not realize, perceive, or have knowledge of that*
5 *defect or condition.” Nelson, 163 P.3d at 425 (emphasis added). In addition, the court*
6 *specifically adopted the rule that repairing damage negates a seller’s duty to disclose because a*
7 *repaired water leak “no longer constitute[s] a condition that materially lessen[s] the value of the*
8 *property.” Id.*

9 The *Nelson* case is very similar to this one and a brief discussion of its facts is warranted.
10 In *Nelson*, the Nevada Supreme Court found that when an owner makes a repair, he has no duty
11 to disclose. *Nelson, 123 Nev. at 220, 163 P.3d at 423. In Nelson, a water pipe on the third floor*
12 *of the owner’s cabin “burst, flooding the cabin.” Id. The property owner hired a general*
13 *contractor, who repaired the broken water pipe. The leak, however, caused extensive water*
14 *damage, requiring the owner to replace “flooring, ceiling tiles, several sections of wallboard,*
15 *insulation, kitchen cabinets, bathroom vanities, kitchen appliances, and certain furniture.” Id. At*
16 *that time, the owner did not conduct any mold remediation. Id.*

17 Four years later, the owner listed the cabin for sale and completed a Nevada Real Estate
18 Division SRPD form. The owner did not disclose the previous water damage. Without being
19 informed of *any* water leaks, the buyer closed on the property.

20 The buyer learned of the water damage after the sale when his homeowner’s insurance
21 was canceled. “The carrier cited the prior water damage as the cause of the cancellation.” *Id.*
22 The buyer received an \$81,000 estimate for repairs.

23 On appeal, the issue in *Nelson* was whether the seller had a duty to disclose the earlier
24 damages. As noted above, the court found that the seller did not violate the disclosure rules
25 because the earlier flood and water damages were repaired, and the seller could not have
26 knowledge of a defect. Using the terms in the statute and the disclosure form, the court noted the
27 seller was not aware of a “defect or condition” that “materially lessened the value or use of the
28 cabin” because the water damage was repaired and, therefore, the previous water problem did not

1 have to be disclosed. *Id.*

2 This case is exactly like *Nelson*. Here, the Plaintiffs allege the Defendants failed to
3 disclose a water leak which occurred in February 2017, about 6 months before the Defendants
4 made the October 24, 2017 disclosures. In support of their non-disclosure claim, the Plaintiffs
5 attached invoices and warranties, Exhibits 8-11, to their First Amended Complaint. These
6 exhibits show that, to the Defendants' knowledge, the leak had been repaired. As in *Nelson*, the
7 Defendants could not have any "realization, perception or knowledge" of a defective condition
8 because the prior water leak was fixed. This negates the Plaintiffs' allegations the Defendants
9 had the "knowledge or belief" that answering "no" was a false statement. The Plaintiffs' fourth
10 claim should be dismissed.

11 **F. The Folinos' Civil RICO Claim Fails as a Matter of Law**

12 The Plaintiffs' fifth claim is for civil RICO. The Folinos' claim raise the following
13 general allegations: 1) that the "Defendants, and each of them" acted with the "unlawful purpose,
14 aim and/or goal . . . to defraud the Plaintiffs out of their money." (See First Amended Complaint
15 ¶81 at 11:1-5); and 2) that the collective Defendants "acted in concert," intending "to accomplish
16 the unlawful objective of defrauding the Plaintiffs out of their personal property," by "using
17 fraudulent and deceptive trade practices, without justification." (See First Amended Complaint
18 ¶82 at 11:6-10). These allegations fall far short of alleging a viable civil RICO claim.

19 Nevada's anti-racketeering laws are codified at NRS §207.350 through NRS §207.520.
20 The civil RICO elements are quite detailed and must be pled with particularity. *Hale v.*
21 *Burkhardt*, 104 Nev. 632, 637-638, 764 P.2d 866, 869-70 (1988).⁸ "[T]hree conditions must be
22 met: (1) the plaintiff's injury must flow from the defendant's violation of a predicate Nevada
23 RICO act; (2) the injury must be proximately caused by the defendant's violation of the predicate
24 act; and (3) the plaintiff must not have participated in the commission of the predicate act."
25 *Allum*, 109 Nev. at 283, 849 P.2d at 299. "The specificity required is that called for in a *criminal*
26 *indictment* or information." *Cummings v. Charter Hospital*, 111 Nev. 639, 638, 764 P.2d 1137,

27 ⁸ See also *Allum v. Valley Bank*, 109 Nev. 280, 282-283, 849 P.2d 297, 298-299 (1993)
28 (outlining the formal, detailed requirements to plead a civil RICO claim with specificity).

1 869 (1995) (emphasis added).

2 To comply with the above standards, the Folinós' fifth claim must allege that the
3 Defendants "engag[ed] in at least two *crimes* related to racketeering." *Id.* The Folinós must also
4 allege the crimes "have the same or similar pattern, intents, results, accomplices, victims or
5 methods of commission, or are otherwise interrelated by distinguishing characteristics." *Id.*
6 Further, "[a] civil RICO pleading must, in that portion of the pleading which describes the
7 criminal acts that the defendant is charged to have committed, contain a sufficiently 'plain,
8 concise and definite' statement of the essential facts such that it would provide a person of
9 ordinary understanding with notice of the charges." *Cummings*, 111 Nev. at 646, 896 P.2d at
10 1141. "This means the complaint should provide information as to 'when, where [and] how' the
11 underlying criminal acts occurred." *Id.*

12 Here, analyzing the "particularity" requirements is not even necessary. Indeed, the
13 Folinós' First Amended Complaint does not allege *any* of the elements for a civil RICO claim,
14 let alone offer any specificity of the when, where and how regarding *any* criminal acts. The First
15 Amended Complaint "does not state, in any detail, the circumstances surrounding the allegations,
16 nor does it specify with particularity what conduct is complained of and when and where the
17 conduct occurred." *Id.* at 646, 896 P.2d at 1141. Dismissal is warranted.

18 **G. "Todd Swanson, an Individual" Should Be Dismissed**

19 **1. At All Times, Dr. Swanson Acted in a Representative Capacity**

20 The general rule is that an agent of an LLC can sign on behalf of the company and not be
21 personally liable for the company's obligations. *See* NRS §86.371 ("[u]nless otherwise provided
22 in the articles of organization or an agreement signed by the member or manager to be charged,
23 no member or manager of any limited-liability company formed under the laws of this state is
24 individually liable for the debts or liabilities of the company").

25 At all times, Dr. Swanson acted as the "Co-trustee, the Shiraz Trust, Manager of Lyons
26 Development, LLC." "Todd Swanson, an individual" was never a party to the transaction.⁹ The

27
28 ⁹ The typical format to avoid individual liability is to sign documents with the "company name,
individual's signature, individual's position." *See e.g. Hubbard Family Trust v. TNT Land*

1 transaction, from the start, was between the Folinis and the owner of the property, Lyons
2 Development, LLC. (*See* First Amended Complaint, Exhibit 7). None of the allegations tie Dr.
3 Swanson, individually, to the alleged wrongful acts. Instead, the allegations are general
4 averments that the collective "Defendants" committed the wrongful acts.

5 Although the Folinis do not assert a breach of contract action, nobody disputes that this
6 case emanates from a real estate purchase agreement between the Folinis and Lyons
7 Development, LLC. All relevant transaction documents, which are attached to the Folinis'
8 Complaint as exhibits, are executed by or in the name of Lyons Development, LLC or "Todd
9 Swanson, Co-trustee, the Shiraz Trust, Manager, Lyons Development, LLC." These documents
10 are the following:

- 11 1. The Residential Purchase Agreement. (*See* First Amended Complaint, Exhibit 1 at
12 10) (signed by "Todd Swanson, Co-trustee, the Shiraz Trust, Manager, Lyons
Development");
- 13 2. Counter-Offer No. 2. (*See* First Amended Complaint, Exhibit 2) (referencing
14 "Lyons Development, LLC as the Seller and signed by "Todd Swanson, Co-
trustee");
- 15 3. Counter-Offer No. 1. (*See* First Amended Complaint, Exhibit 3) (signed by
16 "Todd Swanson, Co-trustee");
- 17 4. Seller's Real Property Disclosure Form. (*See* First Amended Complaint, Exhibit 4
18 at 5) (signed by "Todd Swanson, Co-trustee, the Shiraz Trust, Manager, Lyons
Development");
- 19 5. Request for Repairs. (*See* First Amended Complaint, Exhibit 6 at 5) (signed by
"Todd Swanson, Co-trustee, the Shiraz Trust, Manager, Lyons Development");
- 20 6. The Grant, Bargain and Sale Deed. (*See* First Amended Complaint, Exhibit 7 at 2)
21 (Lyons Development, LLC is the Seller of the property, and the document is
22 signed on behalf of Lyons Development, LLC by "Todd Swanson, Resource
Trustee for the Shiraz Trust."); (*See also* Declaration of Value Form (which is the
last page of Exhibit 7) which references Lyons Development, LLC as the Seller).

23 As shown by *all* the transaction documents accompanying the Folinis' First Amended
24 Complaint, Dr. Swanson was always acting in a representative capacity. The way he signed the
25 documents as the Co-trustee of Shiraz Trust, Manager of Lyons Development LLC attests to that.

26 _____ (continued)

27 *Holdings, LLC*, 9 N.E.3d 411, 424 (Ohio App. 2014). To avoid personal liability, the agent must
28 make third persons aware that he is an agent of the corporation and it is the corporation
(principal) with which they are dealing, not the agent individually. *Id.*

1 Further, the Folinos executed the same documents - the PSA, the two counteroffers, the SRPD
2 acknowledgment, and the Request for Repairs - and are listed on the deed as the "Buyer"
3 purchasing the home from "Lyons Development." The Folinos cannot claim they were not on
4 notice that Dr. Swanson was acting on behalf of the owner of the property, Lyons Development,
5 LLC. Dr. Swanson, an individual, should be dismissed from this case, with prejudice.

6 2. The Plaintiffs' Piercing the Corporate Veil Allegations Fail

7 Plaintiffs requested leave to amend, and their sole amendment was to add an alter ego
8 claim. But the Plaintiffs' alter ego claim contains virtually none of the required elements for an
9 alter ego claim.

10 Members of corporation or LLCs are responsible *only if* the alleged wrongful acts were
11 committed in an individual capacity. See *Gardner v. Eighth Judicial Dist. Court of State*, 405
12 P.3d 651, 655, 133 Nev. Adv. Rep. 89 (2017). Alter ego must be established for liability to be
13 imputed to the member. *Id.* "[A]lthough 'there is no litmus test for determining when the
14 corporate fiction should be disregarded,' factors including: '(1) commingling of funds; (2)
15 undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the
16 individual's own; and (5) failure to observe corporate formalities' may indicate the existence of
17 an alter ego." See *Pharmaplast S.A.E. v. Zeus Med. Holdings, LLC*, 2017 U.S. Dist. LEXIS
18 36227 *9 (9th Cir. 2017). Here, none of these benchmarks are alleged by the Folinos.

19 Under Nevada law, "the party propounding the alter ego doctrine and attempting to pierce
20 the corporate veil must establish the elements" to assert an alter ego claim. *Lorenz v. Beltio,*
21 *Ltd.*, 114 Nev. 795, 807, 963 P.2d 488, 496 (1998).¹⁰ There are three requirements for finding
22 that the doctrines of alter ego and piercing the corporate veil apply:

23 (1) The corporation must be influenced and governed by the person asserted to be its alter
24 ego;

25 (2) There must be such unity of interest and ownership that one is inseparable from the

26
27 ¹⁰ The threshold question is whether the Nevada rules for corporations apply equally to trusts.
28 Courts have ruled they likely do. See *Transfirst Grp., Inc. v. Magliarditi*, 2017 U.S. Dist. LEXIS
80443 *14 (D. Nev. 2017).

1 other; and

2 (3) The facts must be such that adherence to the fiction of separate entity would, under
3 the circumstances, sanction a fraud or promote injustice.

4 *Lorenz*, 114 Nev. at 807, 963 P.2d at 496. Here only the first element is present. However, the
5 other two elements are not supported.

6 **a. There is No Unity of Interest**

7 Primarily and most importantly, “to pierce the corporate veil, the findings pointing to a
8 unity of interest must have *caused* the *plaintiff's injury*.” *Polaris Indus. Corp. v. Kaplan*, 103
9 Nev. 598, 602, 747 P.2d 884, 887 (1987). Here, presuming unity of interest, such purported
10 unity did not cause the Plaintiffs’ injuries. Indeed, there is no connection, at all, between the
11 Plaintiffs’ injuries and any purported unity of interest. No discovery will change this fact.

12 For the sake of argument, if Plaintiffs can clear the first hurdle, the courts may look to
13 several other factors.¹¹ For instance, the courts may consider whether the trust is being used “as a
14 mere shell . . . for . . . the business of . . . another corporation.” *Southwood v. Credit Card*
15 *Solution*, 2016 U.S. Dist. LEXIS 48039 *35 (D.N.C. 2016), *citing N. Arlington Med. Bldg., Inc.*
16 *v. Sanchez Const. Co.*, 86 Nev. 515, 522 n.3, 471 P.2d 240, 244 n.3 (1970). Here, the Shiraz
17 Trust is not a mere shell, but acts as the manager of Lyons Development LLC. No discovery will
18 change this fact.

19 Next, the courts may consider whether there is “concealment and misrepresentation of the
20 identity of the responsible ownership, management, and financial interest.” *Southwood*, 2016
21 U.S. Dist. LEXIS 48039 at *35. The Plaintiffs do not allege such concealment or
22 misrepresentation, and no discovery will change this fact.

23 Last, courts may consider whether the trust has disregarded legal formalities and failed to
24 “maintain arm's length relationships among related entities.” *Southwood*, 2016 U.S. Dist. LEXIS

25
26 ¹¹ See also, *Mallard Auto. Group, Ltd. v. LeClair Mgmt. Corp.*, 153 F.Supp. 2d 1211, 1214 (D.
27 Nev. 2001) (*citing Lorenz*, 963 P.2d at 497) (courts consider “several factors that may indicate a
28 unity of interest and ownership between two entities: commingling of funds, undercapitalization,
unauthorized diversion of funds, treatment of corporate assets as the entity’s own, and failure to
observe corporate formalities.”)

1 48039 at *35. Plaintiffs can point to no instance where the Shiraz Trust or Lyons Development,
2 LLC failed to follow corporate formalities. No discovery will change this fact and
3 corporate/trust filings are public record.

4 **b. Recognizing the Trust Would Not Promote Injustice**

5 The last factor is whether recognizing the Shiraz Trust and/or Lyons Development, LLC
6 would promote injustice. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F.Supp.2d 1234, 1242,
7 2008 U.S. Dist. LEXIS 7769 *16. As discussed above, the Folinis have always known that their
8 contract was with “Todd Swanson, Co-trustee, the Shiraz Trust, Manager, Lyons Development
9 LLC.” The burden is on the Folinis to show how recognizing the trust or the LLC would
10 promote injustice. Yet, in their moving papers, the Folinis did not even raise the issue.

11 Failing to comply with the requirements for pleading alter ego, the Plaintiffs’ claim must
12 be dismissed.

13 **H. All Allegations Relating to Punitive Damages Must Be Dismissed**

14 NRS §41.001 & NRS §41.005 allow a plaintiff to seek punitive damages. Plaintiffs
15 seeking a punitive damages remedy must allege “that the defendant is guilty of oppression, fraud
16 or malice, express or implied.” *Wyrick v. Am. Fam. Mut. Ins. Co.*, 2013 U.S. Dist. LEXIS
17 112548 *8, *citing* NRS §42.005(1).

18 But, “[a]lthough [punitive damages] need only be alleged generally and not with the level
19 of specificity required for fraud or mistake, facts supporting the inference of [punitive conduct]
20 must still be pled to survive” dismissal under N.R.C.P. 12(b)(5). *See Bonavito v. Nev. Prop. 1*
21 *LLC*, 2014 U.S. Dist. LEXIS 45304 *2 (D. Nev. 2014) (applying FRCP 12(b)(6) in dismissing
22 plaintiff’s complaint for failure to properly allege punitive conduct). The pleadings require
23 “more than labels and conclusions.” *Bonavito, supra, citing Ashcroft v. Iqbal*, 129 S.Ct. 1937,
24 1941 (2009). If a plaintiff cannot meet this burden, the punitive damages claims must be
25 dismissed. *Id.*

26 Here, the Folinis’ punitive damages allegations are general, conclusory statements that
27 the Defendants acted “wilfully, fraudulently, maliciously [and] oppressively.” (*See* First
28 Amended Complaint ¶54 at 7:15-18, ¶84 at 11:14-17 and ¶88 at 12:5-11). However, the Folinis

1 did not offer any facts supporting an inference that punitive damages are a viable component of
2 damages. The Folinos' punitive damages allegations and prayer should be dismissed.

3 V.

4 **CONCLUSION**

5 The Folinos' seven claims contain multiple deficiencies. First, the Plaintiffs are limited
6 to the remedies contained in NRS Chapter 113, and the other six claims cannot survive dismissal
7 because NRS Chapter 113 provides the Plaintiffs' with a statutory remedy. But, the Plaintiffs'
8 NRS Chapter 113 allegations fail based on the statute, the disclosure form and *Nelson*. The
9 remaining claims are also flawed as discussed above. The Defendants request dismissal of the
10 Plaintiffs' claims.

11 DATED this 20th day of May, 2019.

12 Respectfully Submitted,

13 CHRISTOPHER M. YOUNG, PC

14 
15 _____
16 CHRISTOPHER M. YOUNG, ESQ.

17 Nevada Bar No. 7961

18 JAY T. HOPKINS, ESQ.

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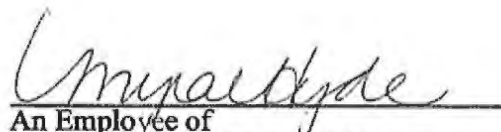
24 Attorneys for Defendant Clark County Nevada
25 Department of Aviation
26
27
28

1 CERTIFICATE OF E-SERVICE

2 Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and
3 N.E.F.C.R. 9, I hereby certify that on the 20th day of May, 2019, I caused the foregoing

4 DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED
5 COMPLAINT to be e-served on counsel as follows:

6 Rusty Graf, Esq.
7 Shannon M. Wilson, Esq.
8 10777 West Twain Avenue, 3rd Floor
9 Las Vegas, Nevada 89135
10 rgraf@blacklobello.law
11 swilson@blacklobello.law

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

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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Steven D. Grierson
CLERK OF THE COURT



Joseph Folino, Plaintiff(s)

vs.

Todd Swanson, Defendant(s)

Case No.: A-18-782494-C

Department 24

NOTICE OF HEARING

Please be advised that the Defendant's Motion to Dismiss Plaintiff's First Amended Complaint in the above-entitled matter is set for hearing as follows:

Date: July 11, 2019

Time: 9:00 AM

Location: Phoenix Building Courtroom - 11th Floor
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Miriam Vazquez
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Miriam Vazquez
Deputy Clerk of the Court

JA000487

DISTRICT COURT
CLARK COUNTY, NEVADA

Joseph Folino, Plaintiff(s)

vs.

Todd Swanson, Defendant(s)

Case No.: A-18-782494-C

Department 24

NOTICE OF HEARING

Please be advised that the Defendant's Motion to Dismiss Plaintiff's First Amended Complaint in the above-entitled matter is set for hearing as follows:

Date: July 11, 2019

Time: 9:00 AM

Location: Phoenix Building Courtroom - 11th Floor
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

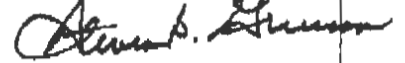
STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Miriam Vazquez
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Miriam Vazquez
Deputy Clerk of the Court



1 **OPPS**

2 Rusty Graf, Esq.

3 Nevada Bar No. 6322

4 Shannon M. Wilson, Esq.

5 Nevada Bar No. 13988

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

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

26 Defendants.

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

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

27 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through
28 Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, their attorneys of record,
hereby submit their Opposition to Defendant's Motion to Dismiss and/or Motion for More
Definite Statement. This Opposition is made and based upon the Memorandum of Points and
Authorities attached hereto, all exhibits attached hereto, and any oral argument as may be
entertained by the Court at the time and place of the hearing of this matter.

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite Defendants' attempt to dismiss Plaintiffs' claims, the inescapable truth is that Plaintiffs' claims are legitimate and actionable. Put simply, the allegations at the heart of Plaintiffs' claims are those commonly found in fraud, deceptive trade practice, and Civil RICO actions. Further, Plaintiffs set forth detailed factual allegations with supporting documentation in throughout their Complaint, which the Defendants are specifically able to refer to in satisfaction of Nevada's notice pleading standard. More importantly, and most definitely, the "Who," "What," "Where," and "Why" of the fraudulent acts have been plead in some instances twice.

II. INDISPUTABLE FACTUAL ALLEGATIONS

The undisputed facts and relevant procedural history of this matter are as follows:

1. On or about October 22, 2017, Plaintiffs entered into a Residential Purchase Agreement ("RPA") to purchase the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, ("Subject Property") with the Shiraz Trust, Dr. Todd Swanson (individually, "Swanson"), Trustee of the Shiraz Trust, and Lyons Development, LLC (individually "Lyons"). See Compl. ¶11.

2. That Defendants were notified of a problem with the plumbing of Subject Property on or about February 16, 2017.

3. That Defendants paid to have this initial problem with the plumbing of Subject Property fixed on or about June 7, 2017.

4. Swanson executed the Sellers Real Property Disclosure Form (required by law and the RPA) on or about October 24, 2017 (the "SRPD"), attached to the Complaint as Exhibit 4. See Compl. ¶16 and Exhibit 4 to the Complaint.

5. On or about May 23, 2017, months before the SRPD, Defendant's subcontractor, Rakeman Plumbing, submitted an invoice and warranty claim to Uponor, the manufacturer of the plumbing system on the Subject Property, for conducting warranty repairs on said plumbing

1 system for leakage and damages related thereto. *See* Compl. ¶¶ 34-40 and Exhibits 8, 9, 10 and
2 11, attached to the Complaint.

3 6. That Subject Property had a second plumbing problem that occurred on or about
4 November 7, 2017.

5 7. That Plaintiffs were not notified of any plumbing problems with Subject Property prior to
6 November 7, 2017.

7 8. On or about November 17, 2017, Plaintiffs effectuated the closing of the real estate
8 transaction for the Subject Property. *See* Compl. ¶ 31.

9 9. The residence on the Subject Property was constructed by Lyons in 2015. *See* Compl. ¶
10 12.

11 10. Chapter 113 of the Nevada Revised Statutes imposes on sellers of residential property the
12 duty to disclose property defects on the SRPD, and a continuing duty to supplement the SRPD
13 prior to the closing under the penalty of perjury. *See* NRS 113.130(1).

14 11. The SRPD on the Subject Property, signed by Swanson, sets forth the text of the statutes
15 detailing the seller's residential property disclosure requirements. *See* Compl. ¶ 16 and Exhibit 4
16 to the Complaint.

17 12. The SRPD executed by Swanson does not contain any notification to Plaintiffs regarding
18 any problems or defects in the plumbing system, at the time of the SRPD or prior, or other
19 related systems that would discuss or reference the plumbing system to supply water, and
20 Swanson never amended the SRPD prior to conveyance. *See* SRPD, attached to the Complaint
21 as Exhibit 4.

22 13. Notwithstanding Defendant's representations on the SRPD, the Subject Property was
23 affected by systemic plumbing defects, water loss and leakage, which Defendants, and each of
24 them, knew about or had reason to know about both prior to the execution of the SRPD and after.
25 *See* Compl. ¶¶ 25-45.

II. LEGAL STANDARD FOR DISMISSAL

"Because Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (citing NRCP 8(a); *Chavez v. Robberson Steel Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978)). In other words, "[a] complaint need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought." *W. States Const., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992). "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." NRCP 9(b). However, conditions of a person's mind, such as malice, intent and knowledge, may be alleged generally. *Id.*

"The standard of review for dismissal under NRCP 12(b)(5) is rigorous as this [C]ourt 'must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].'" *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839 (2000). "All factual allegations of the complaint must be accepted as true." *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (citing *Capital Mmi. Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)). Further, "[t]he complaint cannot be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief." *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). "The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested." *Brelant*, 109 Nev. at 846, 858 P.2d at 1260 (citing *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984); *Michoff*, 108 Nev. at 936, 840 P.2d at 1223).

When the foregoing standard is applied to this case, it is abundantly clear that Defendant's Motion to Dismiss must be denied because the allegations presented by the

1 Plaintiffs' Complaint satisfy each and every necessary element in support of each cause of
2 action.

3 **III. LEGAL ARGUMENT IN OPPOSITION TO MOTION TO DISMISS**

4 **A. Plaintiff's Complaint is legally sufficient in stating its first claim for**
5 **fraud/intentional misrepresentation.**

6 Plaintiff's complaint is legally sufficient as it contains the specificity required by NRCP
7 9(b). "Fraudulent misrepresentation" occurs when (1) a false representation is made with either
8 knowledge or belief that it is false or with an insufficient basis of information for making the
9 representation, (2) an intent to induce another's reliance, and (3) damages that result from this
10 reliance. *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007). "In the context of a
11 fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each
12 defendant in the alleged fraudulent scheme to satisfy the fraud pleadings rule." *Oaktree Capital*
13 *Mgmt., L.P. v. KPMG*, 963 F. Supp. 2d 1064, 1074 (D. Nev. 2013) citing *Swartz v. KPMG LLP*,
14 476 F.3d 756, 764 (9th Cir.2007). Further, the Complaint must state the "[t]ime, place, and
15 specific content of the false representations" *Risinger v. SOC LLC*, 936 F. Supp. 2d 1235,
16 1242 (D. Nev. 2013).

17 **1. In reading the factual allegations of the Complaint in connection with the**
18 **Exhibits thereto, Plaintiffs amply plead each element of fraud with facts.**

19 Plaintiffs amply plead each element of their claim with facts, and not mere conclusions,
20 as well as exhibits supporting the same. Defendants' contention that Plaintiffs lodged the fraud
21 claim against a host of undifferentiated Defendants without information as to the timing and
22 circumstances surrounding the fraud is clearly erroneous. Plaintiff's allege the specific content of
23 the false representations concerning the plumbing system and even attaches a copy of the SRPD,
24 which contains the false representations, as well as proof that each of the Defendants knew or
25 had reason to know of the plumbing system defects. See Compl. ¶¶44-46, and Exhibits 4 through
26 11 to the Complaint. This constitutes an amply plead and legally sufficient claim of fraud as
27 Plaintiffs clearly identifies all of the Defendants as having participated in the intentional
28

1 misrepresentation. The Complaint specifically pleads the elements of fraud with supportive
2 facts, including as follows:

- 3 i. Swanson was identified as the person who signed the SRPD on behalf of the
4 selling parties. *See* Compl. ¶17 and SRPD.
- 5 ii. Lyons built the home. Compl. ¶12.
- 6 iii. Shiraz Trust was an owner at the time of relevancy. First Amended Compl. ¶11.
- 7 iv. The Defendants intentionally failed to identify “prior water losses” and “prior
8 warranty repairs” resulting from the “real property plumbing system defect” on
9 the SRPD (attached to the Complaint as Exhibit 4) (*See* Comp. ¶¶41; 44-46). Page
10 2 of the SRPD specifically supported this assertion, as Swanson affirmatively
11 answered “no” to each water, flooding, and drainage related inquiry, as well as the
12 inquiry asking whether any “conditions or aspects” of the property “materially
13 affect its value or use in an adverse manner”. The nature of the defects is further
14 detailed and substantiated by the actual invoice and communications with the
15 plumbing system manufacturer, attached to the Complaint as Exhibits 8 through
16 11, and the findings located in the Uniform Building Inspection Report, attached
17 to the Complaint as Exhibit 5.
- 18 v. The intentional misrepresentations detailed in the Complaint occurred on or about
19 October 24, 2017 (*See* Compl. ¶¶44-46, and SRPD).
- 20 vi. Defendants, and each of them, failed to correct and supplement the
21 misrepresentations contained in the SRPD prior to closing.
- 22 vii. “Defendants, and each of them, intended by their false representations to induce
23 the Plaintiffs to purchase the Subject Property” (*See* Compl. ¶46);
- 24 viii. Plaintiff relied on the misrepresentations concerning the real property
25 plumbing system defect, and was damaged thereby (*See* Compl. ¶¶47-54).

26 By setting forth facts supporting each element of the claim for fraud and exhibits
27 substantiating the same, Plaintiffs more than satisfied the purposes for the heightened pleading
28 requirement; namely, to provide adequate notice for the Defendants to defend against the charges

1 and not just deny that they have done anything wrong and to “[d]eter plaintiffs from filing
2 complaints ‘as a pretext for the discovery of unknown wrongs’”. See *Oaktree Capital Mgmt.,*
3 *L.P. v. KPMG*, 963 F. Supp. 2d 1064, 1074 (D. Nev. 2013) quoting *In re Stac Elecs. Sec. Litig.*,
4 89 F.3d 1399, 1405 (9th Cir.1996). Therefore, because the claim for fraud is supported by
5 factual allegations and supporting exhibits, it is clearly not a baseless, unsupported claim and
6 meets the heightened pleading requirement.

7 **2. Conditions of the mind, such as intent, can be plead generally, in pleading fraud.**

8
9 The Complaint by Plaintiffs also meets the specificity requirement as to the
10 conditions of the mind of the Defendants. NRCP 9(b) states that, in alleging fraud, “[i]ntent,
11 knowledge, and other conditions of mind of a person may be alleged generally.” NRCP 9(b).
12 Plaintiffs’ allegation that the Defendants “purposefully and with the intent to deceive Plaintiffs”
13 is sufficient to satisfy the fraud pleading requirement set forth by NRCP 9(b). However, Plaintiff
14 went even further as to provide copies of the plumbing invoices and warranty claims submitted
15 by Defendant Swanson (See Complaint, Exhibits 8 to 11).

16 **3. Plaintiffs allegations meet the particularity requirements of N.R.C.P. 9(b).**

17
18 As detailed above, Plaintiffs amply plead each element of their claim with facts, and
19 not mere conclusions, as well as exhibits supporting the same. Defendants incorrectly allege that
20 Plaintiffs citing the signing of the SRPD on or about October 24, 2017 as the specific time of the
21 false representation is insufficient. The execution of the SRPD on or about October 24, 2017 is a
22 specific instance of false representation and sufficiently particular to meet the pleading standard
23 of NRCP 9(b). Further, Plaintiffs’ claim identifies the specific parties involved by identifying the
24 Defendants as the parties which took actions intended to induce Plaintiffs to rely upon the
25 fraudulent statement. Plaintiffs’ Complaint also contains specific allegations as to the nature of
26 Defendants’ fraud and the Defendants intent to deceive are specifically pled. Therefore,
27 Plaintiffs’ pleadings meet all of the particularity requirements of NRCP 9(b) for a claim of fraud
28 and should not be dismissed.

B. Rebuttal of Defendants' Argument that Plaintiffs' Negligent Misrepresentation Claim is Barred by the Economic Loss Doctrine.

Defendants incorrectly argue that Plaintiffs negligent misrepresentation claim is barred by the economic loss doctrine, because it is based on a contract and the losses were purely economic. In support of this argument Defendants cite *Calloway*, where the Court held that "if a house causes economic disappointment by not meeting a purchaser's expectations, the resulting failure to receive the benefit of the bargain is a core concern of contract, not tort law." *Calloway*, 116 Nev. At 258, 993 P.2d at 1266. However, this argument is faulty as it relies on the supposition that Plaintiffs' claim of negligent misrepresentation is based upon Defendants failure to perform under the contract for the purchase of the house. In reality, Plaintiffs' claim alleges that the Plaintiffs were damaged by the negligent misrepresentation of Defendants in inducing them into entering the contract rather than Defendants failure to perform under said contract.

In *Pacific Maxon, Inc. v. Wilson*, the seller of a property altered an appraisal, roughly doubling the appraised price, and this altered document was relied upon by a buyer in purchasing the property. *Pacific Maxon, Inc. v. Wilson*, 619 P. 2d 816 (Nev 1980). The Court held that this was fraud in the inducement of a contract, and clarified that a valid fraud in the inducement claim required only partial reliance on a misrepresentation and that this reliance be justifiable. *Id.* Here, like *Pacific Maxon*, there was misrepresentation by Defendants, this misrepresentation was intended to induce Plaintiffs to enter a contract, the Plaintiffs relied upon this misrepresentation by purchasing the house, and this reliance was justifiable because the Defendants provided a written disclosure which should have included details about the plumbing issues.

In Nevada, economic loss doctrine "generally provides that purely economic losses are not recoverable in tort absent personal injury or property damage..." *Terracon Consultants Western, Inc. v. Mandalay Resort Group*, 206 P.3d 81 (Nev 2009). Purely economic losses are

1 defined as "the loss of the benefit of the user's bargain...including...pecuniary damage for
2 inadequate value, the cost of repair and replacement of [a] defective product, or consequent loss
3 of profits...." Id. at 83.

4 The economic loss doctrine does not apply in this situation and does not bar the claim as
5 Plaintiffs' losses are not a result of Defendants' failure to perform their obligations under the
6 contract, but rather Defendants' fraudulent or negligent misrepresentation, which induced
7 Plaintiffs to enter the contract. *Terracon* cites *Barber Lines A/S v. M/V Donau Maru*, 764 F.2d 50
8 (1st Cir. 1985), in identifying fraudulent or negligent misrepresentation as potential exceptions to
9 the economic loss doctrine. Here, because the Defendants used misrepresentation in the
10 inducement of the contract, Plaintiffs are not barred from bringing the claim of negligent
11 misrepresentation.
12

13 **C. Rebuttal of Defendants' Punitive Damages Argument that the Nevada Deceptive**
14 **Trade Practices Act is Not Applicable to Real Property Matters**

15 Defendants argue that the Nevada Deceptive Trade Practices Act ("DTPA") (NRS 598)
16 governs transactions related to "goods and services" and that real estate should be outside the
17 parameters of the same. However, in *Betsinger*, filed by Plaintiffs' counsel Mr. Graf, the Nevada
18 Supreme Court expressly rejected Defendants' assertion and stated as follows:
19

20 Respondents tangentially argue that NRS Chapter 598's statutory scheme does not
21 regulate the deceptive sale of real property; therefore, DRH could not be held
22 liable for a deceptive trade practice. Having reviewed this issue, we reject
23 respondents' narrow interpretation of NRS Chapter 598 and conclude that this
argument is without merit.

24 *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 166, 232 P.3d 433, 436 (2010), fn 4. Defendants
25 further state that *Betsinger* is distinguishable and should not be followed because it involved a
26 "financing 'bait and switch tactic' by a developer". Such facts are completely irrelevant to the
27 scope of the DTPA and the fact that it applies to "goods and services", such as real estate. In
28

1 opposition to that argument, Plaintiffs assert that the DTPA is exactly the type of statutory
2 prohibition. Here, the Defendants were offering what purported to be a well-built and
3 maintained residence, when in fact the opposite is true. The residence was and is replete with
4 defects in the plumbing system that were known to the Defendants prior to this sale contract,
5 during the time of the sale and certainly at least when the Defendants were making the repairs at
6 the time of closing and chose not to disclose the manner and type of systemic plumbing defect
7 present. Therefore, Plaintiffs' claim does not fall outside of the parameters of Nevada's DTPA.

9 **D. Plaintiff's Complaint is legally sufficient in stating its claim for Civil RICO**
10 **violation.**

11 Defendants incorrectly argue that Plaintiffs' Complaint fails to allege the elements
12 necessary for a civil RICO claim. In Nevada, any person who is injured as a result of
13 racketeering activity may bring a civil action. *See* NRS 207.470(1). "Racketeering activity"
14 requires "[e]ngaging in at least two crimes related to racketeering that have the same or similar
15 pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
16 interrelated by distinguishing characteristics and are not isolated incidents" NRS 207.390.
17 To recover, plaintiff must prove that (1) his injury flows from defendant's violation of predicate
18 racketeering act, (2) that RICO violation proximately caused injury, and (3) that plaintiff did not
19 participate in the RICO violation. *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 849 P.2d 297
20 (1993). In pleading a RICO violation, Plaintiffs need not allege an injury separate and distinct
21 from the harm caused by the predicate acts. *Hale v. Burkhardt*, 104 Nev. 632, 636, 764 P.2d
22 866, 868 (1988). The complaint must "[c]ontain a sufficiently "plain, concise and definite"
23 statement of the essential facts such that it would provide a person of ordinary understanding
24 with notice of the charges." *Id.*, 104 Nev. at 638, 764 P.2d at 870.

1 In this case, Plaintiffs civil RICO pleading alleges all the necessary elements for a valid
2 claim. Plaintiffs' injury flows from and was proximately caused by the Defendants' defrauding
3 Plaintiffs out of their money by selling Plaintiffs the defective Subject Property, all the while
4 knowingly failing to disclose the fact that the home contained significant systemic defects, and
5 Plaintiffs did not participate in the commission of this fraud. But for being defrauded, Plaintiffs
6 would not have closed on the Subject Property for the price paid. *See Allum*, 109 Nev. at 285,
7 849 P.2d at 301. Further, the allegations in the Complaint, incorporated by reference in
8 Plaintiff's fifth cause of action, read together with the exhibits thereto, make clear that this
9 fraudulent conduct occurred upon the date of the SRPD continued through the closing date.
10 Plaintiffs therefore satisfied its pleading requirement for this cause of action and satisfied their
11 duty to put Defendants on notice of the charges.
12

13 E. Rebuttal of Defendants' Punitive Damages Argument

14 Defendants argue that Plaintiff's punitive damages allegations are not supported by the
15 pleadings, but this is incorrect. Plaintiffs' allegations are legally sufficient to support the claim
16 for punitive damages. NRS 42.001 and NRS 42.005 allow for the recovery of punitive damages,
17 if the defendant is guilty of "oppression, fraud or malice, express or implied[.]" NRS 42.001
18 defines these terms as follows:
19
20

21 2. "Fraud" means an intentional misrepresentation, deception or
22 concealment of a material fact known to the person with the intent to deprive
23 another person of his or her rights or property or to otherwise injure another
24 person.

25 3. "Malice, express or implied" means conduct which is intended to injure a
26 person or despicable conduct which is engaged in with a conscious disregard of
27 the rights or safety of others.

28 4. "Oppression" means despicable conduct that subjects a person to cruel
and unjust hardship with conscious disregard of the rights of the person.

Id. [Emphasis added.]

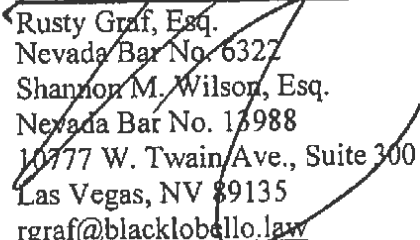
Here, it is clear from Plaintiffs' allegations in the Complaint and the nature of their causes of action that malice and fraud have been properly plead as the basis for requesting punitive damages. Further, the allegations and claims set forth in the complaint, taken together with the relief requested, more than satisfy Nevada's notice pleading standard and Defendant's Motion to Dismiss should be denied. Fraud, in the instant of this case and as alleged in this Complaint, included the intentional misrepresentation or withholding of a material fact that caused the Plaintiffs damage. Specifically, but for the Defendant telling the Plaintiffs that the house was free of any and all prior repairs or from systemic plumbing defects, the Plaintiffs would not have been injured by purchasing this house that required repairs and caused significant injury to the value of the home. The facts of this case could not fit more exactly into the requisites for Punitive damages.

IV. CONCLUSION

When viewing the facts in the light most favorable to Plaintiffs and drawing all reasonable inferences therefrom in their favor, Defendant's Motion to Dismiss Statment must be dismissed.

DATED this 5th day of June 2019

BLACK & LOBELLO


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Attorneys for Plaintiff

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 5th day of June 2019, I caused the above and foregoing document **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**; to be served as follows:

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

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

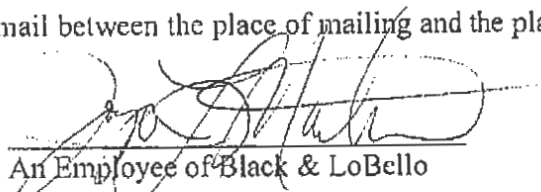
☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

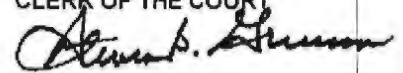
to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

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

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


An Employee of Black & LoBello

BLACK & LOBELLO
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RPLY

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

v.

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

Defendant(s).

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

HEARING DATE: 7/11/19
HEARING TIME: 9:00 A.M.

DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee of the
SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,
LLC, (hereinafter referred to as "Defendants") by and through its counsel of record
CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of
CHRISTOPHER M. YOUNG, PC, hereby submit the following Reply to Plaintiffs' Opposition
to Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint.

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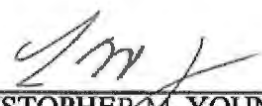
///

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

3 DATED this 3rd day of July, 2019.

4 Respectfully Submitted,

5 CHRISTOPHER M. YOUNG, PC

6
7 
8 _____
9 CHRISTOPHER M. YOUNG, ESQ.
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14 Las Vegas, Nevada 89128
15 cyoung@cotomlaw.com
16 jaythopkins@gmail.com
17 Attorneys for Todd Swanson, et al.

18 **INTRODUCTION**

19 The Plaintiffs' entire case is based on the Defendants' failure to check "yes" in box 1(a)
20 on the Seller's Real Property Disclosure form (SRPD). See SRPD form attached to Plaintiffs'
21 First Amended Complaint as Exhibit 4. NRS Chapter 113, which is embodied in the SRPD,
22 provides the Plaintiffs with an exclusive, statutory remedy. Indeed, Plaintiffs acknowledge in
23 their First Amended Complaint that the Defendants' purported violation of NRS Chapter 113 is
24 the sole basis of their lawsuit. According to Plaintiffs, "Chapter 113 of the Nevada Revised
25 Statutes imposes on sellers of residential property the duty to disclose [known] property defects
26 on the SRPD, and a continuing duty to supplement the SRPD prior to the closing under penalty
27 of perjury." But the Plaintiffs' claims for concealment fail as a matter of law.

28 ///

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///

///

1 ARGUMENT

2 The Defendants do not deny the Plaintiffs' allegations regarding the Sellers'/Defendants'
3 duties to disclose known defects or conditions which materially affect the value of the property.
4 But the Plaintiffs' non-response to the Defendants' NRS 113 argument in the Motion to Dismiss
5 highlights that the Plaintiffs know they do not have grounds for continuing their concealment
6 action.¹ The specific language of the SRPD and the statute, together with the facts alleged by
7 the Plaintiffs, support that the Defendants are not liable for concealment - under any theory.

8 The SRPD

9 The SRPD tracks NRS 113 and defines the Plaintiffs' remedies. The relevant section of
10 the SRPD form, Section 1(a), asks the following:

11 Are you aware of any of the following:

12 1. Structure:

13 (a) Previous or current moisture conditions and/or water damage.

14 See Exhibit 4 to Plaintiffs' First Amended Complaint at 2. (Emphasis in original). The
15 Defendants checked the "no" box. *Id.* The form mirrors and embodies NRS 113.130 and NRS
16 113.140, and itself defines the Sellers' duties. According to the SRPD form:

17 **Purpose of Statement:**

18 (2) This statement is a disclosure of the condition and information concerning the
19 property *known* by the seller *which materially affects the value of the property*. . .
20 This statement is *not a warranty of any kind by the Seller* or by any Agent
representing the Seller in this transaction and is *not a substitute for any*
inspections or warranties the Buyer may wish to obtain.

21 See Exhibit 4 to Plaintiffs' First Amended Complaint at 2. (Bold in original, italics added). As
22 discussed in this Reply and in Defendants' Motion to Dismiss, the "condition" claimed by the
23 Plaintiffs to be defective was not known to the Defendants because it had been repaired by
24 Rakeman Plumbing, as alleged by the Plaintiffs. This fact is not disputed.

25 ///

26 ///

27 1. The Plaintiffs' Civil RICO section cited the general rule but did not apply the elements to this
28 case. Therefore, Defendants' RICO argument in their Motion to Dismiss stands on its own and
this Reply does not add further argument or rebuttal.

1 *The Statute*

2 By its express language, the SRPD form embodies the statute, and the statute is,
3 accordingly, a part of the Disclosure Form. *See* NRS 113.130 (discussing the seller's disclosure
4 duties, the parameters of the disclosure and remedies) and NRS 113.140 (discussing the limits of
5 the disclosure and the buyer's duties). To fail to disclose under the terms of the SRPD form, the
6 Defendants would have had to be *aware* that previous water leaks *materially affected the value*
7 *of the property*.

8 *The Facts Alleged by the Plaintiffs*

9 Perhaps most important, the Plaintiffs' own allegations and accompanying exhibits
10 establish that NRS Chapter 113 obviates the Defendants' liability. Plaintiffs assert that:

11 On or about May 23, 2017, months before the SRPD, Defendant's subcontractor,
12 Rakeman Plumbing, submitted an invoice and warranty claim to Uponor, the
13 manufacturer of the plumbing system on the Subject Property, for conducting
warranty repairs on said plumbing system for leakage and damages related
thereto.

14 *See* Plaintiffs' First Amended Complaint ¶¶ 34-40 and Exhibits 8, 9, 10 and 11, attached to the
15 First Amended Complaint. *See also* Plaintiffs' Opposition to Motion to Dismiss at 2-3.

16 Under Nevada law, this allegation guts the Plaintiffs' case. As discussed in the
17 Defendants' Motion to Dismiss, the Nevada Supreme Court has ruled that a seller does not have
18 a duty to disclose "defects or conditions" if the "defect or condition" has been repaired. *Nelson*
19 *v. Heer*, 123 Nev. 217, 220, 163 P.2d 420 (2007). The *Nelson* ruling is discussed in detail in the
20 Defendants' Motion to Dismiss.

21 However, the Plaintiffs offer no rebuttal. Indeed, there can be no rebuttal because the
22 facts as alleged by the Plaintiffs directly track the facts in *Nelson* and support dismissal under
23 N.R.C.P. 12(b)(5). Under the law and the language of the *Nelson* case, the Defendants were not
24 "aware" and did not "know" there was a "defect or condition." In short, the Defendants did not
25 conceal anything.

26 ///

27 ///

28 ///

1 CONCLUSION

2 The Plaintiffs have thrown a myriad of claims against the Defendants, hoping that at least
3 one will stick. However, when this case is refined to its essence, the Plaintiffs' only claim is for
4 non-disclosure under the statute. *Nelson* is controlling and the Plaintiffs' claims against the
5 Defendants fail. Dismissal is warranted pursuant to N.R.C.P. 12(b)(5).

6 DATED this 3rd day of July, 2019.

7 Respectfully Submitted,

8 CHRISTOPHER M. YOUNG, PC

9
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/s/ Myra Hyde
An Employee of
CHRISTOPHER M. YOUNG, PC

Other Tort

COURT MINUTES

July 18, 2019

A-18-782494-C Joseph Folino, Plaintiff(s)
vs.
Todd Swanson, Defendant(s)

July 18, 2019 09:00 AM Defendant's Motion to Dismiss Plaintiff's First Amended Complaint

HEARD BY: Crockett, Jim COURTROOM: Phoenix Building 11th Floor 116

COURT CLERK: Jacobson, Alice

RECORDER:

REPORTER:

PARTIES PRESENT:

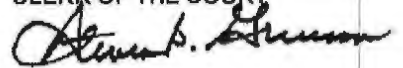
Christopher M. Young Attorney for Defendant, Trustee

J. Rusty Graf Attorney for Plaintiff

Jay T. Hopkins Attorney for Defendant, Trustee

JOURNAL ENTRIES

Argument for dismissal by Mr. Young. Opposition by Mr. Graf. Argument regarding plumbing issues. COURT ORDERED, claims 2,3,5,6,7 DISMISSED; claims 1 and 4 remain. COURT INSTRUCTED counsel to file an Second Amended Complaint with the surviving claims.



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12

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

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

17 Plaintiff(s),

18 v.

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

25 Defendant(s).
26
27
28

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

29 **NOTICE OF ENTRY OF ORDER**

30 YOU WILL PLEASE TAKE NOTICE that on the 14th day of August, 2019, an Order
31 was entered in the above-entitled action, a copy of which is attached hereto as Exhibit A.

32 DATED this 14th day of August, 2019.

33 CHRISTOPHER M. YOUNG, PC

34 /s/CHRISTOPHER M. YOUNG
35 CHRISTOPHER M. YOUNG, ESQ.
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EXHIBIT A

EXHIBIT A



1 **ORDER**
2 CHRISTOPHER M. YOUNG, ESQ.
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4 JAY T. HOPKINS, ESQ.
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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

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

12 Plaintiff(s),

13 v.

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

20 Defendant(s).

19 **ORDER**

20 On July 18, 2019, this Court heard arguments on Defendants' Motion to Dismiss the
21 Plaintiffs First Amended Complaint. Christopher M. Young, Esq. and Jay T. Hopkins, Esq.
22 appeared on behalf of the Defendants. Rusty Graff, Esq. appeared on behalf of the Plaintiffs.

23 Based on the pleadings and the arguments of counsel at the hearing, this Court hereby
24 issues the following Findings and Order.¹
25

26
27 ¹ The Court ordered Defendants to submit the Order within 10 days pursuant to EDCR 7.21. However,
28 the Court notes that issuance of the Minute Order was delayed, and that counsel for the Defendants (Jay
T. Hopkins, Esq.) spoke with Department 24's law clerk, Marvin Simeon on July 25, 2019, before the 10
day deadline expired. At that time, Mr. Hopkins was informed that the Order could be submitted after

1 **I. FINDINGS**

2 **A. Standards for Dismissal**

3 The Defendants moved for dismissal of each of Plaintiffs' seven claims and sought
4 dismissal of Plaintiffs' punitive damages allegations.

5 Pursuant to NRCP 12(b)(5), the Plaintiffs' Complaint must be accepted as true. Dismissal
6 is proper if the Plaintiffs' Complaint "fails to state a claim upon which relief can be granted."
7 NRCP 12(b)(5). Under Rule 12(b)(5) standards, the trial court may dismiss claims only if it
8 appears to a certainty that a plaintiff can prove no set of facts which would entitle him to relief.
9 *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993).

11 While courts consider all factual assertions in the complaint to be true and draw all
12 reasonable inferences in favor of the plaintiff, to survive dismissal, a complaint must contain
13 "some set of facts which, if true, would entitle the plaintiff to relief." *In re Amerco Derivative*
14 *Litig.*, 127 Nev.196, 252 P.3d 681 (2011).

15 An NRCP 12(b)(5) motion must be granted if the plaintiff cannot recover under the facts
16 set forth in the complaint. *Morris v. Bank of America*, 110 Nev. 1274, 1277, 886 P.2d 454, 457
17 (1994) (emphasis added). While Nevada is a notice pleading state, the complaint must set forth
18 sufficient facts to establish all necessary elements of a claim for relief. *Hay v. Hay*, 100 Nev.
19 196, 678 P.2d 672 (1984) (emphasis added).

20 **B. Findings**

- 21 1. This Court GRANTS the Defendants' Motion to Dismiss for the following
22 claims:

23 ***Plaintiffs' Second Claim: Negligent Misrepresentation***

24 The economic loss doctrine bars the Plaintiffs' Second Claim for negligent
25 misrepresentation. *See Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000).

26 _____
27 (continued)
28 issuance of the Minute Order, which counsel reviewed on August 1, 2019.

1 Under the economic loss doctrine, “there can be no recovery in tort for purely economic losses.”
2 *Calloway*, 116 Nev. at 256, 993 P.2d at 1263, citing American Law of Products Liability (3d) §
3 60:39 at 69 (1991). “Purely economic loss is generally defined as ‘the loss of the benefit of the
4 user’s bargain . . . including . . . pecuniary damage for inadequate value, the cost of repair and
5 replacement of the defective product, or consequent loss of profits, without any claim of personal
6 injury or damage to other property.’” *Id.*; American Law of Products Liability (3d) § 60:36, at
7 66. “The doctrine serves to distinguish between tort, or duty-based recovery, and contract, or
8 promise-based recovery.” *Calloway*, 116 Nev. at 258, 993 P.2d at 1259.

10 As the Plaintiffs’ remedy is purely economic, their Second Claim for negligent
11 misrepresentation is hereby dismissed.

12 ***Plaintiffs’ Third Claim: Violation of the Nevada Deceptive Trade Practices Act***

14 The DTPA does not apply to this case. The Court finds that this case is distinguishable
15 from *Betsinger v. D.R. Horton*, 126 Nev. 162, 232 P.3d 433 (2010). The *Betsinger* case involved
16 a dispute “involv[ing] a financing ‘bait and switch tactic’ by a developer with regard to the
17 interest rate offered to a homeowner.” In contrast, the instant case is about a seller’s failure to
18 disclose a purported defect. See *Harlow v. LSI Title Agency, Inc.*, 2012 U.S. Dist. LEXIS
19 158852, *13 (D.Nev. 2012) and *Bank of N.Y. Mellon v. Christopher Cmty. at Southern*
20 *Highlands Golf Club Homeowners Ass’n*, 2018 U.S. Dist. LEXIS 49049 at *9-10 (D.Nev. March
21 23, 2018).

23 The Plaintiffs’ Third Claim fails because it seeks to apply the DTPA in a real estate
24 transaction between a property owner and a buyer and does not involve “goods and services.”
25 Accordingly, the Plaintiffs’ Third Claim is hereby dismissed, with prejudice.

26 **Plaintiffs’ Fifth Claim: Civil RICO**

27 The Plaintiffs’ Fifth claim for Civil RICO fails as a matter of law. Nevada’s anti-
28

1 racketeering law is codified at NRS §207.350 through NRS §207.520. To state a claim for Civil
2 RICO the Plaintiff must allege that: (1) the plaintiff's injury flows from the defendant's violation
3 of a predicate Nevada RICO act; (2) the injury proximately caused by the defendant's violation
4 of the predicate act; and (3) the plaintiff did not participate in the commission of the predicate
5 act. *Allum v. Valley Bank*, 109 Nev. 280, 282-283, 849 P.2d 297, 298-299 (1993) (outlining the
6 formal, detailed requirements to plead a civil RICO claim with specificity). The Civil RICO
7 elements must be pled with particularity. *Hale v. Burkhardt*, 104 Nev. 632, 637-638, 764 P.2d
8 866, 869-70 (1988). "The specificity required is that called for in a criminal indictment or
9 information." *Cummings v. Charter Hospital*, 111 Nev. 639, 638, 764 P.2d 1137, 869 (1995).

11 The Plaintiffs' Civil RICO Claim fails to allege that the Defendants "engag[ed] in at least
12 two crimes related to racketeering" and fails to allege that the crimes "have the same or similar
13 pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
14 interrelated by distinguishing characteristics." *Id.* In addition, the Plaintiffs' Civil RICO Claim
15 fails to describe "the criminal acts that the defendant is charged to have committed" and fails to
16 "contain a sufficiently 'plain, concise and definite' statement of the essential facts such that it
17 would provide a person of ordinary understanding with notice of the charges." *Cummings*, 111
18 Nev. at 646, 896 P.2d at 1141.

20 Because the Plaintiffs' Fifth Claim does not allege any of the elements for a Civil RICO
21 claim the Fifth Claim is hereby dismissed, with prejudice.

23 **Plaintiffs' Sixth Claim: Respondeat Superior**

24 The Plaintiffs' Sixth Claim for Respondeat Superior is not a recognized claim for relief
25 under Nevada law. Therefore, Plaintiffs' Sixth Claim is hereby dismissed, with prejudice.

26 **Plaintiffs' Seventh Claim: Individual Liability and Alter Ego**

27 Members of corporation or LLCs are responsible *only if* the alleged wrongful acts were
28

1 committed in an individual capacity. See *Gardner v. Eighth Judicial Dist. Court of State*, 405
2 P.3d 651, 655, 133 Nev. Adv. Rep. 89 (2017). Alter ego must be established for liability to be
3 imputed to the member. *Id.* Although the Nevada Supreme Court has not ruled on the
4 applicability of the alter ego doctrine to trusts, the Nevada Federal District Court has ruled that
5 Nevada rules for corporations apply equally to trusts. See *Transfirst Grp., Inc. v. Magliarditi*,
6 2017 U.S. Dist. LEXIS 80443 *14 (D.Nev. 2017).
7

8 “[A]lthough ‘there is no litmus test for determining when the corporate fiction should be
9 disregarded’ factors including: (1) commingling of funds; (2) undercapitalization; (3)
10 unauthorized diversion of funds; (4) treatment of corporate assets as the individual’s own; and
11 (5) failure to observe corporate formalities may indicate the existence of an alter ego. See
12 *Pharmaplast S.A.E. v. Zeus Med. Holdings, LLC*, 2017 U.S. Dist. LEXIS 36227 *9 (9th Cir.
13 2017).
14

15 Other factors include the following:

- 16 (1) The corporation must be influenced and governed by the person asserted to be its alter
17 ego;
18 (2) There must be such unity of interest and ownership that one is inseparable from the
19 other (“to pierce the corporate veil, the findings pointing to a unity of interest must
20 have caused the plaintiff’s injury.” *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602,
21 747 P.2d 884, 887 (1987)); and
22 (3) The facts must be such that adherence to the fiction of separate entity would, under
23 the circumstances, sanction a fraud or promote injustice.

24 (4)

25 *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 807, 963 P.2d 488, 496 (1998).
26

27 The Court finds that the Plaintiffs’ Seventh Claim fails to comply with the requirements
28 for pleading alter ego. Accordingly, the Plaintiffs’ Seventh Claim must be dismissed, without
prejudice.

2. This Court DENIES the Defendants’ Motion to Dismiss on the following claims:

1 **Plaintiffs' First Claim: Fraud**

2 “To state a claim for fraud, a plaintiff must allege three factors: (1) a false representation
3 by the defendant that is made with either knowledge or belief that it is false or without sufficient
4 foundation; (2) an intent to induce another’s reliance; and (3) damages that result from this
5 reliance.” *See Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420, 426 (2007), *citing* NRCP 9(b). As
6 noted above, these elements must be alleged “with particularity.” *Id*
7

8 This Court finds that the Plaintiffs’ First Claim for fraud presents a fact question and
9 dismissal is not appropriate at this time.

10 **Plaintiffs' Fourth Claim: NRS Chapter 113**

11 The Plaintiffs’ Fourth Claim is for violation of NRS Chapter 113, which provides the
12 statutory remedy for Plaintiffs’ allegation that the Defendants failed to disclose a known defect.

13 NRS §113.140 provides:

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

16 1. NRS §113.130 does not require a seller to disclose a defect in residential
17 property of which the seller is not aware.

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

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

21 NRS 113.140. *See also Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420, 426 (2007).

22 This Court finds that whether Defendants failed to comply with NRS Chapter 113
23 presents a question of fact. Accordingly, Defendants’ Motion to Dismiss the Plaintiffs’ Fourth
24 Claim is denied.

25 **Plaintiffs' Punitive Damages Allegations**

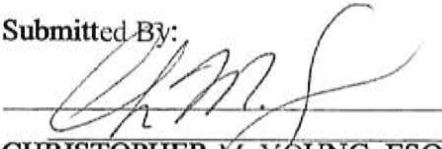
26 A plaintiff may allege that punitive damages are warranted under NRS §41.001 & NRS
27 §41.005. Plaintiffs seeking a punitive damages remedy must allege “that the defendant is guilty
28

1 of oppression, fraud or malice, express or implied.” *Wyrick v. Am. Fam. Mut. Ins. Co.*, 2013
2 U.S. Dist. LEXIS 112548 *8, *citing* NRS §42.005(1).

3 This Court finds that the Plaintiffs’ punitive damages allegations present a question of
4 fact. Therefore, the Defendants’ Motion to Dismiss the Plaintiffs’ punitive damages allegations
5 is hereby denied.

6 DATED this 6th day of August, 2019.

8 Submitted By:

9
10 
11 CHRISTOPHER M. YOUNG, ESQ.
12 Nevada Bar No. 7961
13 JAY T. HOPKINS, ESQ.
14 Nevada Bar No. 3223
15 2460 Professional Court, #200
16 Las Vegas, Nevada 89128
17 Attorneys for Todd Swanson, et al.

18 **ORDER**

19 **THIS COURT HEREBY ORDERS THAT:**

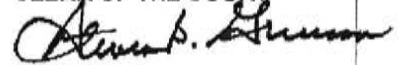
- 20 1. The Defendants’ Motion to Dismiss the Plaintiffs’ Second, Third, Fifth, Sixth and
21 Seventh causes of action is hereby GRANTED.
- 22 2. The Defendants’ Motion to Dismiss the Plaintiffs’ First and Fourth causes of
23 action is hereby DENIED.
- 24 3. The Defendants’ Motion to Dismiss the Plaintiffs’ punitive damages allegations is
25 hereby DENIED.
- 26 4. Within 20 days following Notice of Entry of this Order, the Plaintiffs shall file a
27 Second Amended Complaint with the surviving claims.

28 DATED this 13 day of August, 2019.

IT IS SO ORDERED.

H:\Open Case Files\0300.003\PLEADINGS\Order


JUDGE



1 **ORDER**
2 CHRISTOPHER M. YOUNG, ESQ.
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13 Attorneys for Todd Swanson, et al.

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JOSEPH FOLINO, an individual and NICOLE CASE NO.: A-18-782494-C
12 FOLINO, an individual, DEPT. NO.: XXIV
13 Plaintiff(s),

14 v.

15 TODD SWANSON, an individual; TODD
16 SWANSON, Trustee of the SHIRAZ TRUST;
17 SHIRAZ TRUST, a Trust of unknown origin;
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22 **ORDER**

23 On July 18, 2019, this Court heard arguments on Defendants' Motion to Dismiss the
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25 appeared on behalf of the Defendants. Rusty Graff, Esq. appeared on behalf of the Plaintiffs.

26 Based on the pleadings and the arguments of counsel at the hearing, this Court hereby
27 issues the following Findings and Order.¹

28 ¹ The Court ordered Defendants to submit the Order within 10 days pursuant to EDCR 7.21. However, the Court notes that issuance of the Minute Order was delayed, and that counsel for the Defendants (Jay T. Hopkins, Esq.) spoke with Department 24's law clerk, Marvin Simeon on July 25, 2019, before the 10 day deadline expired. At that time, Mr. Hopkins was informed that the Order could be submitted after

1 **I. FINDINGS**

2 **A. Standards for Dismissal**

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4 dismissal of Plaintiffs' punitive damages allegations.

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18 sufficient facts to establish all necessary elements of a claim for relief. *Hay v. Hay*, 100 Nev.
19 196, 678 P.2d 672 (1984) (emphasis added).

20 **B. Findings**

- 21 1. This Court GRANTS the Defendants' Motion to Dismiss for the following
22 claims:

23 ***Plaintiffs' Second Claim: Negligent Misrepresentation***

24 The economic loss doctrine bars the Plaintiffs' Second Claim for negligent
25 misrepresentation. *See Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000).

26 _____
27 (continued)
28 issuance of the Minute Order, which counsel reviewed on August 1, 2019.

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7 66. “The doctrine serves to distinguish between tort, or duty-based recovery, and contract, or
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10 As the Plaintiffs’ remedy is purely economic, their Second Claim for negligent
11 misrepresentation is hereby dismissed.

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13 The DTPA does not apply to this case. The Court finds that this case is distinguishable
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15 a dispute “involv[ing] a financing ‘bait and switch tactic’ by a developer with regard to the
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17 disclose a purported defect. See *Harlow v. LSI Title Agency, Inc.*, 2012 U.S. Dist. LEXIS
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19 *Highlands Golf Club Homeowners Ass’n*, 2018 U.S. Dist. LEXIS 49049 at *9-10 (D.Nev. March
20 23, 2018).

21
22
23 The Plaintiffs’ Third Claim fails because it seeks to apply the DTPA in a real estate
24 transaction between a property owner and a buyer and does not involve “goods and services.”
25 Accordingly, the Plaintiffs’ Third Claim is hereby dismissed, with prejudice.

26 **Plaintiffs’ Fifth Claim: Civil RICO**

27 The Plaintiffs’ Fifth claim for Civil RICO fails as a matter of law. Nevada's anti-
28

1 racketeering law is codified at NRS §207.350 through NRS §207.520. To state a claim for Civil
2 RICO the Plaintiff must allege that: (1) the plaintiff's injury flows from the defendant's violation
3 of a predicate Nevada RICO act; (2) the injury proximately caused by the defendant's violation
4 of the predicate act; and (3) the plaintiff did not participate in the commission of the predicate
5 act. *Allum v. Valley Bank*, 109 Nev. 280, 282-283, 849 P.2d 297, 298-299 (1993) (outlining the
6 formal, detailed requirements to plead a civil RICO claim with specificity). The Civil RICO
7 elements must be pled with particularity. *Hale v. Burkhardt*, 104 Nev. 632, 637-638, 764 P.2d
8 866, 869-70 (1988). "The specificity required is that called for in a criminal indictment or
9 information." *Cummings v. Charter Hospital*, 111 Nev. 639, 638, 764 P.2d 1137, 869 (1995).

11 The Plaintiffs' Civil RICO Claim fails to allege that the Defendants "engag[ed] in at least
12 two crimes related to racketeering" and fails to allege that the crimes "have the same or similar
13 pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
14 interrelated by distinguishing characteristics." *Id.* In addition, the Plaintiffs' Civil RICO Claim
15 fails to describe "the criminal acts that the defendant is charged to have committed" and fails to
16 "contain a sufficiently 'plain, concise and definite' statement of the essential facts such that it
17 would provide a person of ordinary understanding with notice of the charges." *Cummings*, 111
18 Nev. at 646, 896 P.2d at 1141.

20 Because the Plaintiffs' Fifth Claim does not allege any of the elements for a Civil RICO
21 claim the Fifth Claim is hereby dismissed, with prejudice.

23 **Plaintiffs' Sixth Claim: Respondeat Superior**

24 The Plaintiffs' Sixth Claim for Respondeat Superior is not a recognized claim for relief
25 under Nevada law. Therefore, Plaintiffs' Sixth Claim is hereby dismissed, with prejudice.

26 **Plaintiffs' Seventh Claim: Individual Liability and Alter Ego**

27 Members of corporation or LLCs are responsible *only if* the alleged wrongful acts were
28

1 committed in an individual capacity. *See Gardner v. Eighth Judicial Dist. Court of State*, 405
2 P.3d 651, 655, 133 Nev. Adv. Rep. 89 (2017). Alter ego must be established for liability to be
3 imputed to the member. *Id.* Although the Nevada Supreme Court has not ruled on the
4 applicability of the alter ego doctrine to trusts, the Nevada Federal District Court has ruled that
5 Nevada rules for corporations apply equally to trusts. *See Transfirst Grp., Inc. v. Magliarditi*,
6 2017 U.S. Dist. LEXIS 80443 *14 (D.Nev. 2017).
7

8 “[A]lthough ‘there is no litmus test for determining when the corporate fiction should be
9 disregarded’ factors including: (1) commingling of funds; (2) undercapitalization; (3)
10 unauthorized diversion of funds; (4) treatment of corporate assets as the individual’s own; and
11 (5) failure to observe corporate formalities may indicate the existence of an alter ego. *See*
12 *Pharmaplast S.A.E. v. Zeus Med. Holdings, LLC*, 2017 U.S. Dist. LEXIS 36227 *9 (9th Cir.
13 2017).
14

15 Other factors include the following:

- 16 (1) The corporation must be influenced and governed by the person asserted to be its alter
17 ego;
18 (2) There must be such unity of interest and ownership that one is inseparable from the
19 other (“to pierce the corporate veil, the findings pointing to a unity of interest must
20 have caused the plaintiff’s injury.” *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602,
21 747 P.2d 884, 887 (1987)); and
22 (3) The facts must be such that adherence to the fiction of separate entity would, under
23 the circumstances, sanction a fraud or promote injustice.

24 (4)
25 *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 807, 963 P.2d 488, 496 (1998).
26

27 The Court finds that the Plaintiffs’ Seventh Claim fails to comply with the requirements
28 for pleading alter ego. Accordingly, the Plaintiffs’ Seventh Claim must be dismissed, without
prejudice.

2. This Court DENIES the Defendants’ Motion to Dismiss on the following claims:

1 **Plaintiffs' First Claim: Fraud**

2 “To state a claim for fraud, a plaintiff must allege three factors: (1) a false representation
3 by the defendant that is made with either knowledge or belief that it is false or without sufficient
4 foundation; (2) an intent to induce another’s reliance; and (3) damages that result from this
5 reliance.” *See Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420, 426 (2007), *citing* NRCP 9(b). As
6 noted above, these elements must be alleged “with particularity.” *Id*
7

8 This Court finds that the Plaintiffs’ First Claim for fraud presents a fact question and
9 dismissal is not appropriate at this time.

10 **Plaintiffs' Fourth Claim: NRS Chapter 113**

11 The Plaintiffs’ Fourth Claim is for violation of NRS Chapter 113, which provides the
12 statutory remedy for Plaintiffs’ allegation that the Defendants failed to disclose a known defect.
13

14 NRS §113.140 provides:

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

17 1. NRS §113.130 does not require a seller to disclose a defect in residential
18 property of which the seller is not aware.

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

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

23 NRS 113.140. *See also Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420, 426 (2007).

24 This Court finds that whether Defendants failed to comply with NRS Chapter 113
25 presents a question of fact. Accordingly, Defendants’ Motion to Dismiss the Plaintiffs’ Fourth
26 Claim is denied.

27 **Plaintiffs' Punitive Damages Allegations**

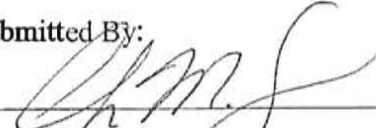
28 A plaintiff may allege that punitive damages are warranted under NRS §41.001 & NRS
§41.005. Plaintiffs seeking a punitive damages remedy must allege “that the defendant is guilty

1 of oppression, fraud or malice, express or implied." *Wyrick v. Am. Fam. Mut. Ins. Co.*, 2013
2 U.S. Dist. LEXIS 112548 *8, *citing* NRS §42.005(1).

3 This Court finds that the Plaintiffs' punitive damages allegations present a question of
4 fact. Therefore, the Defendants' Motion to Dismiss the Plaintiffs' punitive damages allegations
5 is hereby denied.

6 DATED this 6th day of August, 2019.

8 Submitted By:

9 
10 CHRISTOPHER M. YOUNG, ESQ.
11 Nevada Bar No. 7961
12 JAY T. HOPKINS, ESQ.
13 Nevada Bar No. 3223
14 2460 Professional Court, #200
15 Las Vegas, Nevada 89128
16 Attorneys for Todd Swanson, et al.

17 **ORDER**

18 THIS COURT HEREBY ORDERS THAT:

- 19 1. The Defendants' Motion to Dismiss the Plaintiffs' Second, Third, Fifth, Sixth and
20 Seventh causes of action is hereby GRANTED.
- 21 2. The Defendants' Motion to Dismiss the Plaintiffs' First and Fourth causes of
22 action is hereby DENIED.
- 23 3. The Defendants' Motion to Dismiss the Plaintiffs' punitive damages allegations is
24 hereby DENIED.
- 25 4. Within 20 days following Notice of Entry of this Order, the Plaintiffs shall file a
26 Second Amended Complaint with the surviving claims.

27 DATED this 13 day of August, 2019.

28 IT IS SO ORDERED.

H:\Open Case Files\0300.003\PLEADINGS\Order


JUDGE



COMP

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for their Second Amended Complaint against Defendants assert, allege and complain as follows:

I.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JOSEPH FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

1 3. Upon information and belief, TODD SWANSON, an individual (hereinafter
2 "SWANSON" or collectively "DEFENDANTS"), Defendant is, and at all times relevant hereto
3 was, a resident of Clark County, Nevada.

4 4. Upon information and belief, TODD SWANSON, as Trustee of the SHIRAZ
5 TRUST (hereinafter "SWANSON" or collectively "DEFENDANTS"), Defendant is, and at all
6 times relevant hereto was, a resident of Clark County, Nevada.

7 5. Upon information and belief, SHIRAZ TRUST, (hereinafter "SHIRAZ" or
8 collectively "DEFENDANTS"), Defendant is, and at all times relevant hereto was a lawful entity
9 believed to have been formed within the State of Nevada, and licensed to conduct business in
10 Clark County, Nevada.

11 6. Upon information and belief, LYONS DEVELOPMENT, LLC, a Nevada limited
12 liability company (hereinafter "LYONS" or collectively "DEFENDANTS"), Defendant is, and at
13 all times relevant hereto was a lawful entity formed within the State of Nevada, and licensed to
14 conduct business in Clark County, Nevada.

15 7. Defendants designated herein as Does I-X and Roes Entities I-X are individuals
16 and legal entities that are liable to Plaintiff for the claims set forth herein, including but not
17 limited to, possible alter egos or successors-in-interest of Defendants. Certain transactions, and
18 the true capacities of Does and Roes Entities, are presently unknown to the Plaintiffs and,
19 therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiffs will amend their
20 Complaint to assert the true names and capacities of such Doe and Roe Entities when more
21 information has been ascertained.

22 8. At all relevant times hereto, each Defendant was the agent, servant, employee, co-
23 adventurer, representative, or co-conspirator of each of the other Defendants, and acted with the
24 knowledge, consent, ratification, authorization, and at the direction of each Defendant, or is
25 otherwise responsible in some manner for the occurrences alleged in this Complaint.

26 9. This Court has personal jurisdiction over all Defendants as, at all times relevant
27 hereto, a substantial part of the events or omissions giving rise to the claims occurred in whole or
28 in part in Clark County, Nevada. Further, this suit alleges claims and causes of action arising

1 from the sale of certain real property located within Clark County, Nevada. Thus, jurisdiction
2 and venue are proper in Clark County, Nevada.

3 **II.**

4 **FACTUAL ALLEGATIONS**

5 10. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 9
6 inclusive, and incorporate the same as if fully set forth herein.

7 11. On or about October 22, 2017, Joseph Folino and Nicole Folino (Hereinafter,
8 "Plaintiffs" or "Folinos") entered into a Residential Purchase Agreement ("RPA") to purchase
9 the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, ("Subject Property") for
10 the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the
11 Shiraz Trust, Dr. Todd Swanson, Trustee (collectively "Defendants" or individually "Swanson")
12 and Lyons Development, LLC (collectively "Defendants" or individually "Lyons"). *See*, rpa
13 attached hereto as **Exhibit 1.**

14 12. The house was constructed in 2015 by Lyons, and it is the understanding of the
15 Plaintiffs, that Swanson and Lyons were the owners since its original construction.

16 13. The transaction was consummated when Counter Offer Number 2 was executed
17 electronically by both parties on or about that date. *See*, Counter Offer attached hereto as
18 **Exhibit 2.**

19 14. The parties had previously exchanged prior counteroffers and the original RPA.
20 *See* attached Exhibits 1, 2 and Counter Offer No. 1 attached hereto as **Exhibit 3.**

21 15. The form of the RPA and the counteroffers are the standard forms used by the
22 Greater Las Vegas Association of Realtors ("GLVAR").

23 16. Pursuant to the terms and conditions of the RPA, NRS 113.130 and NRS 113.140,
24 the Defendants was required to complete and execute a Seller's Real Property Disclosure form
25 ("SRPD"), and the Defendants did so execute the SRPD on or about October 24, 2017. *See*,
26 SRPD attached as **Exhibit 4.**

27 17. The SRPD executed by Swanson does not contain any notification to the
28 purchasers regarding any problems or defects in the plumbing system, or other related systems

1 that would discuss or reference the plumbing system to supply water. *See*, attached Exhibit 4,
2 pp. 1-3.

3 18. There is no description of any water event, the existence of fungi/mold or
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss
5 issues at this Subject Property. *Id.*

6 19. It is the understanding of the Plaintiffs that Swanson had been living in the home
7 for a period of months and possibly years prior to the sale transaction.

8 20. Prior to the time of closing, the Plaintiffs engaged an inspection company, Caveat
9 Emptor LV ("Inspector"), to perform an inspection of the Subject Property. *See*, Inspection
10 Report attached hereto as Exhibit 5.

11 21. The home inspection was performed on or about October 27, 2017.

12 22. Pursuant to the inspection report, the Plaintiffs utilized a Request for Repair form
13 from their realtor to make a formal request to remediate any and all issues identified in the
14 inspection report. *See*, Request attached hereto as Exhibit 6.

15 23. Every item identified in the inspection report was included in the Request for
16 Repair. *See*, Exhibit 5 and Exhibit 6.

17 24. Prior to the time of closing the transaction, the Plaintiffs requested and were given
18 the opportunity to perform their own site inspection of the Subject Property.

19 25. This pre-closing inspection occurred on or before November 17, 2017.

20 26. During this inspection, the Plaintiffs uncovered a water leak that was in the
21 process of being repaired by the Defendants.

22 27. The Defendants had not previously communicated the existence of the water leak,
23 prior to the Plaintiffs observing the repairs during the pre-closing inspection by the Plaintiffs.

24 28. The Plaintiffs' real estate agent, Ashley Lazosky, ("Plaintiff's Agent") had
25 specific conversations with the Defendants and the subcontractor hired to make the repairs.

26 29. The Defendants stated that there was an isolated water loss, drywall damage and
27 other repairs that were being completed to the Plaintiff's Agent.
28

1 30. The Plaintiffs' Agent was not told about any previous or other water losses, and
2 certainly was not told about any plumbing failures, such as defects requiring the complete
3 replacement of the water supply/plumbing system as a result of a warranty claim having been
4 made to Uponor, the manufacturer of the plumbing/pipe supply system.

5 31. On or about November 17, 2017, the Plaintiffs effectuated the closing of the real
6 estate transaction for the Subject Property. *See*, Grant Bargain and Sale Deed attached hereto as
7 **Exhibit 7.**

8 32. Shortly after the closing occurred, the Plaintiffs were made aware of an additional
9 water loss that had occurred at the Subject Property in approximately February of 2017 by the
10 plumbing system manufacturer: Uponor.

11 33. After learning of the earlier water loss, the Plaintiffs obtained an additional
12 inspection report of the plumbing system, water supply pipe system and any related drainage
13 system.

14 34. The Plaintiffs have been made aware by the plumbing manufacturer, Uponor, that
15 the Defendants had previously made a warranty claim that was accepted by Uponor.

16 35. The payment to conduct the warranty repairs to the plumbing system was made to
17 the Defendant's subcontractor, Rakeman Plumbing, on or about June 9, 2017, well before the
18 date of the SRPD, October 24, 2017. *See*, Rakeman Plumbing Invoice attached hereto as
19 **Exhibit 8** and June 9, 2017, Uponor letter attached hereto as **Exhibit 9.**

20 36. The Plaintiffs contacted Uponor directly and were informed of the past water
21 losses that had occurred at the Subject Property. In addition to the water loss that occurred in
22 November 2017, at or near the time of the closing, the Plaintiffs were informed by Uponor of the
23 February 2017 water loss. *See*, Uponor email with attachments attached hereto as **Exhibit 10.**

24 37. Uponor provided the warranty claim information for the plumbing system in
25 response to an email from the Plaintiffs. *See*, Uponor email with Warranty attached hereto as
26 **Exhibit 11.**

27 38. The plumbing defects in the house were systemic and known to the Defendants
28 prior to the closing of the transaction.

9 III.
0 FIRST CAUSE OF ACTION
1 (Fraud/Intentional Misrepresentation)

42. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41, inclusive, and incorporate the same as if fully set forth herein.

4 43. Defendants, and each of them, communicated, by and through themselves and
5 their employees and/or agents, on or about October 24, 2017, to the Plaintiffs that there were no
6 defects in the house, the systems or the structure.

7 44. The Defendants, and each of them, coerced the Plaintiff into closing on the sale of
8 the Subject Property by concealing, hiding and affirmatively omitting known facts, to wit: that
9 the house was built with defects known to the Defendants, whether repaired or not.

45. The Defendants purposefully, and with the intent to deceive the Plaintiffs, failed to identify the known defects, prior water losses, prior warranty repairs and other material misrepresentations or omissions contained on the SRPD.

46. The Defendants made these intentional misrepresentations on the SRPD form in an effort to induce the Plaintiffs to purchase the Subject Property.

47. Defendants, and each of them, intended by their false representations to induce the Plaintiffs into entering into said transaction.

48. Plaintiffs would not have completed the transaction had they known of the facts alleged herein and withheld from the Plaintiffs by the Defendants.

58. The Nevada Revised Statutes create a separate duty from any contractual duty to disclose the requested information by the Defendants, and this separate duty requires these Defendants to have been candid, honest and forthcoming as to the topics of information, defects and general condition of the property as requested on the SRPD form.

59. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

60. As a direct and proximate result of the Defendants' violations, and each of them, and pursuant to violation of the Nevada Revised Statutes, Plaintiff is entitled to recover treble damages.

61. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

PRA YER

WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

1. For general damages in an amount in excess of \$15,000.00;
2. For special damages in an amount in excess of \$15,000.00;
3. For punitive damages in an amount in excess of \$15,000.00;
4. For reasonable attorney's fees;
5. For costs incurred in the pursuit of this action; and

6. For such ~~other~~ further relief as the court deems proper.

DATED this 3 day of September 2019.

BLACK & LÖBELLØ

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 3rd day of September 2019, I caused the above and foregoing document *Plaintiffs'*

Amend the Complaint to be served as follows:

- [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- [X] by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- [] pursuant to EDCR 7.26, to be sent via facsimile;
- [] hand delivered

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

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

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

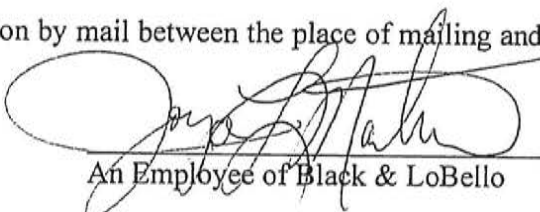

An Employee of Black & LoBello

EXHIBIT 1



RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 10/19/2017

Joseph Folino and Nicole Folino ("Buyer"), hereby offers to purchase 42 Meadowhawk Lane, Las Vegas, NV 89135 ("Property"), within the city or unincorporated area of Las Vegas, County of Clark County, State of Nevada, Zip 89135, A.P.N. # for the purchase price of \$2,700,000 (two million seven hundred thousand dollars) ("Purchase Price") on the terms and conditions contained herein: BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

\$150,000 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer -OR- ☒ wired to title. Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000 fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date). The additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$2,160,000 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:

☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)

\$ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):

☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)

Interest: ☐ Fixed rate, years -OR- ☐ Adjustable Rate, years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.

\$390,000 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

\$2,700,000 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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

Rev. 05/16

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

10/20/17 10/20/17

Page 1 of 10

applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 26 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

D. CASH PURCHASE: Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

3. SALE OF OTHER PROPERTY: This Agreement ☒ is not **-OR-** ☐ is contingent upon the sale (and closing) of another property which address is _____.
Said Property ☐ is ☐ is not currently listed **-OR-** ☐ is presently in escrow with _____.
Escrow Number: _____ Proposed Closing Date: _____.

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

4. FIXTURES AND PERSONAL PROPERTY: The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: all items per MLS, downstairs barstools and couch in media room.

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Chicago Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Sandy Moursey ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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

BUYER(S) INITIALS:

SELLER(S) INITIALS:

<u>JP</u> 10/20/17	<u>NF</u> 10/20/17
<u>JS</u>	

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the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before:
30 days after acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.



6. TITLE INSURANCE: This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

7. BUYER'S DUE DILIGENCE: Buyer's obligation is ☒ is not ☐ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 12 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

A. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

 10/20/17
 Buyer's Initials _____
 10/20/17
 Buyer's Initials _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino





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

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

 10/20/17	 10/20/17
 10/20/17	 10/20/17

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D. INSPECTIONS: Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	n/a	Fungal Contaminant Inspection	n/a	Well Inspection (Quantity)	n/a
Home Inspection	buyer	Mechanical Inspection	n/a	Well Inspection (Quality)	n/a
Termite/Pest Inspection	buyer	Pool/Spa Inspection	buyer	Wood-Burning Device/Chimney Inspection	n/a
Roof Inspection	n/a	Soils Inspection	n/a	Septic Inspection	n/a
Septic Lid Removal	n/a	Septic Pumping	n/a	Structural Inspection	n/a
Survey (type):		Other:		Other:	

E. CERTIFICATIONS: In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

F. BUYER'S REQUEST FOR REPAIRS: It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

8. FEES, AND PRORATIONS (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

A. TITLE, ESCROW & APPRAISAL FEES:

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50-50	Lender's Title Policy	buyer	Owner's Title Policy	seller
Real Property Transfer Tax	seller	Appraisal	buyer	Other: n/a	

B. PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

JP NF
10/26/17 10/26/17

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

SELLER(S) INITIALS:

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exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute \$zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with TBD. ☒ Seller -OR- ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$1200-. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

9. TRANSFER OF TITLE: Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

A. CIC RELATED EXPENSES: (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	seller	CIC Capital Contribution	seller	CIC Transfer Fees	seller
Other:					

11. DISCLOSURES: Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

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

SELLER(S) INITIALS:

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12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within 2 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ COE ☐ . In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.





15. RISK OF LOSS: Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

18. DEFAULT:

A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.





BUYER(S) INITIALS:   SELLER(S) INITIALS:  

B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino
Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:  
SELLER(S) INITIALS:  

Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. **BROKER'S COMPENSATION/FEES:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will –OR– ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a





Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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

BUYER(S) INITIALS:

SELLER(S) INITIALS:

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developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

25. **IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

26. **OTHER ESSENTIAL TERMS:** Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino





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

Rev. 05/16

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

 10/20/17	 10/20/17
 10/20/17	 10/20/17

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THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

27. ADDENDUM(S) ATTACHED: _____

28. ADDITIONAL TERMS: _____

Buyer's Acknowledgement of Offer

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Ashley Oakes-Lazosky

Company Name: Vegas Homes and Fine Estates LLC

Broker's License Number: B.1000869

Phone: 702-281-1198

Fax: 702-446-4536

Agent's Name: Ashley Oakes-Lazosky

Agent's License Number: B.1000869

Office Address: 1180 N. Town Center Dr Ste 100

City, State, Zip: Las Vegas, NV 89144

Email: ashley@vhfelv.com

BUYER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ DOES NOT have an interest in a principal to the transaction. -OR-

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship)

Seller must respond by: 5 ☐ AM ☒ PM on (month) October, (day) 21, (year) 2017. Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Joseph Folino dotloop verified 10/20/17 12:34AM EDT 5NGZ-T3OB-TC4E-MMZH

Buyer's Signature

Joseph Folino

Buyer's Printed Name

10/19/2017

Date Time

☐ AM ☒ PM

Nicole Folino dotloop verified 10/20/17 12:15AM EDT DC2P-LQQA-1Y5S-WU9W

Buyer's Signature

Nicole Folino

Buyer's Printed Name

10/19/2017

Date Time

☐ AM ☒ PM

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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

BUYER(S) INITIALS:

SELLER(S) INITIALS:

Joseph Folino *Nicole Folino*
10/20/17 10/20/17

Rev. 05/16

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Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: <u>Forest Barbee</u>	Agent's Name: <u>Ivan Sher</u>
Company Name: <u>BHHS Nevada</u>	Agent's License Number: _____
Broker's License Number: _____	Office Address: <u>1215 S. Fort Apache Rd. Ste 210</u>
Phone: <u>702-315-0223</u>	City, State, Zip: <u>Las Vegas, NV 89117</u>
Fax: _____	Email: <u>ivan@shapiroandsher.com</u>

SELLER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☐ DOES NOT have an interest in a principal to the transaction. -OR-
☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ☒ is not -OR- ☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: TS

☒ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☒ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

☐ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is **not** accepted.

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> </div> Seller's Signature	<u>Todd V. Swanson</u> Seller's Printed Name	<u>11/21/2017 6:30</u> Date Time	<input type="checkbox"/> AM / <input checked="" type="checkbox"/> PM
<div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Seller's Signature	<u>Co-trustee, the Shiraz Trust, Manager, Lyons Development, LLC</u> Seller's Printed Name	_____ Date Time	<input type="checkbox"/> AM / <input type="checkbox"/> PM

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino
 Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS: JF NF
 SELLER(S) INITIALS: TS

Rev. 05/16

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EXHIBIT 2



COUNTER OFFER
NO. 2

ATTENTION: Ivan Sher COMPANY: BHHS Nevada Home Services
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Lyons Development LLC
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 42 Meadow hawk Lane Las Vegas, NV 89135
dated: October 19, 2017 is not accepted in its present form, but the following Counter Offer
is hereby submitted:

Purchase price to be \$3,000,000.00

All existing electronics to convey with the sale (as indicated in the
original RPA).

☐ **ADDITIONAL PAGE(S) ATTACHED.** This Counter Offer is not complete without the additional
additional terms on the attached page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms
agreed to in Counter Offer(s) No. 1.

EXPIRATION: ☐ Buyer ☒ Seller must respond by: 8 ☐ AM ☒ PM on (month) October,
(day) 23, (year) 2017. Unless this Counter Offer is accepted by execution below
and delivered to the ☐ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall
lapse and be of no further force and effect.

Date: 10/22/2017

Joseph Folino
dotloop verified
10/22/17 12:05PM EDT
85QP-2VJN-MPHI-RJMO

☒ Buyer ☐ Seller

Signature

Time:

Nicole Folino
dotloop verified
10/22/17 12:02PM EDT
MIVE-FIUV-GBHS-DNHH

☒ Buyer ☐ Seller

Signature

The undersigned ☐ Buyer ☒ Seller hereby:

X accepts the Counter Offer;

 accepts the terms of this Counter Offer subject to the attached Counter Offer No. ; or

 rejects the Counter Offer.

Date: 10/22/17

Authenticsign
Todd Swanson, Co-Trustee
10/23/2017 04:52PM PST

☐ Buyer ☒ Seller

Signature

Time: 11:30 am

☐ Buyer ☐ Seller

Signature

EXHIBIT 3



COUNTER OFFER

NO. 1

ATTENTION: Ashely Oakes-Lazosky COMPANY: Vegas Homes and Fine Estates LLC
(Agent) (Name)

The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Joseph Folino & Nicole Folino
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 42 Meadowhawk Lane Las Vegas
dated: October 19S, 2017 is not accepted in its present form, but the following Counter Offer
is hereby submitted:

1. Purchase price to be \$3,099,000.00.
2. Buyer Pre-approval to be revised to reflect lower down payment (as indicated in purchase agreement) or buyer to put 30% down as indicated in Pre-approval letter.
3. Appraisal to be order within 2 business days of accepted offer.
4. Escrow to be opened with Taci Granlund of Equity Tile 702-432-1111, TaciG@equitynv.com
5. No personal property to be included in the sale.
6. Seller time to respond to original offer is hereby to be extended to midnight October 21st, 2017.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. .

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 10:00 ☒ AM ☐ PM on (month) October,
(day) 23rd, (year) 2017. Unless this Counter Offer is accepted by execution below
and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall
lapse and be of no further force and effect.

Date: 10/21/2017

Authentisign

Todd Swanson, Co-Trustee

☐ Buyer ☒ Seller

Signature

Time: 6:30 PM

☐ Buyer ☐ Seller

Signature

The undersigned ☒ Buyer ☐ Seller hereby:

 accepts the Counter Offer;

☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. #2; or

 rejects the Counter Offer.

Date: 10/22/2017

Joseph Folino

dotloop verified
10/22/17 6:37PM EDT
RANP-LMZL-KSGC-SFL1

☒ Buyer ☐ Seller

Signature

Time:

Nicole Folino

dotloop verified
10/22/17 6:55PM EDT
VJVE-TL6W-NMRF-FSNG

☐ Buyer ☐ Seller

Signature

EXHIBIT 4

SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date 10/24/2017

Do you currently occupy or have you ever occupied this property? ☒ YES ☐ NO

Property address 42 Meadowhawk Lane

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

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

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

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

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

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

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

75
Seller(s) Initials

GF
11/07/17
3:03PM CST
Buyer(s) Initials

MF
11/07/17
7:34PM EST

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

Are you aware of any of the following?:

1. Structure:

- (a) Previous or current moisture conditions and/or water damage? ☐ YES ☒ NO
- (b) Any structural defect? ☐ YES ☒ NO
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ YES ☒ NO
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ YES ☒ NO
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

- (a) Any of the improvements being located on unstable or expansive soil? ☐ YES ☒ NO
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ YES ☒ NO
- (c) Any drainage, flooding, water seepage, or high water table? ☐ YES ☒ NO
- (d) The property being located in a designated flood plain? ☐ YES ☒ NO
- (e) Whether the property is located next to or near any known future development? ☐ YES ☒ NO
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ YES ☒ NO
- (g) Is the property adjacent to "open range" land? ☐ YES ☒ NO
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ☐ YES ☒ NO

4. Pool/spa: Any problems with structure, wall, liner, or equipment? ☐ YES ☒ NO ☐ N/A

5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ YES ☒ NO

6. Environmental:

- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ YES ☒ NO
- (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ YES ☒ NO

7. Fungi / Mold: Any previous or current fungus or mold? ☐ YES ☒ NO

8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ☐ YES ☒ NO

9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ☒ YES ☐ NO

- (a) Common Interest Community Declaration and Bylaws available? ☒ YES ☐ NO
- (b) Any periodic or recurring association fees? ☒ YES ☐ NO
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ YES ☒ NO
- (d) Any litigation, arbitration, or mediation related to property or common area? ☐ YES ☒ NO
- (e) Any assessments associated with the property (excluding property taxes)? ☒ YES ☐ NO (SID or LID)
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ YES ☒ NO

10. Any problems with water quality or water supply? ☐ YES ☒ NO

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ☐ YES ☒ NO

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ YES ☒ NO

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

13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐
If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Canceled ☐
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ YES ☒ NO

15. Solar panels: Are any installed on the property? ☐ YES ☒ NO

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

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

17. This property is subject to a Private Transfer Fee Obligation? ☒ YES ☐ NO (standard transfer tax)

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

TS
Seller(s) Initials

MF
11/07/17 3:00PM PST
12/12/17 7:34PM PST
Buyer(s) Initials

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

JS
Seller(s) Initials

JS
11/02/17
3:02PM EST

MF
11/02/17
7:34PM EST

Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
 2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
 3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
 4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
 5. "Seller" means a person who sells or intends to sell any residential property.
- (Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

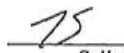
1. A "conveyance of property" occurs:
 - (a) Upon the closure of any escrow opened for the conveyance; or
 - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
 2. Service of a document is complete:
 - (a) Upon personal delivery of the document to the person being served; or
 - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.
- (Added to NRS by 1995, 844)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
 2. Provides notice:
 - (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
 - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
 - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.
- (Added to NRS by 1995, 842)

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsection 2:
 - (a) At least 10 days before residential property is conveyed to a purchaser:
 - (1) The seller shall complete a disclosure form regarding the residential property; and
 - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
 - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
 - (1) Rescind the agreement to purchase the property; or
 - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
 2. Subsection 1 does not apply to a sale or intended sale of residential property:
 - (a) By foreclosure pursuant to chapter 107 of NRS.
 - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
 - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
 - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
 3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
 4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
 - (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
 - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.
 5. As used in this section:
 - (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
 - (b) "Service report" has the meaning ascribed to it in NRS 645H.150.
- (Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)



Seller(s) Initials



Buyer(s) Initials

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

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

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

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

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

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

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

(Added to NRS by 1999, 1446)

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

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

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

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

(Added to NRS by 1995, 843; A 2001, 2896)

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

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

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

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

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

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

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

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

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

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

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

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

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

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

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

Seller(s): [Signature] Date: 10/24/2017

Seller(s): Co-trustee, the Shiraz Trust Date: _____
Manager, Lyons Development LLC Date: _____

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100 to 113.150, inclusive, attached hereto as pages four (4) and five (5).

Buyer(s) Joseph Folino Date: 10/25/2017
 dotloop verified 11/07/17 3:07PM EST EL77-GGIB-JD1V-QK1G

Buyer(s) Nicole Folino Date: 10/25/2017
 dotloop verified 11/07/17 2:44PM EST WQEC-AKST-1UT3-010E

EXHIBIT 5

The Uniform Building Inspection Report™ Condensed



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

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

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

Report Number:
1027170900RP

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

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Condensed Report Version Prepared For: Joe & Nicole Solino

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

Letter Code Definitions:

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

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

IMPORTANT: Findings, Components & Applications Listings:

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

Condensed Report Version Prepared For: Joe & Nicole Solino

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

Condensed Findings:

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

Grounds Findings:

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

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

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

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

Exterior / Roof Findings:

HVAC & Fireplace Findings:

Pool / Spa Findings:

Notes:

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

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JA000560

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

Notes:

[R] 3770.02: Filter case leaks.

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

See Photo(s) 3770.02.

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

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

See Photo(s) 3911.

Plumbing Findings:

[R] 4684: Tub drains slow.

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

See Photo(s) 4684.

Electrical Findings:

[C] 5645: Electrical faceplate missing.

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

See Photo(s) 5645.

Bathroom(s) Findings:

General Interior Findings:

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

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

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needed by a licensed and qualified Door Contractor.
See Photo(s) 7424.

Kitchen / Appliance Findings:

Structure Findings:

Notes:

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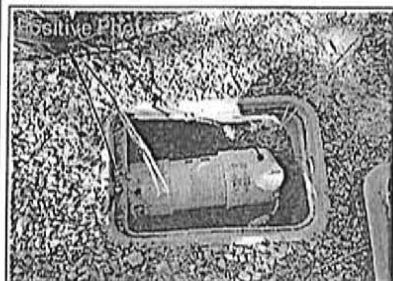


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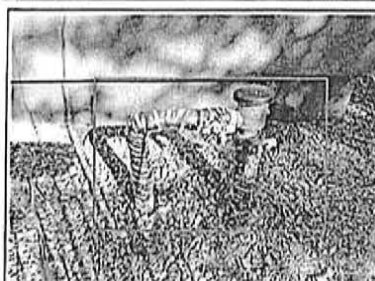


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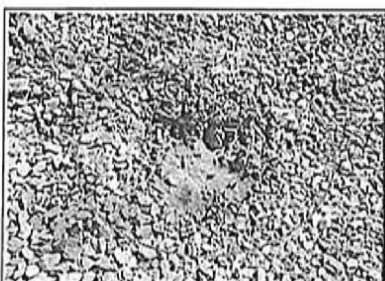


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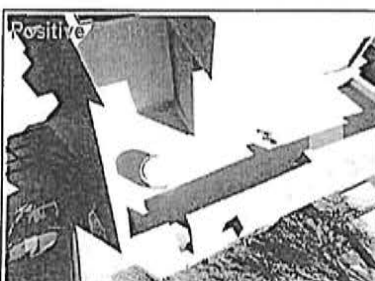


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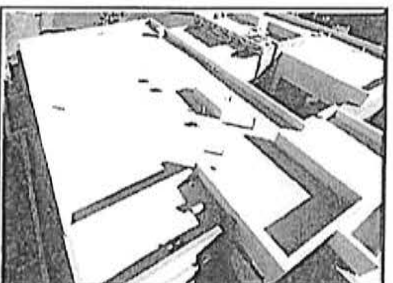


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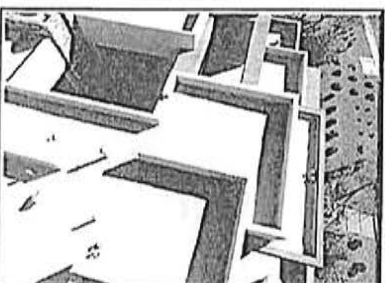


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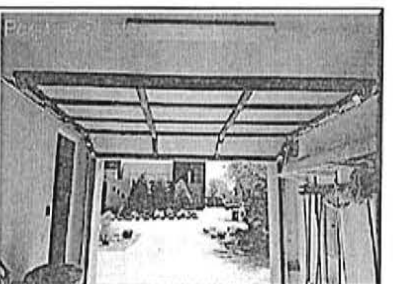


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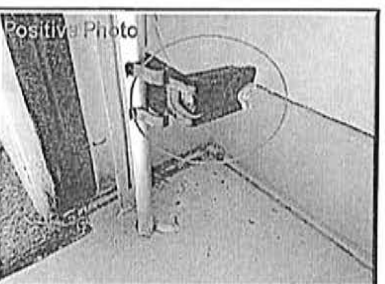


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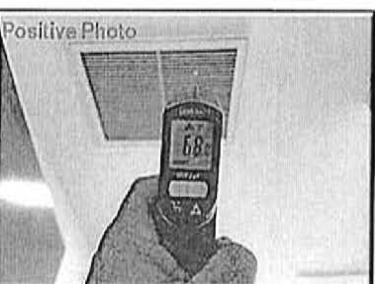


Photo: 2.02 (1)

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

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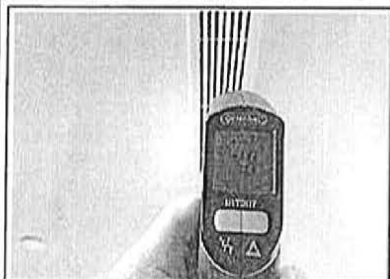


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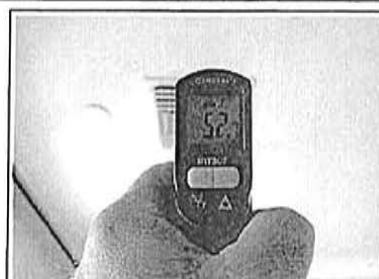


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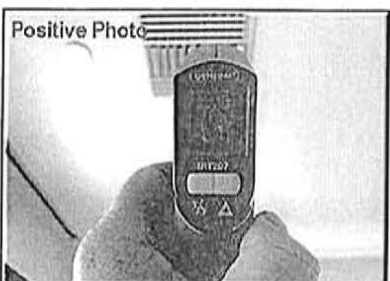


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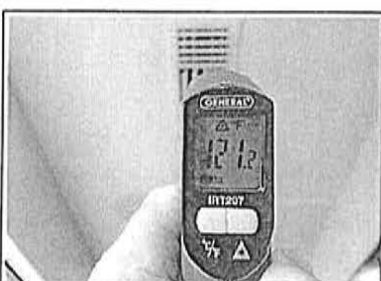


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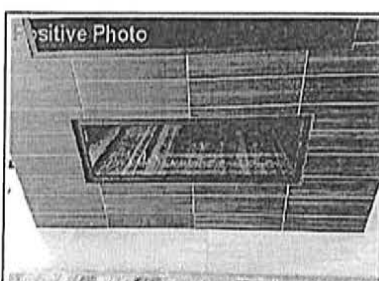


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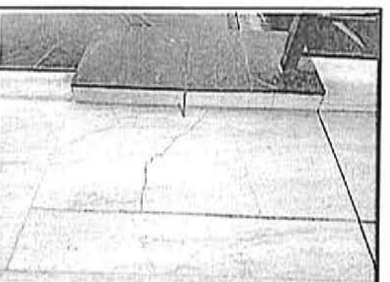


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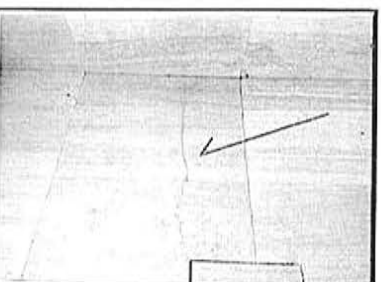


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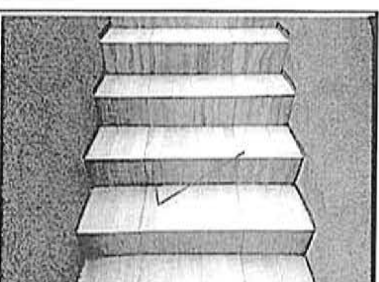


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Photo: 3800 (1)



Photo: 3911 (1)

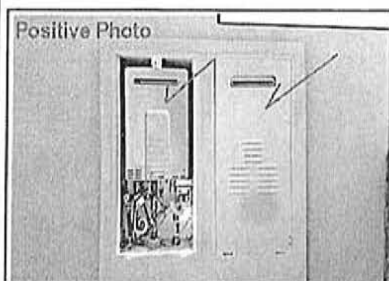


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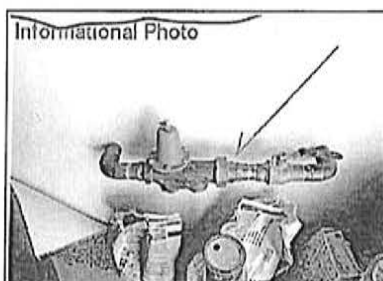


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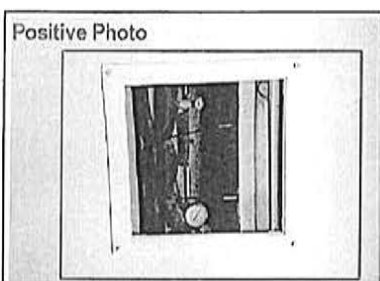


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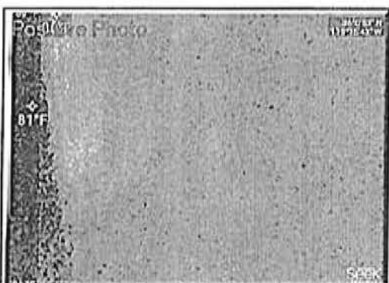


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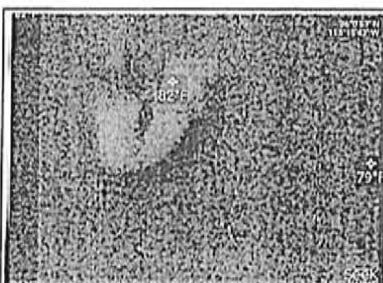


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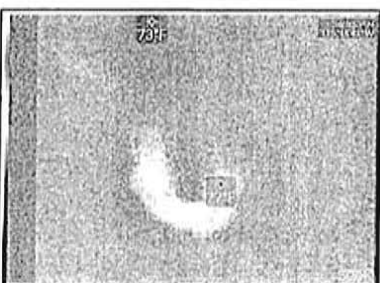


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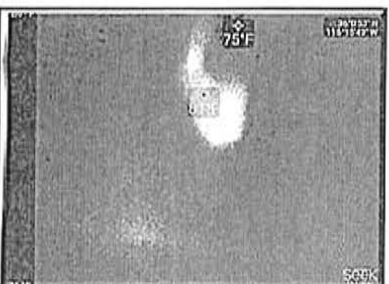


Photo: 4.18 (4)



Photo: 4.21 (1)



Photo: 4.96 (1)

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

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Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135
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Positive Photo

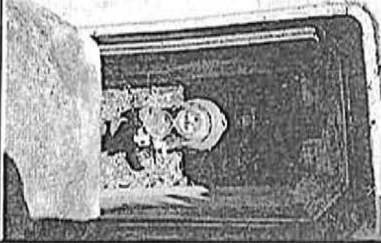


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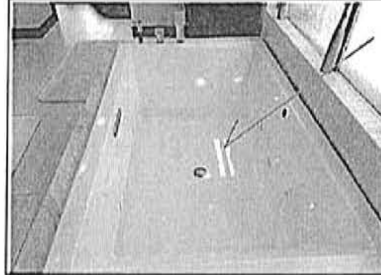


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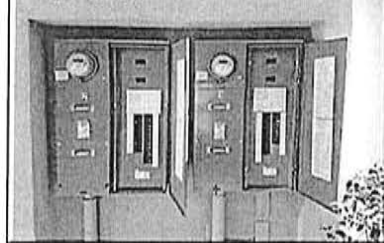


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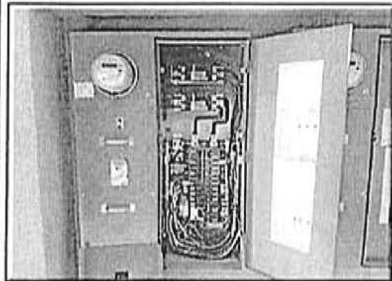


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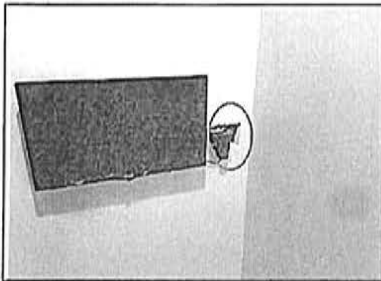


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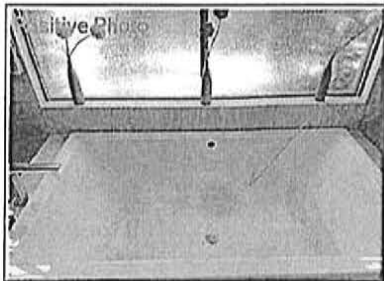


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Photo: 7.82 (1)



Photo: 7424 (1)



Photo: 8.04 (1)



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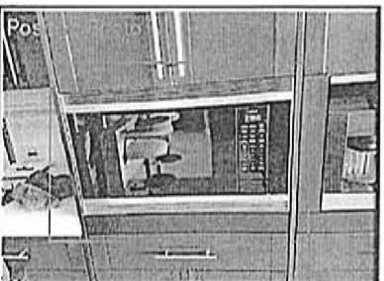


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Condensed Report Version Prepared For: Joe & Nicole Solino

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



Photo: 8.110 (1)

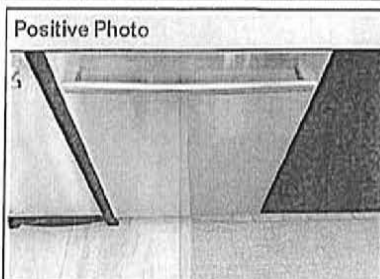


Photo: 8.2003 (1)



Photo: 8.31 (1)



Photo: 8.91 (1)



Photo: 8.91 (2)



Photo: 8.91 (3)

EXHIBIT 6



REQUEST FOR REPAIR No. 1

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

1. BUYER'S NOTICE: (Check one)

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

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

(see inspection report for details)

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

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

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

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

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

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

(See provided amended report and photos)

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

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

11/09/17
11:55AM EST

11/13/17
12:17PM EST

Copies of the following reports are attached:

☒ Inspection Report

☐ _____

☐ _____

☐ _____

DocuSigned by:
Joe Folino
E00050B07A07451...
Buyer Joseph Folino 10/30/17
Date


DocuSigned by:
Nicole Folino
121E7F6092B421...
Buyer Nicole Folino 10/30/17
Date



2. SELLER'S RESPONSE: (Check one)

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

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

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

Seller	Date
--------	------

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

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

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

Joseph Folino

Date _____

Nicole Folino dalloop verified
11/13/17 12:17PM EST
SUH-91CG-MRTJ-RHRC

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

- ☐ Seller **APPROVES** the _____ day extension of the due diligence period:

Seller	Date
--------	------

Seller	Date
--------	------

EXHIBIT 7

APN NO.: 164-14-414-014

RECORDING REQUESTED BY:
EQUITY TITLE OF NEVADA

WHEN RECORDED MAIL TO:

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

MAIL TAX STATEMENTS TO:
SAME AS ABOVE

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

Inst #: 20171117-0003032

Fees: \$40.00

RPTT: \$15300.00 Ex #:

11/17/2017 03:21:08 PM

Receipt #: 3252384

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: RYUD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH THAT:

Lyons Development, LLC, a Nevada Limited Liability Company

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

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

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

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

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

SUBJECT TO:

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

SELLER:

Lyons Development, LLC

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

STATE OF Colorado)
COUNTY OF Denver) SS:

On November 11, 2017

personally appeared before me, a Notary Public

Todd Swanson

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

Karen Coffey
Notary Public

My commission expires: 3/29/18

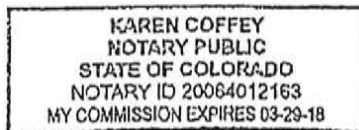


EXHIBIT "A"
LEGAL DESCRIPTION

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

ASSESSOR'S COPY

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 164-14-414-014
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page _____
Date of Recording: _____
Notes: _____

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

4. If Exemption Claimed

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

5. Partial Interest: Percentage being transferred: 100%

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

Signature _____ Capacity agent
Signature _____ Capacity _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

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

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

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

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

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

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

EXHIBIT 8



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

INVOICE

INVOICE NO
232809

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

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

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

ORDER 13382, PO

RESOLUTION RMA # 747000

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

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

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

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

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

Your Business is Appreciated!

* means item is non-taxable



INVOICE

INVOICE NO
232809

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

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

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

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

TOTAL AMOUNT 2,496.00

JA000578

EXHIBIT 9



June 9, 2017

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

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

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

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

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

Sincerely,

Christy Wegner
Claims Coordinator
Christy.Wegner@uponor.com

Enclosure: Check

Uponor North America

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

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

JA000580

014805

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

109098 RAKEMAN PLUMBING Jun 7, 2017 14805

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

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER, A VOID PANTOGRAPH AND MICROPRINTING.

uponor
5925 148TH STREET WEST
APPLE VALLEY, MN 55124

PNC Bank
National Association
Jeannette, PA
60-152/433

014805

Check Date
07-Jun-2017

Check Amount
\$2,496.00

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

TO THE ORDER OF
RAKEMAN PLUMBING
4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
United States

[Signature]

⑈014805⑈ ⑆043301627⑆ 1001149485⑈

JA000581

EXHIBIT 10

Diane Meeter

From: Beissel, Stacey <Stacey.Beissel@uponor.com>
Sent: Wednesday, December 13, 2017 12:39 PM
To: Nicole Folino
Cc: Joe Folino
Subject: Uponor Warranty Claim - RMA 746512 (42 Meadowhawk)
Attachments: 746512_As_Received__2_.JPG; Rakeman_746512_42_meadowhawk_invoice.pdf; 746512_-_payout.pdf

Hi Nicole,

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

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

Claimant And Jobsite Information

Claimant Information

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

Jobsite Information

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

Past Occurrences

Past Occurrences

Estimated Claim Amount

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

Installation Information

Application

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

Contractor Information

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

Temperature/Pressure

Temperature	Hot
System Temp Hot	120 F
System Pressure	65 PSI

Other Information

Present for destructive
Phase of Construction
Builder

Water Source

Water Source	Municipal
---------------------	-----------

Customer Comment(s)

tubing split at fitting. Cu

Dates

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

Product Information

Item Number	Description	Return
Q4751775	ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX	
Problem: tubing split at fitting		
Review Result: No Failure		
F2060750	3/4" Uponor AquaPEX Red, 300-ft. coil	
Problem: tubing split at fitting		
Review Result: Manufacturing		
F3060750	3/4" Uponor AquaPEX Blue, 300-ft. coil	
Problem: tubing split at fitting		
Review Result: Manufacturing		
F1041000	1" Uponor AquaPEX White, 100-ft. coil	
Problem: tubing split at fitting		
Review Result: No Failure		
Q4690756	ProPEX Ring with Stop, 3/4"	
Problem: tubing split at fitting		
Review Result: No Failure		
Q4691000	ProPEX Ring with Stop, 1"	
Problem: tubing split at fitting		
Review Result: No Failure		

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

Thank you
Stacey

uponor

Stacey Beissel
Warranty Manager
Uponor North America

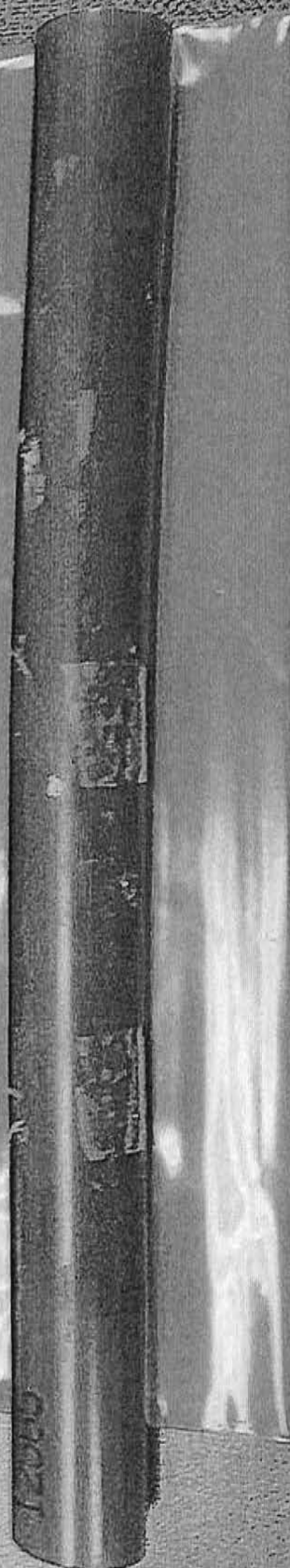
T +19529978984
M +16512531956

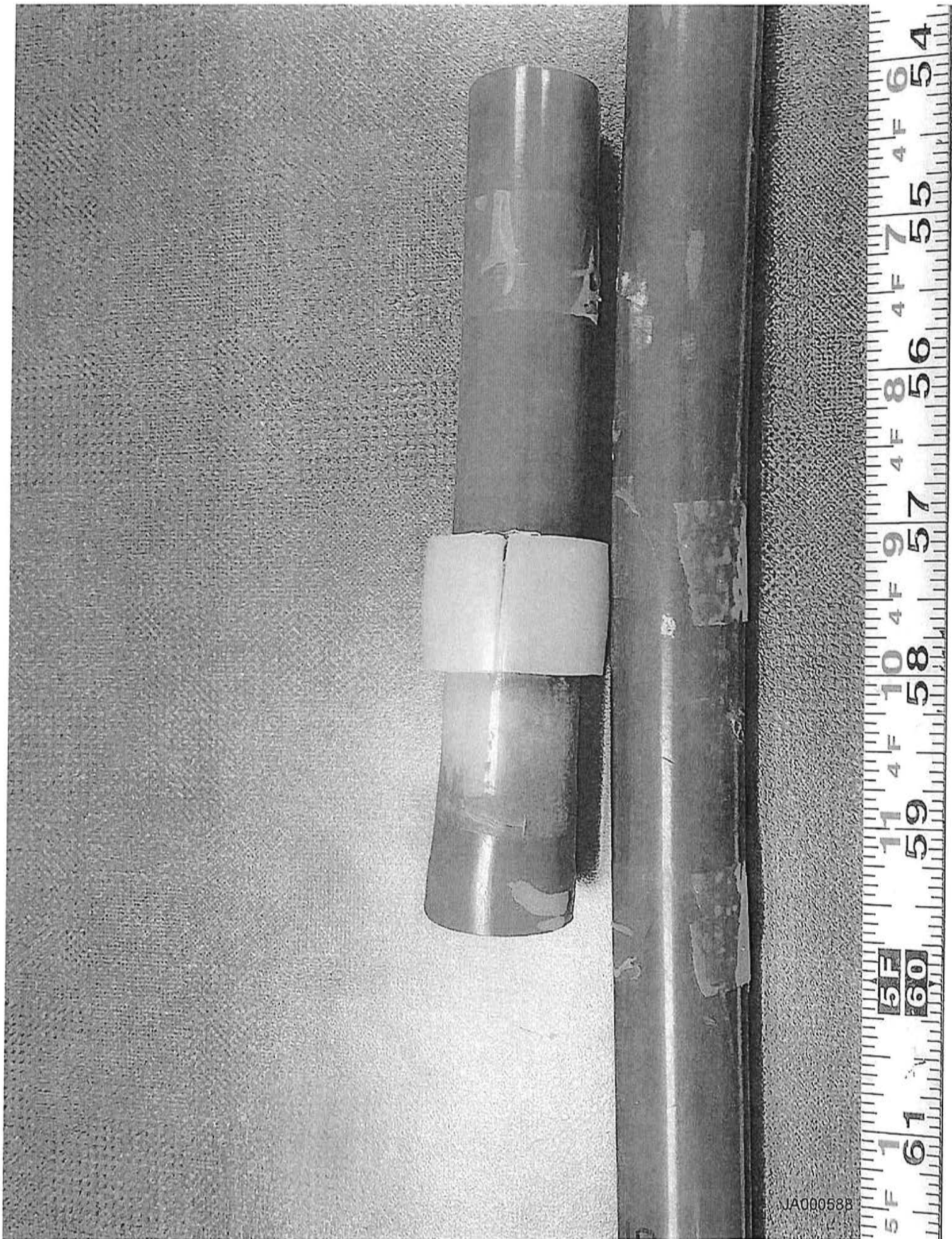
www.uponor-usa.com
www.uponorpro.com

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

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RMA748395





JA000588

EXHIBIT 11

Diane Meeter

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

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

Thanks
Stacey

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

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

Claimant And Jobsite Information

Claimant Information

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

Estimated Claim Amount

Amount	\$1000 to \$2500
Preferred Reimbursement	Cash

Jobsite Information

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

Past Occurrences

Past Occurrences

Past Occurrences Ref

Installation Information

Application

Application

Plumbing

Recirculation

No

Location Detail

master bath closet below water heater

Temperature/Pressure

Temperature

Cold

System Temp

70 F

System Pressure

65 PSI

Water Source

Water Source

Municipal

Dates

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017

Contractor Information

rakeman plumbing

alison brooks

4075 losee rd

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Ph 702 642 8553

Installing? Yes

Other Information

Present for destructive

Phase of Construction

Builder

Customer Comment(s)

Blue pipe split at fitting

Product Information

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

Thank you
Stacey

uponor

Stacey Beissel
Warranty Manager
Uponor North America

T +19529978984
M +16512531956

www.uponor-usa.com
www.uponorpro.com

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

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PLUMBING SYSTEMS

WARRANTY

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

This Warranty is Effective For Installations Made After October 15, 2012

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

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

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

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

Exclusions From Limited Warranty:

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

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

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

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

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

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

Exclusive Remedies:

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

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

Warranty Claim Dispute Process:

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

Transferability:

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

Miscellaneous:

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

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

UPONOR FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY.

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

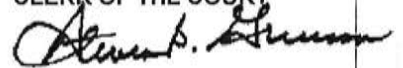
THIS LIMITED WARRANTY GIVES THE CLAIMANT SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Revised as of 8/2012

Uponor, Inc.
5925 148th Street West
Apple Valley, MN 55124 USA
Tel: (800) 321-4739
Fax: (952) 891-2008
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Uponor

JA000595



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

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

11 Plaintiff(s),

12 v.

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

17 Defendant(s).

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

HEARING REQUESTED

18
19 DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S
20 SECOND AMENDED COMPLAINT

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

26 ///


27 ///

28 ///

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

3 DATED this 24th day of September, 2019.

4 Respectfully Submitted,

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

1 NOTICE OF MOTION

2 TO: TO ALL INTERESTED PARTIES AND THEIR COUNSEL:

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

7 DATED this 24th day of September, 2019.

8 Respectfully Submitted,

9 CHRISTOPHER M. YOUNG, PC

10 
11 CHRISTOPHER M. YOUNG, ESQ.

12 Nevada Bar No. 7961

13 JAY T. HOPKINS, ESQ.

14 Nevada Bar No. 3223

15 2460 Professional Court, Suite 200

16 Las Vegas, Nevada 89128

17 cyoung@cotomlaw.com

18 jayhopkins@gmail.com

19 Attorneys for Defendant Clark County Nevada
20 Department of Aviation

21 I.

22 INTRODUCTION

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

- 28
- The undisputed facts show that the water leak was completely repaired. As such, under Nevada law, the sellers did not have knowledge of a "defect or condition" materially affecting the value of the property. Defendants request a ruling from this Court that the

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

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

6 II.

7 **PROCEDURAL RECAP**

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

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

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

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

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

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

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

26
27 ¹ The same exhibits were also attached as exhibits to the Plaintiffs First and Second Amended
28 Complaints and are incorporated by reference, together with the arguments and other information
in the two previous motions to dismiss.

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

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

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

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

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

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

15 ***The Instant Motion***

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

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

1 claim is also warranted.²

2 **III.**

3 **UNDISPUTED FACTS**

4 The following facts are not disputed or cannot be disputed:

- 5 • That there was a previous water leak at the property. (Exhibit A);
- 6 • That a licensed plumbing contractor, Rakeman Plumbing, came to the property on May
- 7 23, 2017 and completely repaired the leak. *Id.*
- 8 • That no information other than that the repair was completed was communicated to the
- 9 Defendants; *Id.*
- 10 • That Rakeman Plumbing was the plumbing company that invoiced and submitted a
- 11 warranty claim to the plumbing manufacturer, Uponor. *Id.*
- 12 • That the Defendants did not disclose the previous water leak in their October 24, 2017
- 13 Sellers Real Property Disclosure Form (SRPD). (Exhibit B).

14 **IV.**

15 **ARGUMENT**

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

17 **1. The Rakeman Plumbing Affidavit Establishes Undisputed Evidence**

18 **Supporting Summary Judgment**

19 Under NRCP 56(a), "[t]he court shall grant summary judgment if the movant shows that

20 there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

21 matter of law." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134

22 (2007); *Wood v. Safeway, Inc.*, 731, 121 P.3d 1026, 1031 (2005).

23 ///

24 ///

25 ² The documents attached to the Plaintiffs' pleadings are incorporated into the pleadings, which

26 together with the allegations can be viewed under NRCP 12(b)(5)'s standards. *Breliant v.*

27 *Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, because the

28 affidavit from Aaron Hawley of Rakeman Plumbing presents facts outside the pleadings, this

Court must invoke the summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

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

8 2. The Undisputed Evidence Supports Summary Judgment

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

14 V.

15 **CONCLUSION**

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

23 ///

24 ///

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

4 DATED this 24th day of September, 2019.

5 Respectfully Submitted,

6 CHRISTOPHER M. YOUNG, PC

7 
8 CHRISTOPHER M. YOUNG, ESQ.

Nevada Bar No. 7961

9 JAY T. HOPKINS, ESQ.

Nevada Bar No. 3223

10 2460 Professional Court, Suite 200

Las Vegas, Nevada 89128

11 cyoung@cotomlaw.com

jaythopkins@gmail.com

12 *Attorneys for Defendant Clark County Nevada*

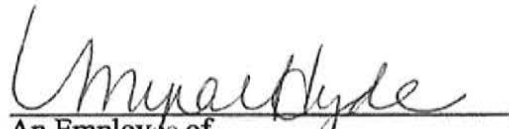
13 *Department of Aviation*

1 **CERTIFICATE OF E-SERVICE**

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

4 **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED**
5 **COMPLAINT** to be electronically filed and e-served on counsel as follows:

6 Rusty Graf, Esq.
7 Shannon M. Wilson, Esq.
8 10777 West Twain Avenue, 3rd Floor
9 Las Vegas, Nevada 89135
10 rgraf@blacklobello.law
11 swilson@blacklobello.law

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

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

EXHIBIT A

EXHIBIT A

AFFIDAVIT OF AARON HAWLEY

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

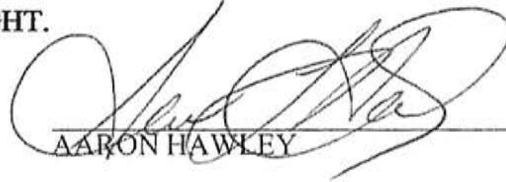
10. The May 23, 2017 leak was fully and completely repaired, and we did not expect any further problems. As such, nothing further was conveyed to Dr. Swanson, other than that the leak was repaired and that we remediated the damage to the drywall, paint and carpet.

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

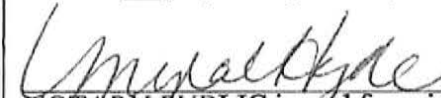
12. Uponor paid the Rakeman Plumbing invoice on June 9, 2017. (Exhibit B).

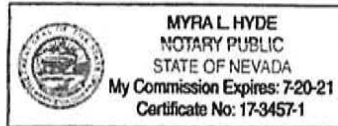
1 13. The attached Exhibits A & B are business records of Rakeman Plumbing. Those records
2 were kept in the regular course of business. I have personal knowledge that the invoice
3 was created at or near the time the leak was repaired on or about May 23, 2017 and that
the June 9, 2017 letter from Uponor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

4 FURTHER AFFIANT SAYETH NAUGHT.

5
6 
AARON HAWLEY

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

9 
10 NOTARY PUBLIC in and for said
County and State



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H:\Open Case Files\0300.003\AFF-RAKEMAN

**AFFIDAVIT
EXHIBIT A**

**AFFIDAVIT
EXHIBIT A**



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

INVOICE

INVOICE NO
232809

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

SITE SWANSON RESIDENCE
 42 MEADOWHAWK LN
 Las Vegas, NV 89135

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

ORDER 13382, PO

RESOLUTION RMA # 747000

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

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

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

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

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

Your Business is Appreciated!

* means item is non-taxable

**INVOICE**INVOICE NO
232809

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

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

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

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

TOTAL AMOUNT 2,496.00

**AFFIDAVIT
EXHIBIT B**

**AFFIDAVIT
EXHIBIT B**



June 9, 2017

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

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

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

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

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

Sincerely,

Christy Wegner
Claims Coordinator
Christy.Wegner@uponor.com

Enclosure: Check

Uponor North America

Uponor, Inc.
5925 148th Street West
Apple Valley, MN 55124
Tel: (800) 321-4739
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Uponor Ltd
2000 Argenta Road
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Mississauga, ON L5N 1W1
Tel: (888) 994-7726
Fax: (800) 638-9517
Web: www.uponor.ca

JA000614

014805

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

10000 RAKEMAN PLUMBING Jun 7, 2017 1005

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

Uponor 5925 148TH STREET WEST APPLE VALLEY, MN 55124		PNC Bank National Association Jeannette, PA 60-182/433	014805 Check Date 07-Jun-2017
PAY TO THE ORDER OF Two Thousand Four Hundred Ninety Six Dollars And Zero Cents		Check Amount \$2,496.00	
RAKEMAN PLUMBING 422 LOSEE ROAD NORTH LAS VEGAS NV 89030 United States			

⑈014805⑈ ⑈043301627⑈ ⑈001149485⑈

EXHIBIT B

EXHIBIT B

SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date 10/24/2017

Do you currently occupy or have you ever occupied this property? ☒ YES ☐ NO

Property address 42 Meadowhawk Lane

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

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

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

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

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

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

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

TS
Seller(s) Initials


Buyer(s) Initials

Property conditions, improvements and additional information: YBS NO N/A
Are you aware of any of the following?

1. Structure:
 - (a) Previous or current moisture conditions and/or water damage? ☒ ☐ ☐
 - (b) Any structural defect? ☒ ☐ ☐
 - (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ ☐ ☒
 - (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☒ ☐ ☐

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)
2. Land / Foundation:
 - (a) Any of the improvements being located on unstable or expansive soil? ☐ ☐ ☒
 - (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ ☐ ☒
 - (c) Any drainage, flooding, water seepage, or high water table? ☐ ☐ ☒
 - (d) The property being located in a designated flood plain? ☐ ☐ ☒
 - (e) Whether the property is located next to or near any known future development? ☐ ☐ ☒
 - (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ ☐ ☒
 - (g) Is the property adjacent to "open range" land? ☐ ☐ ☒

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
3. Roof: Any problems with the roof? ☐ ☐ ☒
4. Pools/spa: Any problems with structure, wall, liner, or equipment? ☐ ☐ ☒
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ ☐ ☒
6. Environmental:
 - (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ ☐ ☒
 - (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ ☐ ☒
7. Fungi / Mold: Any previous or current fungus or mold? ☐ ☐ ☒
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ☐ ☐ ☒
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ☐ ☐ ☒
 - (a) Common Interest Community Declaration and Bylaws available? ☐ ☐ ☒
 - (b) Any periodic or recurring association fees? ☐ ☐ ☒
 - (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ ☐ ☒
 - (d) Any litigation, arbitration, or mediation related to property or common area? ☐ ☐ ☒
 - (e) Any assessments associated with the property (excluding property taxes)? ☐ ☐ ☒
 - (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ ☐ ☒
10. Any problems with water quality or water supply? ☐ ☐ ☒
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ☐ ☐ ☒
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ ☐ ☒
(If yes, additional Federal EPA notification and disclosure documents are required)
13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐
If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.
14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ ☐ ☒
15. Solar panels: Are any installed on the property? ☐ ☐ ☒
If yes, are the solar panels: Owned... ☒ Leased... ☐ or Financed... ☐
16. Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐
17. This property is subject to a Private Transfer Fee Obligation? ☐ ☐ ☒

(standard transfer tax)

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

TS
Seller(s) Initials

[Signature]
Buyer(s) Initials

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

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Seller(s) Initials

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11/07/17
2:04PM EST

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12/12/17
7:34PM EST

Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
 2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
 3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
 4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
 5. "Seller" means a person who sells or intends to sell any residential property.
- (Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of **NRS 113.100** to **113.150**, inclusive:

1. A "conveyance of property" occurs:
 - (a) Upon the closure of any escrow opened for the conveyance; or
 - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
 2. Service of a document is complete:
 - (a) Upon personal delivery of the document to the person being served; or
 - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.
- (Added to NRS by 1995, 844)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
2. Provides notice:
- (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
 - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
 - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.
- (Added to NRS by 1995, 842)

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; extensions; waiver.

1. Except as otherwise provided in subsection 2:
- (a) At least 10 days before residential property is conveyed to a purchaser:
 - (1) The seller shall complete a disclosure form regarding the residential property; and
 - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
 - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
 - (1) Rescind the agreement to purchase the property; or
 - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property.
- (a) By foreclosure pursuant to chapter 107 of NRS.
 - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
 - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
 - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
- (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
 - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.
5. As used in this section:
- (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
 - (b) "Service report" has the meaning ascribed to it in NRS 645H.150.
- (Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

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Seller(s) Initials

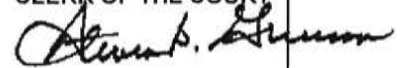


 11/17/77 12/12/77
 7:50PM EST 7:50PM EST
 Buyer(s) Initials

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
9/25/2019 8:38 AM
Steven D. Grierson
CLERK OF THE COURT



Joseph Folino, Plaintiff(s)

Case No.: A-18-782494-C

vs.

Todd Swanson, Defendant(s)

Department 24

NOTICE OF HEARING

Please be advised that the Defendant's Motion to Dismiss Plaintiff's Amended Complaint in the above-entitled matter is set for hearing as follows:

Date: November 07, 2019

Time: 9:00 AM

Location: Phoenix Building 11th Floor 116
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak
Deputy Clerk of the Court

JA000622

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Joseph Folino, Plaintiff(s)

vs.

Todd Swanson, Defendant(s)

Case No.: A-18-782494-C

Department 24

NOTICE OF HEARING

Please be advised that the Defendant's Motion to Dismiss Plaintiff's Amended Complaint in the above-entitled matter is set for hearing as follows:

Date: November 07, 2019

Time: 9:00 AM

Location: Phoenix Building 11th Floor 116
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

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Deputy Clerk of the Court