

IN THE SUPREME COURT STATE OF NEVADA

Electronically Filed  
Sep 27 2021 10:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

Case No. 81252

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.

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

Case No. 81831

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.

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

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**JOINT  
APPENDIX ON APPEAL  
VOLUME X 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 9<sup>th</sup>, 2021.

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

DATED this 9th day of March 2021.

**BLACK & WADHAMS**

/s/ Rusty Graf

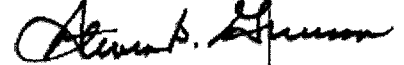
Rusty Graf, ESQ

Nevada Bar No. 6322

10777 W. Twain Ave., Ste 300.

Las Vegas, Nevada 89135

*Attorneys for Appellants*



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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

10 Plaintiffs,

11 vs.

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

17 Defendants.

CASE#: A-18-782494-C  
DEPT. XXIV

18  
19 BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE  
20 TUESDAY, APRIL 7, 2020

21 **RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE VIA**  
22 **BLUEJEANS HEARING**  
23 **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND**  
24 **AMENDED COMPLAINT**

25 APPEARANCES (continued on page 2):

For the Plaintiffs:

J. RUSTY GRAF, ESQ.

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APPEARANCES (continued):

For the Defendants:

JEFFREY L. GALLIHER, ESQ.  
JAY T. HOPKINS, ESQ.

RECORDED BY: NANCY MALDONADO, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, April 7, 2020

2  
3 [Case called at 10:42 a.m.]

4 THE CLERK: A782494, Joseph Folino versus Todd Swanson.  
5 We should have Mr. Graf and Mr. Galliher.

6 MR. GRAF: Good morning, Your Honor, Rusty Graf.

7 THE COURT: Good morning.

8 MR. GALLIHER: And good morning, Your Honor, Jeff Galliher  
9 and Jay Hopkins for the Defendants.

10 THE COURT: Good morning. All right, first of all, I owe  
11 counsel an apology. I was castigating you for not giving me the  
12 documents that you were referring to. That was completely my error.

13 I had several different three-ring binders that came in on this  
14 case. And the one that contained the pleadings that I needed to be  
15 referring to and that I was giving you guys a hard time about was on a  
16 different part of the filing cabinet. And I simply did not see it and look at  
17 it. So I apologize for accusing you guys of screwing up. That was my  
18 error.

19 So this is Defendant's Motion to Dismiss Plaintiff's Second  
20 Amended Complaint. In the Plaintiff's supplemental brief, it appears the  
21 Plaintiff is attempting to expand their claim that Defendant  
22 misrepresented water loss issues by bringing up items that surfaced  
23 after the initial sellers executed the real property disclosure form on  
24 October 24th, 2017. For example, a water leak that manifested on  
25 November 7th, 2017.

1           Plaintiff seems to take issue with the fact that when the seller  
2 completes the real property disclosure form on October 24th, 2017, he's  
3 under no obligation to and can't report a leak that hasn't happened yet.

4           So the Defendant cannot be charged with concealing or failing  
5 to report or misrepresenting something on October 24th, 2017 that  
6 doesn't happen until November 7th, 2017.

7           In Defendant's supplemental brief of 2/27/20, as the  
8 Defendants points out, Plaintiff's lawsuit was premised on there being a  
9 leak in the -- I don't know how you pronounce this, U-P-O-N-O-R, that's  
10 a brand name system, for my purposes, I'll just call it the Uponor, on  
11 February 16th, 2017, which of course, pre-dates October 24th, 2017.

12           The -- which Plaintiff says the Defendant failed to disclose  
13 that. But it has been established clearly under oath that actually that  
14 leak was repaired by Rakeman Plumbing, R-A-K-E-M-A-N, long before  
15 the 10/24/17 real property disclosure form was executed by the  
16 Defendant.

17           This is evidenced by the uncontroverted affidavit of Mr. Holley  
18 [phonetic] of Rakeman Plumbing. There was another leak November  
19 7th, 2017 after the 10/24/17 real property disclosure form was executed  
20 by the Defendant.

21           On November 15th, 2017, eight days later, Defendant notified  
22 its agent, emailed disclosure of that leak, and Defendant's agent in turn  
23 on November 16th, 2017. And there are text messages acknowledging  
24 Plaintiff's actual knowledge of the reporting of the leaks.

25           With knowledge of the leaks, Plaintiff elected to close escrow



1 on November 17th, 2017. On November 17th, 2017, mold testing was  
2 done and mold was identified, but the matter was remediated and  
3 resolved by December 5th, 2017.

4 To the Court, it appears that the undisputed evidence is that  
5 Defendant did not fail to disclose the February 16th, 2017 leak because  
6 the affidavit of Rakeman employee Holley, which is not disputed or  
7 contested by a countervailing affidavit on the facts or any expert opinion  
8 to the contrary.

9 And so, the Defendant was not under an obligation to report  
10 the repaired condition in the absence of evidence or information that  
11 would leave the Defendant to know or have reason to know that the leak  
12 had not in fact been repaired.

13 The evidence shows that the Plaintiff knew of the November  
14 7th, 2017 leak, but elected to close escrow anyway after threatening to  
15 walk if there were not sufficient credits made.

16 But escrow did close, so Plaintiff waived or is estopped to  
17 disavow the waiver effect of closure of escrow with this knowledge.

18 The alleged "water losses" regarding the two recirculating  
19 pumps, water pumps, in 2015 were also matters that became moot  
20 when the two recirculating pumps were replaced under warranty in that  
21 same year, 2015. Apparently, the home was completed in April of 2015.

22 The third "leak in the ceiling" apparently did not continue or did  
23 not recur, and in any event, is not the subject of the alleged failure to  
24 disclose.

25 The subject of the alleged failure to disclose was the 2/16/17

1 leak repaired by Rakeman.

2 For me, Defendant's Supplemental Reply brief of 2/27/20  
3 adequately synthesizes my thinking at page 2, line 3 through page 3,  
4 line 10; at page 3, line 14 through page 6, line 4; at page 7, line 7  
5 through page 11, line 5; at page 11, line 17 through page 13, lines 1  
6 through 22, and at page 14, line 1 and page 14, lines 13 through page  
7 15, line 4. I offer you the page and line citations rather than to read that  
8 information into the record.

9 So my conclusion is that the Motion for Summary Judgment  
10 should be granted. And Defendants should prepare findings of fact and  
11 conclusions of law consistent with this Court's analysis.

12 So those are my thoughts. I'm happy to hear anything that the  
13 Plaintiff's counsel wishes to add that supplements the very  
14 comprehensive brief and exhibits that were already submitted and  
15 reviewed.

16 And, again, my apologies to you for having not made myself  
17 aware of it at the earlier hearing.

18 MR. GRAF: Your Honor, not a problem. I understand that  
19 these things happen when you got caseloads like you have.

20 Your Honor, and this is Rusty Graf appearing on behalf of the  
21 Plaintiffs and I would like to make some statements regarding those  
22 findings, Your Honor.

23 First and foremost, Your Honor, it's my understanding you're  
24 making this finding pursuant to NRS 113.140, as well as Nelson v. Heer.

25 My understanding, Your Honor, is the following that you're

1 also making this determination that you announced on your -- the last  
2 hearing on a basis of summary judgment.

3 I would like to talk about the fact that the standard of summary  
4 judgment is it's reviewed in the light most favorable to the nonmoving  
5 party, that is the Plaintiff, Your Honor.

6 In addition, Your Honor, that I wanted to make a procedural  
7 statement regarding Nelson v. Heer. Nelson v. Heer was the case that  
8 decided on NRCP 50 after the presentation of evidence at trial and after  
9 the trial had actually concluded.

10 That's important because Nelson v. Heer makes the following  
11 determination. It says the determination of whether a seller is aware of a  
12 defect, however, is a question of fact to be decided by the trier of fact.

13 What we attempted to do, Your Honor, by presenting the  
14 evidence and information that we presented to His Honor, His Honor had  
15 made a statement at the last hearing like you did a document dump.  
16 And I apologize, Your Honor, if you thought that.

17 That wasn't the intent. The intent was, you know, in just sitting  
18 here through some of the other hearings that you had this morning, I  
19 heard where you instructed Plaintiff's counsel that they needed to do  
20 some discovery and what not.

21 I think it's important for the Court to understand the amount of  
22 discovery that was conducted on this case, that we took Dr. Swanson's  
23 deposition, that we took Mr. Holley's deposition. We provided the  
24 affidavit from Rakeman Plumbing. And we took the deposition of Mr.  
25 Gerber [phonetic], who was the basis of what we would call the hearsay

1 statements contained within the affidavit.

2 In addition, Your Honor, we took the depositions of a couple of  
3 realtors and that sort of thing. And from all of that testimony, Your  
4 Honor, and from all of the information that we subpoenaed also and that  
5 we presented to His Honor was more information that I think negates  
6 this Court's granting of a Motion for Summary Judgment.

7 There are several questions of fact that exist as to whether or  
8 not particularly Dr. Swanson had knowledge of the defects and the leaks  
9 and the conditions of moisture that occurred in 2015 --

10 THE COURT: Let me --

11 MR. GRAF: -- as well as thereafter.

12 THE COURT: Excuse me, one second. Let me interject one  
13 thing.

14 MR. GRAF: Yes, yes, sir.

15 THE COURT: There is a common misconception that  
16 happens when people are seeking to defend against a motion for  
17 summary judgment.

18 And it is conflating a genuine dispute as to a material issue of  
19 fact with a question of fact. Oftentimes, there are questions of fact, but a  
20 motion for summary judgment presses the issue and says, well, here is  
21 what we say the facts are and here is our sworn statement as to those  
22 facts.

23 And if the person against whom summary judgment is sought  
24 is unable to dispute that, the fact that they may have questions  
25 subjectively as to whether or not they agree or disagree or whether or

1 not there might be evidence out there to contradict that statement, that  
2 does not defeat a motion for summary judgment.

3           Instead, the party against whom summary judgment is sought,  
4 they have to come up with evidence to contradict that sworn statement  
5 or that evidence offered by the moving party to show that, well, that may  
6 be that party's view of what the facts are, but in actuality, there's also  
7 this factual contention under oath or by sworn exhibits that shows that  
8 that is not in fact.

9           So then, you have a genuine dispute as to a material issue of  
10 fact, which means that it has to be decided by the trier of fact whether  
11 that's the judge in a nonjury trial or by the jury.

12           But merely having questions is not sufficient. If you have  
13 questions, that you think you could provide answers to if you were given  
14 sufficient time, that's when you seek NRCP 56(d) relief under the new  
15 numbering system.

16           And that's the rule I read earlier. You have an affidavit where  
17 you say, look, we know that Swanson has testified in his deposition that  
18 his only knowledge of the February 6th, 2017 leak was back at the time  
19 it occurred.

20           And we know that he has testified that Rakeman repaired it.  
21 So, for him, it was no longer an issue when he signed the disclosure  
22 form on October 24, 2017.

23           But we have a -- an email from him to Rakeman Plumbing  
24 refusing to pay Rakeman Plumbing's invoice dated March 15th of 2017  
25 because he said you didn't fix the leak. It's still an ongoing problem.

1           We don't have authentication that this is an email sent by Dr.  
2 Swanson, so we're asking for some more time to conduct some  
3 discovery to pin that down.

4           That is an affidavit for 56(d) relief. And that's how you seek  
5 the opportunity to conduct more discovery.

6           You have to remember that the whole focus of your lawsuit  
7 was the February 6th, 2017 leak. All of these other things that you talk  
8 about, it may have been frustrating and irritating for the Plaintiffs to find  
9 out that there was a leak that happened in November of 2017, but with  
10 full knowledge of that, and even though the Plaintiff was threatening to  
11 walk, the Plaintiff said, oh, you know, let's close escrow, let's be done  
12 with it.

13           And so, we can't lose sight of the fact that the real issue has  
14 always been in terms of the assertions made in the lawsuit, the February  
15 6th, 2017 leak.

16           And if you are unable to create a genuine dispute as to a  
17 material issue of fact, i.e., that Rakeman Plumbing repaired the February  
18 6th, 2017 leak, then you're out of luck in terms of the lawsuit that you  
19 have filed in this case.

20           And the fact that you have become aware of other things,  
21 they're just -- they're not relevant to this inquiry regarding this Motion for  
22 Summary Judgment. It's that simple.

23           MR. GRAF: Your Honor --

24           THE COURT: Or maybe I didn't make it sound real simple,  
25 but I think it's simple.

1 MR. GRAF: And I understand what His Honor is saying as to  
2 the November 2017 leak. My question is this, Your Honor.

3 Whether or not Dr. Swanson had knowledge of leaks in 2015,  
4 whether or not he has proof and support to say that those leaks had  
5 been repaired is a question of fact in this case. We've uncovered that  
6 through the evidence and testimony that's been presented in our  
7 supplemental brief.

8 Your Honor, our allegations as to the violation of NRS 113 and  
9 the material misrepresentation or the fraudulent misrepresentation,  
10 excuse me, allegation is as to anything that they did not indicate on the  
11 SRPD.

12 The SRPD is a simple document, Your Honor. It is a yes or  
13 no response. And he responded, no, there were no prior incidences of  
14 moisture condition at this house.

15 That is categorically not true. It is false. We have proven that  
16 through the deposition testimony of Dr. Swanson and we have proven  
17 that also, Your Honor, through the deposition testimony of Mr. Holley  
18 and Mr. Gerber.

19 One thing that I want to draw to the attention of the Court is,  
20 Your Honor, we have submitted the deposition transcripts of Mr. Holley  
21 and Mr. Gerber.

22 Those deposition transcripts controvert the testimony and  
23 statements in the affidavit. Those -- that sworn testimony specifically  
24 says that they were not there when any repairs were made.

25 One of the things that His Honor made very clear at the prior

1 hearing is that the decision the Court was going to make as to the  
2 November 17, 2017 leak was based upon the affidavit of Mr. Holley.

3 That affidavit was controverted during their depositions. They  
4 both testified they were not present during any repairs. They  
5 were -- both testified that they could not provide you with any evidence  
6 as to the repairs themselves.

7 That is in direct contravention of that. Your Honor, they both  
8 testified they did not perform the repairs. That controverts that affidavit.  
9 Both of those individuals, Your Honor, testified as such.

10 They -- Mr. Holley testified at page 17 of his deposition that he  
11 obtained any knowledge that he had from others, not from personal  
12 knowledge that he had.

13 He then -- he testified at page 24 of his deposition that he did  
14 not observe any of the repairs and emphatically stated in that deposition  
15 not at all.

16 He then said, Your Honor, that on page 34 of his deposition, I  
17 do not know what actually occurred.

18 Your Honor, if these types of statements are in direct  
19 contravention of his affidavit, I don't know what are.

20 He specifically then went forward to say, Your Honor, that in  
21 terms of the mold testing in 2017, and I don't want to really talk too much  
22 about that, but that is an indication of -- and here's the question of fact  
23 that I would like to draw to the attention of the Court on that issue, Your  
24 Honor.

25 And that is this. The testing was conducted on November



1 17th. That's the day that the house supposedly closed. That test by  
2 Infinity Environmental, which that test is before His Honor, and the  
3 results of that test are before His Honor, is a positive test for mold.

4 At some point in time, Dr. Swanson was aware of that defect.  
5 Your Honor --

6 THE COURT: Hold on, let me ask you a question about that.  
7 Are you saying that the October 24th, 2017 disclosure form was a  
8 misrepresentation regarding the November 2017 mold?

9 MR. GRAF: I am, Your Honor, for the following reasons.

10 THE COURT: No, wait, wait, wait. Wait, it's clear that it was  
11 brought to the attention of your client, and your client was not happy  
12 about it, said he was going to walk if suitable credits were not done.

13 And I don't know if credits were done or not, but he closed  
14 escrow with that information as opposed to refusing to close escrow.  
15 Had he refused to close escrow, we wouldn't be here. There wouldn't  
16 have been a purchase and sale.

17 But in spite of all of this information, your client went ahead  
18 and closed escrow.

19 MR. GRAF: Your Honor, and I apologize, Your Honor, I didn't  
20 -- I kind of stopped and started there a couple of times. This is kind of a  
21 difficult format to use, especially when I don't have video, so I apologize.

22 In response to that statement, I think that that's an accurate  
23 statement, Your Honor, as to the leak. It's not an accurate statement as  
24 to the mold.

25 This is the issue here. And we asserted this in our brief, Your

1 Honor. Counsel, or excuse me, not counsel, but Dr. Swanson submitted  
2 an addendum, Addendum 4A, that was meant to supplement the SRPD.  
3 That was the document where he told the Folinis that there had been a  
4 leak in November of 2017.

5 What that document does not contain, Your Honor, and has  
6 never been produced, nor was it ever disclosed anywhere is the actual  
7 positive test for mold that came back from Infinity Environmental.

8 THE COURT: No, but --

9 MR. GRAF: And Your Honor --

10 THE COURT: No, but counsel, the problem is it put your  
11 client on notice of the fact that there was a leak.

12 And given the --

13 MR. GRAF: No --

14 THE COURT: And given the fact that your client had  
15 concerns and this was a not insubstantial purchase at all, and given the  
16 fact that he threatened to walk, and instead, he went ahead and closed  
17 escrow without any further specification or demands regarding that leak.

18 So I do think, and I got to cut you off because we have other  
19 things we have to get to, but I do think that your client is confounding  
20 some of the other information that they've learned since that just has  
21 thrown gasoline on their fire over issues with this house.

22 And they've even gotten upset about things which are not  
23 problems going on today, but the mere fact that they weren't told about  
24 them or that they existed is a source of irritation to them.

25 I understand that it's irritating and upsetting, but it's not legally

1 actionable. And that's where the distinction has to be drawn. So I think  
2 that the Motion for Summary Judgment --

3 MR. GRAF: Your Honor --

4 THE COURT: -- should be granted.

5 MR. GRAF: Your Honor --

6 THE COURT: It's a Motion to Dismiss the Second Amended  
7 Complaint. But I think given all of extensive consideration of matters  
8 outside the pleadings that have been utilized, that it should be treated as  
9 a summary judgment motion and I'm inclined to grant it.

10 Now, Mr. Galliher, is there anything that you wish to add?

11 MR. GRAF: Your Honor, I don't mean to interrupt His Honor,  
12 but I had some statements that I'd like to make as to the 2015 leaks --

13 THE COURT: No, I'm sorry, counsel, I have to cut you off.  
14 You have to realize you submitted at least a couple thousand pages of  
15 material for my review.

16 I reviewed it. I was tardy in my review of it, but I reviewed it.  
17 And so, there is nothing you have said or could say that would be  
18 supplemental to the written materials you provided.

19 If there was something that you didn't include, that's what I  
20 was inviting you to mention, but everything you have said is contained in  
21 the brief.

22 And I have to manage the time here and move on to the next  
23 case. So I do want to give Mr. Galliher a chance, if he wishes to, to  
24 supplement his written filings if he wants to for the record.

25 MR. GALLIHER: Thank you, Your Honor. Very briefly, I just

1 want to make sure it's clear for this record that the very first report of  
2 mold at 33 Meadowhawk is dated November 24th, 2017, which is a  
3 week after the date of closing.

4 The test was conducted on November 17th, 2017, but no  
5 results were had until November 24th. And even then, that report was  
6 never provided to Dr. Swanson because of course, he was no longer the  
7 owner of the property. And I believe that report was actually directed to  
8 Rakeman Plumbing.

9 So there could be no question, disputed or otherwise, about  
10 whether Dr. Swanson ever had any knowledge either express or implied  
11 of or notice of mold prior to the date of the closing. I just want to make  
12 sure that we're clear on that that there's been confusion about dates, but  
13 there's no --

14 THE COURT: No, it was clear to me that the material was  
15 submitted for testing on November 17th, 2017. Escrow closed. And  
16 then, some days later, the report came back positive findings of mold.  
17 All right. So the motion --

18 MR. GALLIHER: Thank you, Your Honor.

19 THE COURT: The Motion to Dismiss is being treated as a  
20 Motion for Summary Judgment. It's granted and I tried to call out the  
21 specific information in the briefs that I felt was important to be included in  
22 the findings of fact and conclusions of law.

23 I do need the order within 14 days per EDCR 7.21. All right?

24 MR. GALLIHER: Thank you, Your Honor.

25 THE COURT: And we will set a calendar date for 30 days

1 from today. And what I'm looking for is the filing of the order granting  
2 summary judgment.

3 THE CLERK: May 5th at 9 a.m.

4 THE COURT: No need to return on May 5th if the order has  
5 been filed. If it has been, I will need to see you on May 5th. Okay, thank  
6 you.

7 MR. GALLIHER: Thank you, Your Honor.

8 [Proceedings concluded at 11:09 a.m.]

9 \* \* \* \* \*

10

11

12 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
13 audio/video proceedings in the above-entitled case to the best of my ability.

13

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Chris Hwang  
Transcriber

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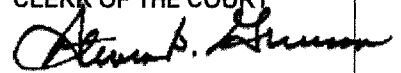
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1 Christopher M. Young, Esq.  
Nevada Bar No. 7961  
2 Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
3 CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
4 Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
5 Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
6 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

7 Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
8 GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
10 Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

11 Attorneys for Defendants

GALLIHER LEGAL P.C.  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

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;  
SHIRAZ TRUST, a Trust of unknown origin;  
21 LYON DEVELOPMENT, LLC, a Nevada limited  
liability company; DOES I through X; and ROES  
I through X,

22 Defendant(s).

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

**HEARING REQUESTED**

23  
24 **DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS**

25 COME NOW Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee  
26 of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,  
27 LLC, (hereinafter referred to as "Defendants") by and through their counsel of record  
28

1 CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of  
2 CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of  
3 GALLIHER LEGAL P.C., and hereby submits their motion for Attorney Fees and Costs pursuant to  
4 NRCP 68 and NRS 18.010. Defendants are the prevailing parties in this matter after Plaintiff's  
5 complaint was dismissed upon motion. Furthermore, Plaintiff's suit was brought without reasonable  
6 grounds, therefore Defendants are entitled to an award of their reasonable attorney's fees pursuant to  
7 NRS 18.010(20(a) and (b).  
8

9 This motion is made and based upon the attached points and authorities, affidavit, and all the  
10 pleadings, papers and files herein.

11 DATED this 22nd day of April 2020.

12 GALLIHER LEGAL P.C.

13 /s/ *Jeffrey L. Galliher*  
14 Jeffrey Galliher, Esq.  
15 Nevada Bar No. 8078  
16 1850 E. Sahara Ave., Suite 107  
17 Las Vegas, NV 89104

18 **POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 This case arises from the sale of a private residence located at 42 Meadowhawk ("The  
22 Property") in Las Vegas. The home was constructed by Blue Heron Homes pursuant to a contract with  
23 Defendant Lyons Development and construction was completed in the spring of 2015. The home was  
24 sold by Defendant Lyons Development to Plaintiffs and escrow closed on November 17, 2017.

25 On October 9, 2018 Plaintiffs filed their Complaint alleging seven separate causes of action  
26 against Defendants. On February 4, 2019 Defendants filed their motion to dismiss Plaintiffs'  
27  
28

1 complaint. In response, Plaintiffs filed a countermotion to amend their complaint which was granted  
2 at a hearing on April 9, 2019.

3 On April 18, 2019 Plaintiffs filed their First Amended Complaint ("FAC") and Defendants'  
4 filed a motion to dismiss on May 20, 2019. On July 18, 2019 this court held a hearing wherein  
5 Plaintiffs' 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> causes of action were dismissed. The court ordered Plaintiffs to file  
6 a second amended complaint limited to the two surviving causes of action.  
7

8 On September 3, 2019 Plaintiffs filed their Second Amended Complaint ("SAC") wherein  
9 Plaintiffs alleged two causes of action. The first alleged Fraud/Intentional Misrepresentation and the  
10 second alleged violation of NRS 113.100 et seq. The gravamen of the SAC was that Defendants failed  
11 to disclose systemic defects in The Property's plumbing system related to the Uponor piping installed  
12 in The Property. In response the Defendants filed a Motion for Summary Judgment, supported by  
13 indisputable evidence that Rakeman Plumbing completely repaired the water leak, thus negating the  
14 Defendants' purported "knowing concealment." EXHIBIT A.  
15

16 On November 7, 2019 this court held a hearing on Defendants' motion to dismiss. At that time  
17 the court stated its inclination to grant Defendants' motion. EXHIBIT B.

18 On November 26, 2019, due to the extent of discovery indicated by numerous written  
19 discovery requests and notices of deposition served by Plaintiffs, Defendants associated Mr. Galliher  
20 as counsel. EXHIBIT C.  
21

22 On December 11, 2019 Defendants served an offer of judgment upon the Plaintiffs in the  
23 amount of \$150,000.00 (one-hundred, fifty thousand dollars) inclusive of fees, costs and interests.  
24 EXHIBIT D. The offer of judgment was not accepted and ultimately expired as a function of law.

25 Subsequent to the expiry of the offer of judgment, Plaintiff's undertook substantial discovery  
26 in a futile effort to manufacture a material issue of fact in the case. That discovery included service  
27 of Interrogatories, Requests for Admissions and Requests for Production of Documents on all  
28



1 Defendants. Additionally, Plaintiff noticed and took the depositions of Dr. Swanson (twice), his  
2 assistant (Nikki Whitfield), two employees of Rakeman Plumbing (Aaron Hawley and William  
3 Gerber) and two of the selling agent's team (Ivan Sher and Kelly Contenta).

4 After a brief stipulated extension Plaintiff's filed their supplemental brief on February 13,  
5 2020. Along with the brief Plaintiffs served more than 5,400 pages of documents upon the Defendants.  
6

7 On February 27, 2020 Defendants filed their response to Plaintiffs' supplement.

8 On March 3, 2020 the court held a hearing on all pending motions. Due to some logistical  
9 confusion the matter was eventually continued to April 7, 2020.

10 On April 7, 2020 this court summarily dismissed this case upon Defendants' motion. EXHIBIT  
11 B.

12 Defendants incurred attorney's fees in the amount of since the inception of the case. EXHIBIT  
13 C and EXHIBIT D.  
14

## 15 II.

### 16 ARGUMENT

17 Defendants are entitled to an award of their accrued attorney's fees and costs of suit. Plaintiffs  
18 pursued this action out of pure spite based upon the bald assumption that Todd Swanson had  
19 knowledge prior to selling The Property that the Uponor piping system installed during construction  
20 was defective and needed to be replaced. But rather than inquire of Dr. Swanson or the contractor  
21 who had installed and serviced the system – Rakeman Plumbing – about the history of the system, or  
22 Dr. Swanson's potential knowledge of any defects, Plaintiffs instead just filed a lawsuit.  
23

24 Despite subsequently arguing to the contrary, Plaintiffs filed this suit with the full knowledge  
25 of the leak which occurred in early November 2017. See, SAC at ¶¶ 24-26. The leak was disclosed  
26 by Defendants in Addendum 4A to the transaction and Plaintiffs acknowledged their right to "walk  
27 away" prior to closing. As the court correctly pointed out at the hearing where the case was dismissed,  
28

1 this uncontroverted knowledge and action by the Plaintiffs constituted a waiver of the Plaintiffs'  
2 claims.

3 **PURSUANT TO NRCP 68, DEFENDANTS ARE ENTITLED TO THEIR FEES AND**  
4 **COSTS ACCRUED SINCE DECEMBER 11, 2019**

5 On December 11, 2019 Defendants served upon Plaintiffs an Offer of Judgment in the amount  
6 of \$150,000.00. EXHIBIT F. Pursuant to NRCP 68(f)(1)(B) Defendants are entitled to recover their  
7 costs and allowed attorney's fees from the time of the service of the offer as Plaintiffs did not accept  
8 the offer and then failed to obtain a more favorable outcome. See, *Uniroyal Goodrich Tire Co. v.*  
9 *Mercer*, 11 Nev 318, 890 P.2d 785 (1995); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 860 P.2d  
10 720(1993).  
11

12 Defendants have incurred recoverable costs in the amount of \$4,165.26 in defending this  
13 lawsuit since December 11, 2019. See, Declaration of Jeffrey L. Galliher, Esq, attached as EXHIBIT  
14 G and declaration of Christopher M. Young, Esq. attached as EXHIBIT H. These costs were  
15 reasonable and necessary to the defense of this case. Those costs are set forth in Defendants' Verified  
16 Memorandum of Costs and Disbursements filed concurrently herewith and Attached as EXHIBIT I.  
17

18 Defendants have likewise incurred \$39,447.00 in attorney's fees in defending this case from  
19 December 11, 2019 through present. (EXHIBITS C, D, G and H).

20 In total Defendants have incurred \$43,612.26 in recoverable attorney's fees and costs since  
21 serving Plaintiffs with their offer of judgment. Defendants request that these fees and costs be awarded  
22 to Defendants.

23 **THE ATTORNEYS FEES AND COSTS SOUGHT BY DEFENDANTS ARE**  
24 **REASONABLE AND JUSTIFIED AND THE COURT SHOULD AWARD THE FULL**  
25 **AMOUNT REQUESTED.**

26 An award of attorney's fees pursuant to NRCP 68 is discretionary with the court, and the  
27 court's discretion will not be abused absent clear abuse. *Bidart v. American Title Ins. Co.*, 103 Nev.  
28

1 175, 734 P.2d 732 (1987). In determining whether to award fees and costs pursuant to an NRCP 68  
2 offer of judgment the court must evaluate the following factors: 1) whether the plaintiff's claim was  
3 brought in good faith; 2) whether the defendant's offer of judgment was reasonable and in good faith  
4 in both its timing and amount; 3) whether the plaintiff's decision to reject the offer and proceed in the  
5 litigation was grossly unreasonable or in bad faith; and 4) whether the fees sought by the offeror are  
6 reasonable and justified in amount. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790  
7 (1985); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268 (1983). After weighing these factors  
8 the court may award up to the full amount of fees requested. *Id.* at 589.

9  
10 In considering the amount of fees to award the court must also consider the following:

- 11 1) The qualities of the advocate: his ability, training, education, experience, professional  
12 standing and skill;
- 13 2) The character of the work to be done: its difficulty, intricacy, importance, the time and skill  
14 required, the responsibility imposed and the prominence and character of the parties where  
15 they affect the impotence of the litigation;
- 16 3) The work actually performed by the lawyer; the skill, time and attention given to the work;  
17 and  
18 4) The result: whether the attorney was successful and what benefits were derived.

19  
20 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Where the trial  
21 court evaluates the necessary factors, its ruling will not be disturbed on appeal unless its exercise of  
22 discretion is arbitrary or capricious. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786, (1985).

23  
24 In this case, consideration of the *Beattie* and *Bunzell* factors supports an award of the entire  
25 amount of fees and costs requested by Defendants.

26 ///

27 ///

1        ***1) Whether the Plaintiffs' claim was brought in good faith***

2        There is a substantial question of whether Plaintiffs' claims in this case were initially brought in  
3        good faith. Plaintiff's initial complaint was replaced by the First Amended Complaint early on. The  
4        gravamen of the FAC was that Defendants failed to disclose a leak which occurred in February of  
5        2017 on the form Seller's Real Property Disclosure ("SRPD") completed by Dr. Swanson on or about  
6        October 24, 2017. However, attached to the First Amended Complaint itself was an invoice from  
7        Rakeman Plumbing evidencing the fact that the February 2017 leak had, in fact, been repaired by  
8        Rakeman Plumbing, a licensed professional plumbing contractor. The Defendants sought dismissal  
9        of each of the Plaintiffs' seven claims in the FAC. Based on the Rakeman Plumbing invoice and  
10       related documents attached to the Plaintiffs' First Amended Complaint, the Defendants argued the  
11       invoice showed the leak had been repaired, thus negating the duty to disclose under *Nelson v. Heer*,  
12       123 Nev. 217, 223-224, 163 P.3d 420, 425 (2007).  
13

14       On July 18, 2019 at the hearing on Defendants' motion to dismiss the FAC, the court dismissed  
15       Plaintiff's 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> causes of action and directed Plaintiffs to file a second amended  
16       complaint including the surviving claims. EXHIBIT B.  
17

18       On September 4, 2019, the Plaintiffs filed their Second Amended Complaint. In response the  
19       Defendants filed a Motion to Dismiss, supported by undisputed evidence – indeed the same evidence  
20       attached to the Plaintiffs' pleadings - that Rakeman Plumbing completely repaired the water leak,  
21       which thus negated the Defendants' purported "knowing concealment."  
22

23       The Defendants obtained an affidavit from Aaron Hawley, the owner of Rakeman Plumbing,  
24       regarding the adequacy of Rakeman's repair and what was communicated to the Defendants. Mr.  
25       Hawley stated that the water leak was completely repaired and that no further or contradictory  
26       information was conveyed to the Defendants. With these new facts, the Defendants requested a ruling  
27       from this Court that neither of the Plaintiffs' remaining claims could survive summary judgment. The  
28

1 concealment claim fails because under *Nelson* and NRS Chapter 113, the completed repair negates  
2 any duty to disclose. Defendants argued that because the Defendants did not have “knowledge” under  
3 the *Nelson* standard, because the repair had been completed, summary judgment on the Plaintiffs’  
4 fraud claim was also warranted.

5  
6 Plaintiffs’ response was to file an opposition and countermotion for sanctions filled with  
7 personal attacks against defense counsel. The court characterized the motion for sanctions as  
8 “inappropriate” and denied it. EXHIBIT B.

9  
10 At the hearing on November 7, 2019 the court stated its inclination to grant Defendants’ motion  
11 for summary judgment. Plaintiff orally requested NRCP 56(d) relief which was granted in the form  
12 of an order allowing Plaintiffs’ counsel 90 days to conduct discovery in an attempt to “demonstrate a  
13 genuine issue of material fact.” EXHIBIT B.

14  
15 At that point the “good faith” of Plaintiffs was clearly in doubt. Not only had they filed  
16 multiple complaints with seemingly zero factual basis, but had also filed a completely “inappropriate”  
17 motion for sanctions ascribing multiple nefarious acts to defense counsel without basis.

18 **2) *Whether the defendant’s offer of judgment was reasonable and in good faith in both its  
19 timing and amount***

20  
21 Defendants offer was reasonable in time because it was made after the Court expressed its  
22 inclination to dismiss the case, but before the parties had expended substantial time, effort and money  
23 in discovery.

24  
25 On December 11, 2019 Defendants served Plaintiff’s with an offer of judgment in the amount  
26 of \$150,000.00 inclusive of fees and costs. EXHIBIT F. This offer was made in what was obviously  
27 a genuine, even generous, effort to settle the case under the circumstances. To that time, and even  
28

1 now, Plaintiffs have never asserted that they had suffered any measurable special damages. Just as  
2 had been the case when Defendants owned The Property, all repairs to the plumbing system were  
3 handled under warranty by either Rakeman Plumbing or the manufacturer, Uponor. Further, at the  
4 time of the offer of judgment, Plaintiffs had already been advised in open court of the Court's  
5 inclination to grant Defendants' motion to summarily dispose of the case. Nevertheless, in a genuine  
6 attempt to resolve the case in the very spirit of NRCP 68, Defendant's offered the very substantial  
7 amount of \$150,000.00 at a time when Plaintiffs had yet to expend significant amounts of time and  
8 money on what ultimately turned out to be futile discovery efforts.

10 Defendants' offer was reasonable with respect to amount because the offer was for an  
11 objectively substantial amount when compared to Plaintiffs' potential damages.

12 Plaintiffs have never disclosed any special damages which they allege to have suffered.  
13 Instead, Plaintiffs' computation of damages merely claimed "Fraud Damages" of "[a]pproximately  
14 \$300,000.00" and "Bad Faith Damages" of "\$100,000.00." Based upon this paucity of damage  
15 information, and with the knowledge that the court had declared its inclination to dismiss the case,  
16 Defendants calculated their offer with the expectation that it would do what it was intended to do:  
17 settle the case. While Defendants maintain that they did nothing wrong, given the unpredictable nature  
18 of litigation and the potential to accrue substantial costs and fees in a relatively short period of time  
19 they authorized their counsel to offer an exceedingly generous amount of money to resolve the case  
20 once and for all.

22 When no response was forthcoming from Plaintiffs, Defendants and their counsel were  
23 disappointed, but were left with no alternative but to go forward and participate fully in the discovery  
24 propounded by Plaintiffs and to attend the six depositions Plaintiffs noticed.

26 ///

27 ///

1       3) *Whether the plaintiff's decision to reject the offer and proceed in the litigation was grossly*  
2       *unreasonable or in bad faith*

3       Under the circumstances at the time Defendants served their offer of judgment: where the court  
4       had already indicated its inclination to dismiss the case; where Plaintiff's had essentially zero special  
5       damages; and where established case law clearly eviscerated Plaintiff's claims, rejection of that  
6       extremely generous offer of judgment was grossly unreasonable. Rather than take what could be  
7       reasonably described as a gift, Plaintiffs instead chose to undertake extensive, ultimately futile,  
8       discovery at great expense to the parties.

9       All indications are that all of the expenses required to re-pipe the house and remediate the  
10      November 2017 leak were borne by Uponor and Rakeman Plumbing. Indeed, Plaintiffs' disclosed  
11      calculation of damages includes zero special damages. Even if Plaintiffs could prove that Defendants  
12      did fail to make all necessary disclosures under NRS 113.150, Plaintiffs' recoverable damages would  
13      be limited to "the amount necessary to repair or replace the defective part of the property". NRS  
14      113.150(4). Plaintiffs have not alleged that they have born any costs to repair or replace the Uponor  
15      system.

16      Further, pursuant to statute, recovery is completely barred "on the basis of an error or omission  
17      in the disclosure form that was caused by the seller's reliance upon information provided to the seller  
18      by:... (b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or  
19      pesticide applicator, who was authorized to practice that profession in this State at the time the  
20      information was provided." NRS 113.150(5). It has been well established that both the leak in  
21      February 2017 and November 2017 were immediately reported to Rakeman Plumbing, a licensed  
22      Nevada plumbing contractor for investigation and repair and that all information relied upon by  
23      Defendants regarding the leaks was provided by Rakeman Plumbing.

1 As discussed earlier, all indications are that, since the problems with the pipe stemmed from a  
2 manufacturing defect, the costs of re-piping the property were covered by the manufacturer warranty  
3 provided by Uponor. Based upon the conduct of the Plaintiff during the escrow period, where they  
4 sought access to the property for myriad trades and contractors, it is believed that Plaintiffs undertook  
5 a substantial remodel of The Property immediately upon taking possession, but before actually moving  
6 in. If, as presumed, the re-piping was accomplished commensurate with the remodel it is likely that  
7 Plaintiffs did not even suffer any significant inconvenience as a result of the re-pipe. Beyond the bare  
8 claims in the calculation of damages listed in Plaintiff's initial disclosures no other information  
9 regarding any alleged damages was ever communicated to the Defendants.  
10

11 Finally, the damages available to Plaintiffs on their second cause of action are fixed by statute.  
12 NRS 113.150 provides, in pertinent part:

13  
14 If, before the conveyance of the property to the purchaser, a seller or the seller's agent  
15 informs the purchaser or the purchaser's agent, through the disclosure form or another  
16 written notice, of a defect in the property of which the cost of repair or replacement was  
17 not limited by provisions in the agreement to purchase the property, the purchaser may: (a)  
18 Rescind the agreement to purchase the property at any time before the conveyance of the  
19 property to the purchaser; or (b) Close escrow and accept the property with the defect as  
20 revealed by the seller or the seller's agent **without further recourse.** (emphasis added)

21 Nev. Rev. Stat. § 113.150(2).

22 In this case there can be no dispute that the leak occurring in November 2017 was disclosed to  
23 Plaintiffs via Addendum 4A to the purchase agreement prior to the close of escrow. Plaintiffs'  
24 decision to nevertheless close escrow was their election of remedy and bars "further recourse" as a  
25 matter of law. *Id.*

26 Under the circumstances as they existed in mid-December 2019 – the court had indicated its  
27 inclination to dismiss the case, Plaintiffs had suffered essentially zero special damages, the repiping  
28 had apparently not created any substantial inconvenience – and in the face of the formidable statutory



1 barriers to any substantial recovery discussed earlier, Plaintiffs' rejection of the \$150,000.00 offer of  
2 judgment was grossly unreasonable.

3 **4) *Whether the fees sought be the offeror are reasonable and justified in amount***

4 When determining whether the fees requested are reasonable and justified in amount the court  
5 is to consider the 4 factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d  
6 31, 33 (1969):

- 7
- 8 1) The qualities of the advocate: his ability, training, education, experience, professional standing  
9 and skill;
  - 10 2) The character of the work to be done: its difficulty, intricacy, importance, the time and skill  
11 required, the responsibility imposed and the prominence and character of the parties where  
12 they affect the importance of the litigation;
  - 13 3) The work actually performed by the lawyer; the skill, time and attention given to the work;  
14 and  
15
  - 16 4) The result: whether the attorney was successful and what benefits were derived.

17 As set forth more fully in the attached declarations, the attorneys handling the defense of this  
18 matter have excellent credentials. They have been partnered with and trained by some of the finest trial  
19 lawyers in the state, including the late J. Mitchell "Mitch" Cobeaga and Rex Jemison, among others.  
20 They have substantial litigation and trial experience over many decades of combined admission as  
21 Nevada lawyers in handling lawsuits for both plaintiffs and defendants. They serve as judges pro-tem  
22 and arbitrators in both criminal and civil courts. They are skilled litigators with at least one of them  
23 rated AV/Preeminent in litigation by Martindale-Hubbell, the nation's foremost rating service for  
24 attorneys. All are in good standing with the State Bar of Nevada with no history of discipline.

25  
26 The character of the work to be done was difficult. The range of claims initially brought by the  
27 Plaintiffs combined with the statute heavy nature of these types of cases required close attention to  
28

1 detail and mastery of a litany of important facts. The work performed in a relatively short period of  
2 time was extensive, including six lengthy depositions being taken over just a two week period,  
3 expansive research and writing, including review of over 5,400 documents and multiple oral  
4 arguments. Defense counsel delivered a just result for their client: dismissal of the case. As discussed  
5 herein the case should not have been brought, but Plaintiffs pushed the case and conducted substantial  
6 discovery which had to be dealt with and made myriad arguments which had to be countered.

7  
8 After rejecting the offer of judgment of \$150,000.00, Plaintiffs conducted substantial and wide-  
9 ranging discovery. Plaintiffs' counsel deposed Dr. Swanson (twice), his assistant (Nikki Whitfield),  
10 two employees of Rakeman Plumbing (Aaron Hawley and William Gerber) and two of the selling  
11 agent's team (Ivan Sher and Kelly Contenta). In addition, Plaintiffs served each of the Defendants  
12 with substantive Interrogatories, Requests for Admissions and Requests for Production of Documents  
13 and issued many third-party subpoenas resulting in the production of more than 5,000 pages of  
14 documents. None of this unnecessary work changed the facts which had already been established:  
15 the February 2017 leak had been repaired by a professional, licensed plumbing contractor and the  
16 November 2017 leak was disclosed during escrow via Addendum 4A. When applied to the well-  
17 established case law, these undisputed facts made it clear that there could be no cognizable claim  
18 against the Defendants. Nevertheless, Plaintiff insisted and persisted in engaging in a scorched Earth  
19 discovery plan despite the writing on the wall.  
20  
21

22 Conversely, Defendants' conduct since the offer of judgment has been almost completely reactive  
23 in nature, meaning that the work done by defense counsel was directly necessitated by the actions of  
24 the Plaintiff in undertaking expansive early discovery. These expenses were exactly what Defendants  
25 were seeking to avoid by making an early and substantial, even generous offer to settle the dispute for  
26 real money.  
27  
28

1 But even in a purely reactionary role Defendants accrued \$39,447.00 in attorneys fees and  
2 \$4,189.26 in case costs since service of the offer of judgment on December 11, 2019. The vast  
3 majority of the time spent was making initial disclosures, responding to Plaintiffs' written discovery,  
4 attending depositions and hearings and drafting a response to Plaintiff's supplemental opposition.  
5 Further, the hourly fee of \$270.00 charged to Defendants is exceedingly reasonable given the nature  
6 of the work (real estate litigation) and the experience of counsel involved.  
7

8 These costs and fees could have been avoided had Plaintiffs accepted Defendants' exceedingly  
9 reasonable offer of judgment made on December 11, 2019.

10 **PURSUANT TO NRS 18.010(2)(b) DEFENDANTS ARE ENTITLED TO THEIR FEES**  
11 **AND COSTS ACCRUED SINCE INCEPTION OF SUIT**

12 Defendants should be awarded their attorney's fees and costs in defending this action from its  
13 inception because the case was brought by Plaintiffs without any reasonable factual basis and on  
14 grounds which are directly inapposite to Nevada law.

15 NRS 18.010(2)(b) provides as follows:

16 In addition to the cases where an allowance is authorized by specific statute, the court  
17 may make an allowance of attorney's fees to a prevailing party:

18 ...  
19 (b) Without regard to the recovery sought, when the court finds that the claim,  
20 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
21 **was brought or maintained without reasonable ground or to harass the prevailing**  
22 **party. The court shall liberally construe the provisions of this paragraph in favor**  
23 **of awarding attorney's fees in all appropriate situations.** It is the intent of the  
24 Legislature that the court award attorney's fees pursuant to this paragraph and impose  
25 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
26 situations to punish for and deter frivolous or vexatious claims and defenses because  
27 such claims and defenses overburden limited judicial resources, hinder the timely  
28 resolution of meritorious claims and increase the costs of engaging in business and  
providing professional services to the public. (Emphasis added)

26 Since the inception of this case Defendants have accrued \$82,021.50 in attorney's fees and  
27 \$6,939.85 in costs. EXHIBITS C, D, G and H. In this case, Plaintiffs brought suit against the  
28

1 Defendants based upon wholly frivolous grounds. With respect to the November 2017 leak, Plaintiffs'  
2 Second Amended Complaint clearly states that Plaintiffs requested and performed an inspection prior  
3 to close of escrow and that during that inspection they observed the November 2017 leak. *See*, Second  
4 Amended Complaint at paragraphs 24-26. The subsequent determination that the leak was caused by  
5 a manufacturing defect in the Uponor piping was never disclosed by Uponor or Rakeman Plumbing  
6 to Defendants prior to the sale to the Plaintiffs and the Plaintiffs had no evidence that it ever had been  
7 disclosed to Defendants when they initiated this suit. The February 2017 leak was fully repaired as  
8 indicated by documentation the Plaintiff actually attached to their Second Amended Complaint. *See*,  
9 Exhibit 8 to Second Amended Complaint.  
10

11 These facts, alleged within the Second Amended Complaint itself, firmly establish that  
12 Defendants had no liability under Nevada law because they show that 1) the February leak had been  
13 repaired, and 2) Plaintiffs were aware of the November leak prior to closing. These facts, alleged by  
14 Plaintiffs themselves, defeat their claims when applied to clearly established precedent in the form of  
15 the *Nelson* decision.  
16

17 Further, even if the Plaintiffs could establish a prima facie case, they could still not establish  
18 that they had suffered any recoverable damages. The repair to the piping was done under warranty at  
19 no expense to the Plaintiffs and concurrent with other work being done at the Property. Plaintiffs  
20 suffered no monetary damages nor even any significant inconvenience. Plaintiffs' claimed "Fraud  
21 Damages" of "[a]pproximately \$300,000.00" and "Bad Faith Damages" of "\$100,000.00" have no  
22 basis in reality since they did not have to pay for the re-piping of the property or for the remediation  
23 of the November 2017 leak.  
24

25 The plain language of NRS 18.010(2)(b) unequivocally establishes that attorney's fees awards  
26 are appropriate in cases like this one: "It is the intent of the Legislature that the court award attorney's  
27 fees pursuant to this paragraph . . . in all appropriate situations to punish for and deter frivolous or  
28

1 vexatious claims and defenses because such claims and defenses overburden limited judicial  
2 resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in  
3 business and providing professional services to the public.” *See also* NRS 7.085. The reasoning set  
4 forth in Defendants’ multiple motions to dismiss and adopted by this Court when granting Defendants’  
5 most recent motion establishes the folly of this case. This court has acknowledged the controlling  
6 nature of *Nelson v. Heer* with respect to the issues in this case. Any reasonable reading of *Nelson*  
7 must lead to the conclusion that the conduct of the Defendants alleged in this case are not actionable.  
8 Likewise, Plaintiffs made no real effort to distinguish this case from *Nelson* nor did they argue that  
9 *Nelson* should not otherwise apply. Instead, in pursuing this case Plaintiffs essentially ignored *Nelson*  
10 and the clear example it set for actionable conduct. “A claim is groundless if “the allegations in the  
11 complaint . . . are not supported by any credible evidence at trial.” [citation omitted] *Allianz Ins. Co.*  
12 *v. Gagnon*, 109 Nev. 990, 996 (Nev. 1993).

13  
14  
15 **PURSUANT TO NRS 18.020 DEFENDANTS ARE ENTITLED TO THEIR COSTS**  
16 **ACCRUED SINCE INCEPETION OF SUIT**

17 Pursuant to NRS 18.020, “(c)osts must be allowed of course to the prevailing party against  
18 any adverse party against whom judgment is rendered, in the following cases...(3) In an action for the  
19 recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” (Emphasis  
20 added). An award of costs under NRS 18.020 is “mandatory and not subject to the court’s discretion.”  
21 *Day v. West Coast Holdings Inc.*, 101 Nev. 260, 264, 699 P.2d 1067, 1070 (1985). Since the inception  
22 of this case Defendants have expended \$6,427.26 in recoverable costs. EXHIBIT I.

23 **CONCLUSION**

24 Pursuant to NRS 18.020, Defendants must be awarded their costs incurred in the amount of  
25 \$6,427.26. Pursuant to NRS 18.010(2)(b) Defendants should be awarded their attorney’s fees incurred  
26

27 ///

GALLIHER LEGAL P.C.  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

1 since the inception of this case in the amount of \$82,021.50. In the alternative, pursuant to NRCP 68  
2 Defendants should be awarded their attorney's fees accrued since December 11, 2019 in the amount  
3 of \$39,447.00.

4 DATED this 22nd day of April 2020.

6 GALLIHER LEGAL P.C.

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

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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 22nd day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **MOTION FOR ATTORNEYS FEES AND COSTS** postage prepaid and addressed to the following:

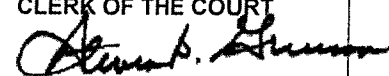
Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3rd Floor  
Las Vegas, Nevada 89135  
rgraf@blacklobello.law  
swilson@blacklobello.law

*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC

GALLIHER LEGAL P.C  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

# EXHIBIT A





**COMP**

Rusty Graf, Esq.  
Nevada Bar No. 6322  
Shannon M. Wilson, Esq.  
Nevada Bar No. 13988  
10777 West Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
Telephone: (702) 869-8801  
Facsimile: (702) 869-2669  
E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
E-mail: [swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
*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.

1           39.     The Defendants had previously employed Rakeman Plumbing to make repairs.

2           40.     The Defendants specifically chose not to inform the Plaintiffs of any water losses,  
3 including those that had been repaired.

4           41.     The Defendants knew of or should have known of the duty to inform a purchaser  
5 of real property of plumbing system defect and that failing to disclose known defects such as  
6 those that are alleged to have existed at the Subject Property, as the duties of the Seller are  
7 clearly stated on the SRPD form, on which the Seller/Defendant then signs, initials and thereby  
8 affirms the obligations of the Defendants on several sections on that SRPD form.

9                               **III.**

10                            **FIRST CAUSE OF ACTION**

11                            **(Fraud/Intentional Misrepresentation)**

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

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

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

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

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

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

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



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.

## PRAAYER

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



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

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

2       DATED this 3<sup>rd</sup> day of September 2019.

3                               **BLACK & LOBELLO**

4  
5  
6                               Rusty Graf, Esq.  
7                               Nevada Bar No. 6322  
8                               Shannon M. Wilson, Esq.  
9                               Nevada Bar No. 13988  
10                              10777 W. Twain Ave., Suite 300  
11                              Las Vegas, NV 89135  
12                              [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
13                              [swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
14                              Attorneys for Plaintiffs  
15  
16  
17  
18  
19  
20  
21  
22  
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24  
25  
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27  
28

**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'*

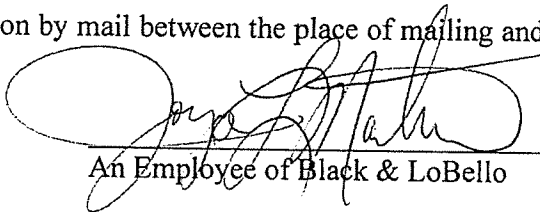
*Amend the Complaint* to be served as follows:

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

# EXHIBIT B

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)  
[Search](#) [Refine](#) [Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

### CASE NO. A-18-782494-C

Joseph Folino, Plaintiff(s) vs. Todd Swanson, Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: Other Tort  
 Date Filed: 10/09/2018  
 Location: Department 24  
 Cross-Reference Case Number: A782494

#### PARTY INFORMATION

Defendant Lyons Development, LLC

Lead Attorneys  
 Christopher M. Young  
*Retained*  
 702-240-2499(W)

Defendant Shiraz Trust

Christopher M. Young  
*Retained*  
 702-240-2499(W)

Defendant Swanson, Todd

Christopher M. Young  
*Retained*  
 702-240-2499(W)

Plaintiff Folino, Joseph

J. Rusty Graf  
*Retained*  
 702-869-8801(W)

Plaintiff Folino, Nicole

J. Rusty Graf  
*Retained*  
 702-869-8801(W)

#### EVENTS & ORDERS OF THE COURT

11/07/2019 Motion to Dismiss (9:00 AM) (Judicial Officer Crockett, Jim)  
 11/07/2019, 03/03/2020, 04/07/2020  
 Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint

##### Minutes

11/07/2019 9:00 AM

- Court stated its inclination as to the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint noting an affidavit was required seeking 56 (d) relief. Further, there were two questions of fact. Moreover, the Court was inclined to grant the motion for summary judgment and to deny to inappropriately filed counter motion for sanctions. Arguments by counsel. Colloquy regarding affidavits, discovery, and conducting depositions. Court GRANTED counsel ninety (90) days to demonstrate a genuine issue of material fact by February 6th; Defendant's Reply February 20th. COURT ORDERED, matter CONTINUED. Counsel to adhere to compliance with the rules. Additionally, the parties could conduct their 16.1 even in advance of their answers or bring the answers to the 16.1. Moreover, Defendants need to file supplemental affidavits as to the two technicians. CONTINUED TO: 02/27/20 9:00 AM

02/27/2020 9:00 AM

03/03/2020 9:00 AM

- COURT NOTED, there was a Motion to Dismiss heard back in November; at that time the Court stated its inclination to the

JA001899

Defendants Motion to Dismiss Plaintiffs second amended Complaint noting that an affidavit was required seeking 56(d) relief, further there were two questions of fact, the Court was inclined to GRANT the Motion for Summary Judgment and to DENY the inappropriate filed countermotion for sanctions. Court further stated there is no affidavit to contradict the affidavit of Mr. Holly, Plaintiff was to demonstrate a genuine dispute as a material issue of fact. Mr. Graf stated he did have a thumb drive dropped off with all of the documents attached. The documents that are attached are also referenced in the Supplemental Brief. Mr. Graf further stated included in those documents is the deposition transcript of Mr. Holly and deposition transcript of Mr. Gerber. Following further arguments of counsel. COURT ORDERED, MATTER CONTINUED 4-07-20 9:00 AM DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

04/07/2020 9:00 AM

- Mr. Graf argued mold and leaks and that Dr. Swanson had knowledge of the defects. Opposition by Mr. Galliher. Argument that the Defendant was no longer the owner at the time of the results. Court finds that Plaintiff was aware of the leaks and elected to close escrow. COURT ORDERED, motion GRANTED as a Summary Judgment. Matter SET for status check for filing of the order 5/5/20 9:00am.

Parties Present

Return to Register of Actions

# EXHIBIT C

**Christopher M. Young, PC**

2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

June 14, 2018

**Attention:** Todd Swanson

**File #:** 0300.003

**Inv #:** 1121

**RE:** Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Feb-12-18	Review/analyze correspondence from client regarding new litigation including litigation hold letter from Plaintiff's counsel for analysis.	0.40	110.00	CMY
	Draft/revise correspondence to client Swanson regarding instructions.	0.30	82.50	CMY
Mar-08-18	Draft/revise correspondence to client regarding requested documents, policy and meeting.	0.30	82.50	CMY
Mar-12-18	Review/analyze correspondence from Todd Swanson regarding meeting to discuss homeowner's claim regarding seller's misrepresentation.	0.10	27.50	CMY
	Review/analyze Seller's Disclosure Statement and Purchase/Sales Agreement.	0.30	82.50	CMY
Mar-16-18	Appear for/attend meeting with client Todd Swanson to discuss facts and circumstances and litigation strategy.	1.50	412.50	CMY
Mar-21-18	Review/analyze correspondence from client, review and analyze of Plaintiff's demand with attached Seller's disclosures, review and analyze client's homeowner's policy draft representation letter to Plaintiff's counsel.	1.20	330.00	CMY
Mar-22-18	Communicate (with client) extended Teleconference with attorney Mike Stoberski	0.50	137.50	CMY

JA001902

	regarding background facts, possible association, experts and mediator recommendations.			
Apr-05-18	Review/analyze Plaintiff's counsel's reply to our response with attached documentation regarding plumbing repairs.	0.40	110.00	CMY
	Draft/revise correspondence to client with attached plaintiff's counsel reply and attachments.	0.10	27.50	CMY
Apr-24-18	Communicate (with client) teleconference with client - case discussion.	0.10	27.50	CMY
Apr-25-18	Communicate (with client) extended teleconference with Plaintiff's lawyer regarding case status and potential early case mediation.	0.40	110.00	CMY
May-17-18	Teleconference with Dr. Swanson; case strategy.	0.30	82.50	CMY
Jun-05-18	Communicate (other outside counsel) with Plaintiff's counsel Rusty Graf regarding proposed early case mediation.	0.30	82.50	CMY
Jun-06-18	Review/analyze request for early litigation mediation.	0.10	27.50	CMY
	Draft/revise correspondence to client.	0.10	27.50	CMY
	Draft/revise correspondence to opposing counsel.	0.10	27.50	CMY
Jun-12-18	Communicate (with client) - Teleconference with client regarding pre-litigation mediation, mediator selection, dates and strategy	0.30	82.50	CMY
	Draft/revise correspondence to Plaintiff's counsel regarding client's approval pre-litigation mediation.	0.20	55.00	CMY
	Totals	7.00	\$1,925.00	

**DISBURSEMENTS**

Feb-12-18	Copying - 42 MH Farmer's Insurance Policy 9-22-15 8 @ .25	2.00
	Copying - 42 MH Farmer's Insurance Umbrella Liability 9-22-15 5 @ .25	1.25



Totals

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\$3.25**Total Fee & Disbursements**

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\$1,928.25**Balance Now Due**

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\$1,928.25

TAX ID Number 82-1847362

**Christopher M. Young, PC**  
2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

October 26, 2018

Attention: Todd Swanson

File #: 0300.003

Inv #: 1150

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-29-18	Review/analyze correspondence with voluminous attachments from client, and respond to client.	0.20	55.00	CMY
Jul-05-18	Appear for/attend meeting with client to discuss mediation strategy including review of all document.	0.50	137.50	CMY
	Appear for/attend meeting with client to discuss strategy and review of case documents.	1.50	375.00	JTH
Jul-06-18	Review/analyze letter from Realtor Ivan Sher regarding valuation of property after the plumbing was replaced, to accompany Mediation Brief on diminution of value issue.	0.20	50.00	JTH
Jul-09-18	Review/analyze e-mail from Folinos' counsel requesting August 17, 2018 JAMS mediation with Floyd Hale.	0.20	50.00	JTH
Jul-12-18	Review/analyze JAMS Notice 8/17/18 Mediation.	0.10	25.00	JTH
Jul-13-18	Review/analyze the Ridges' gate logs for updating time-line of Folino's visits to residence prior to closing.	0.30	75.00	JTH
Jul-16-18	Review/analyze correspondence and backup documents regarding Folino's presence at 42 Meadowhawk.	0.30	82.50	CMY

JA001905

Jul-17-18	Review/analyze and execute JAMS agreement, and forward to client.	0.20	55.00	CMY
Jul-20-18	Appear for/attend conference with JAMS representative regarding format and parameters for Confidential Mediation Brief.	0.20	50.00	JTH
Aug-01-18	Review/analyze detailed review of documents provided by Dr. Swanson/Nicky Whitfield.	3.10	775.00	JTH
	Draft/revise chronology for Mediation Brief.	5.50	1,375.00	JTH
Aug-02-18	Draft/revise affidavits for Dr. Swanson and Nicky Whitfield to accompany Confidential Mediation Brief.	1.40	350.00	JTH
	Communicate (with client) Communicate by telephone with Nicky Whitfield regarding chronology and additional documentation from Rakeman Plumbing to assist in confirming the Folinis' knowledge regarding November 7, 2017 water leak.	0.30	75.00	JTH
Aug-03-18	Review/analyze e-mail to and from Nicky Whitfield regarding revising affidavits.	0.30	75.00	JTH
Aug-04-18	Review/analyzc e-mail from Dr. Swanson regarding revising affidavits.	0.10	25.00	JTH
	Review/analyze affidavits following input from for Dr. Swanson and Nicky Whitfield and supplementing affidavits with additional information.	1.40	350.00	JTH
Aug-06-18	Review/analyze factual/chronology sections of Confidential Mediation Brief, and drafting argument section, including analysis of N.R.S. Chapter 113 and related cases, including Nelson v Heer.	6.80	1,700.00	JTH
	Analysis of Nelson v. Heer case and progeny and drafting argument that repair of defect/condition negates duty to disclose.	3.80	950.00	JTH
Aug-10-18	Revising affidavits following input from for Dr. Swanson and Nicky Whitfield and supplementing affidavits with additional information.	0.60	150.00	JTH
Aug-13-18	Revising and finalizing Confidential Mediation Brief.	4.10	1,025.00	JTH

	Coordinating with staff to prepare Confidential Mediation Brief for service.	0.30	75.00	JTH
Aug-15-18	Communicate (with client) Communicate with client Swanson regarding mediation preparation.	0.30	82.50	CMY
Aug-17-18	Plan and prepare for and meet with client to review for Mediation hearing.	0.50	137.50	CMY
	Appear for/attend Mediation hearing with client. no travel	2.50	687.50	CMY
	Plan and prepare for and attend Mediation.	7.00	1,750.00	JTH
Aug-19-18	E-mail from Dr. Swanson Folinos' request for mold inspection prior to closing, showing knowledge of potential condition affecting closing date.	0.10	25.00	JTH
Aug-20-18	E-mail from Dr. Swanson regarding application of Nevada Supreme Court's ruling in Nelson v. Heer.	0.10	25.00	JTH
Aug-21-18	E-mail from Dr. Swanson and post-mediation conference to discuss importance of Nelson ruling and strategy for limited discover and moving for summary judgment.	0.20	50.00	JTH
Aug-28-18	Review/analyze correspondence from Arbitrator.	0.10	27.50	CMY
Sep-04-18	Communicate (with client) Communicate - teleconference with client Dr. Swanson regarding post mediation letter and future litigation strategy.	0.40	110.00	CMY
Sep-18-18	Communicate (other outside counsel) Communicate with mediator Floyd Hale regarding settlement negotiations.	0.30	82.50	CMY
Oct-05-18	Communicate (with client) Communicate - teleconference with Plaintiff's counsel Rusty Graf regarding settlement negotiations, filing suit.	0.30	82.50	CMY
	Totals	43.20	\$10,940.00	

**DISBURSEMENTS**

Aug-01-18	0300.003 Mediator's Final Bill	164.75
Aug-14-18	Copying - Confidential Mediation Brief. 98 @ .25	24.50
Sep-27-18	Copying - Amended Notice of Early Arbitration Conference. 3 @ .25	0.75

Totals	<hr/>	\$190.00
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<b>Total Fee &amp; Disbursements</b>	<hr/>	<b>\$11,130.00</b>
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Previous Balance		1,928.25
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Previous Payments		1,928.25
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<b>Balance Now Due</b>	<hr/>	<b>\$11,130.00</b>
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TAX ID Number 82-1847362

**PAYMENT DETAILS**

Jul-02-18	Final Payment for Inv1121 - Chk#22	1,928.25
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<b>Total Payments</b>	<hr/>	<b>\$1,928.25</b>
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**Christopher M. Young, PC**  
2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

April 8, 2019

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

File #: 0300.003

Inv #: 1195

Attention: Todd Swanson

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-06-18	Teleconference with Mediator Floyd Hale regarding settlement.	0.20	55.00	CMY
Dec-20-18	Review/analyze Notice from Plaintiff's counsel regarding service of process on Lyons, including correspondence.	0.30	82.50	CMY
	Communicate - teleconference with Plaintiff's counsel regarding Answer and request to accept service on client Swanson.	0.30	82.50	CMY
Jan-04-19	Review/analyze correspondence from Plaintiff's counsel regarding request to Accept Service with Affidavit of Service on Lyons Development.	0.20	55.00	CMY
	Communicate - teleconference with client regarding acceptance of services and status of case, future activity.	0.30	82.50	CMY
Jan-07-19	Communicate - Teleconference with client regarding current status, intent to Answer lawsuit, and acceptance of service.	0.40	110.00	CMY
Jan-10-19	Review and execute Acceptance of Affidavit of Service.	0.20	55.00	CMY
Jan-23-19	Review Plaintiffs' Complaint for pleading deficiencies and preparing preliminary outline	1.80	495.00	CMY

JA001909

	for drafting Motion to Dismiss or for a More Definite Statement under N.R.C.P. 12(b)(5).			
	Research and drafting argument supporting Motion to Dismiss regarding failure to plead fraud with specificity pursuant to N.R.C.P. 9(b) and related cases.	4.10	1,025.00	JTH
	Review/analyze Plaintiff's Complaint for pleading deficiencies and preparing preliminary outline for drafting Motion to Dismiss or for a More Definite Statement Under N.R.C.P. 12(b)(5).	1.80	450.00	JTH
	Research and drafting argument supporting Motion to Dismiss regarding failure to plead fraud with specificity pursuant to N.R.C.P. 9(b) and related cases.	4.10	1,025.00	JTH
Jan-24-19	Research regarding standards and elements for pleading claim under the Nevada Deceptive Trade Practices Act.	1.50	375.00	JTH
	Research regarding elements to plead cause of action for Civil RICO.	2.30	575.00	JTH
	Drafting argument regarding pleading deficiencies in Plaintiffs' Deceptive Trade Practice Act and Civil RICO claims.	3.40	850.00	JTH
	Research regarding standards and elements for pleading claim under the Nevada Deceptive Trade Practices Act.	1.50	375.00	JTH
	Research regarding elements to plead cause of action for Civil RICO.	2.30	575.00	JTH
	Draft/revise argument regarding pleading deficiencies in Plaintiffs' DTPA and Civil RICO claims.	3.40	850.00	JTH
Jan-25-19	Research and drafting argument that Todd Swanson, individually, is not a proper defendant because transaction was between the Folinos and Lyons Development, LLC.	1.70	425.00	JTH
	Drafting argument that Plaintiffs' punitive damages prayer is not supported by the pleadings.	1.60	400.00	JTH
	Review, revise and finalize brief for filing.	1.50	375.00	JTH

	Research and drafting argument that Todd Swanson, individually, is not a proper defendant transaction was between the Folinos and Lyons Development, LLC.	1.70	425.00	JTH
	Draft/revise argument that Plaintiff's punitive damages prayer is not supported by the pleadings.	1.60	400.00	JTH
	Review/analyze and finalize brief for filing.	1.50	375.00	JTH
Feb-25-19	Review/analyze correspondence from client, draft reply to client regarding hearing strategy.	0.30	82.50	CMY
Mar-18-19	Communicate - teleconference with client Dr. Swanson regarding Motion to Dismiss, continuance and strategy.	0.40	110.00	CMY
Mar-25-19	Communicate with Court regarding continue of Motion to Dismiss; draft Notice of Rehearing.	0.30	82.50	CMY
Apr-01-19	Review/analyze Plaintiff's Proposed Amended Complaint.	0.50	137.50	CMY
	Review/analyze Plaintiff's Opposition to Motion to Dismiss and Counter-Motion to Amend Pleadings. Prepare outline for drafting Reply.	1.60	400.00	JTH
	Draft/revise Reply regarding fraud and punitive damages.	5.10	1,275.00	JTH
Apr-02-19	Review/analyze Plaintiff's Request for Exemption.	0.20	50.00	JTH
	Research regarding Nevada standards for asserting alter ego and piercing the corporate veil.	1.50	375.00	JTH
	Draft/revise argument regarding alter ego and finalizing Reply for filing and delivery to Judge Crockett.	2.10	525.00	JTH
	Totals	49.70	\$12,555.00	

**DISBURSEMENTS**

Feb-07-19	Copying - Request for Exemption from Arbitration. 6 @ .25	1.50
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Totals

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\$1.50**Total Fee & Disbursements**

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**\$12,556.50**

Previous Balance

11,130.00

Previous Payments

11,130.00

**Balance Now Due**

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**\$12,556.50**

TAX ID Number 82-1847362

**PAYMENT DETAILS**

Nov-08-18 Payment for Inv#1150 - 0300.003

11,130.00

**Total Payments**

---

**\$11,130.00**

**Christopher M. Young, PC**  
2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

September 13, 2019

**Attention:** Todd Swanson

File #: 0300.003

Inv #: 1230

**RE:** Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-08-19	Communicate - Teleconference with client regarding attendance at Motion to Dismiss hearing.	0.10	27.50	CMY
Apr-09-19	Plan and prepare for and attend Defendant Swanson's motion to Dismiss, Countermotion to Amend Complaint at Regional Justice Center.	3.00	825.00	CMY
Apr-10-19	Review/analyze Proposed Order regarding Motion to Dismiss and Countermotion.	0.10	27.50	CMY
	Communicate - teleconference with Plaintiff's counsel regarding revisions to Order.	0.10	27.50	CMY
Apr-18-19	Review/analyze Notice of Entry of Order on Motion to Dismiss.	0.20	55.00	CMY
May-15-19	Review/analyze Plaintiffs' filed First Amended Complaint for drafting Renewed Motion to Dismiss.	0.90	225.00	JTH
	Research regarding economic loss doctrine.	2.70	675.00	JTH
	Draft/revise argument regarding dismissal of second claim for negligent misrepresentation based on bar on tort claims for purely economic loss.	3.10	775.00	JTH

	Research regarding dismissal pursuant to N.R.S. Chapter 113.	1.90	475.00	JTH
	Draft/revise argument that Plaintiff's Fourth Claim for failure to disclose pursuant to N.R.S. Chapter 113.	2.90	725.00	JTH
May-20-19	Review/analyze and finalize Motion to Dismiss for filing.	0.70	175.00	JTH
May-21-19	Review/analyze Notice of Hearing for July 11, 2019 from Department 24.	0.10	25.00	JTH
May-23-19	Draft/revise correspondence to client regarding Motion to Dismiss, and review of Notice of Hearing.	0.30	82.50	CMY
Jun-24-19	Review/analyze Plaintiff's Opposition to Motion to Dismiss and framing argument for Reply.	1.90	475.00	JTH
	Review/analyze cases cited by Plaintiffs' regarding applicability of economic loss doctrine and drafting reply regarding same.	4.30	1,075.00	JTH
	Review/analyze Plaintiffs' argument that Defendants violated N.R.S. Chapter 113 disclosure requirements and analysis of cited cases.	2.10	525.00	JTH
	Draft/revise reply argument that N.R.S. Chapter 113 and related cases warrant dismissal of Plaintiffs' Fourth Claim.	3.30	825.00	JTH
Jul-03-19	Review/analyze and finalize reply for filing.	0.30	75.00	JTH
Jul-18-19	Plan and prepare for and attend motion to dismiss hearing at the Regional Justice Center, with travel.	4.00	1,100.00	CMY
Jul-29-19	Communicate - teleconference with Department 24, Clerk regarding status of Minute Order from July 18, 2019.	0.20	50.00	JTH
Jul-30-19	Draft/revise Order granting Defendant's Motion to Dismiss Plaintiff's Second, Third, Fifth, Sixth, and Seventh Causes of Action.	2.70	675.00	JTH
Aug-05-19	Communicate - Teleconference with Floyd Hale regarding settlement status.	0.20	55.00	CMY

	Review/analyze Order and Findings of Fact.	0.60	165.00	CMY
Aug-15-19	Draft/revise Notice of Entry of Order on Motion to Dismiss.	0.20	55.00	CMY
	Totals	35.90	<u>\$9,195.00</u>	

**DISBURSEMENTS**

Apr-10-19	Other - Parking	24.00	
Apr-18-19	Copying - First Amended Complaint. 75 @ .25	18.75	
Apr-24-19	Lewis St. Garage - Parking	21.00	
Apr-30-19	Payment for Inv# Inv# 37022860	63.56	
Jun-05-19	Copying - Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint. 13 @ .25	3.25	
Jul-01-19	Copying - CLS Documents 555 @ .15	83.25	
Jul-19-19	Other - Parking	18.00	
Jul-31-19	Swanson - Drop Motion Binder off for Hearing	35.03	
Sep-13-19	Lewis St Garage Las Vegas	18.00	
	Totals	<u>\$284.84</u>	
	<b>Total Fee &amp; Disbursements</b>		<u><b>\$9,479.84</b></u>
	Previous Balance		12,556.50
	Previous Payments		12,556.50
	<b>Balance Now Due</b>		<u><b>\$9,479.84</b></u>

TAX ID Number 82-1847362

**PAYMENT DETAILS**

Apr-19-19	Payment for Inv#1195 - 0030.003	12,556.50
	<b>Total Payments</b>	<u><b>\$12,556.50</b></u>

**Christopher M. Young, PC**  
2460 Professional Court, #200  
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson  
10120 W. Flamingo Rd  
#4333  
Las Vegas, NV  
89147

March 23, 2020

Attention: Todd Swanson

File #: 0300.003

Inv #: 1277

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Sep-20-19	Review/analyze Affidavit of Aaron Hawley, with Rakeman Plumbing, make edits, revisions and discuss with Jay Motion to Dismiss.	0.60	165.00	CMY
Sep-24-19	Review/analyze Motion to Dismiss, including final revisions, and edits by lead counsel, and finalize Motion for Filing.	1.50	412.50	CMY
Oct-02-19	Review/analyze Notice of Hearing.	0.10	27.50	CMY
Oct-04-19	Review/analyze Plaintiff's Opposition to Defendant's Motion to Dismiss with analysis and discussion with associates for response.	0.50	137.50	CMY
Nov-06-19	Plan and prepare for summary judgment hearing including review of all briefs and prepare outline of oral argument.	1.50	412.50	CMY
Nov-07-19	Appear for/attend Oral hearing on Defendant Swanson's Motion to Dismiss Summary Judgment at the Regional Justice Center.	2.00	550.00	CMY
Nov-08-19	Communicate - teleconference with client regarding Motion for Summary Judgment Hearing, case status and future litigation activity.	0.30	82.50	CMY
Nov-26-19	Review/analyze Plaintiff's N.R.C.P. 16.1 List of Witnesses and Production of Documents.	0.20	55.00	CMY

JA001916

Dec-10-19	Communicate - extended teleconference with client regarding case status, strategy and Offer of Judgment.	0.30	82.50	CMY
Dec-11-19	Communicate - teleconference with associate regarding Discovery responses.	0.20	55.00	CMY
Dec-23-19	Review/analyze of Request for Production and Interrogatory answers to client before serving.	0.60	165.00	CMY
	Communicate - teleconference with Jeff Galliher regarding discovery responses.	0.10	27.50	CMY
Mar-03-20	Attend defendant Swanson's motion to dismiss hearing at Regional Justice Center	1.50	412.50	CMY
	Telephone call with Client regarding outcome of hearing	0.30	82.50	CMY
	Totals	9.70	<u>\$2,667.50</u>	

**DISBURSEMENTS**

Aug-31-19	Runner Services - 7-23-19 - Pick Up Minute Order	29.10
	Runner Services - 8-6-19 - Submit Order to Chambers	36.44
Sep-15-19	Filing Fee	3.50
	Filing Fee	3.50
Oct-15-19	NVEfile	3.50
Nov-07-19	Final Invoice for Mediation Services - 0300.003	49.50
Nov-20-19	Copying - Plaintiff's Initial List of Witnesses. 63 @ .25	15.75
Nov-22-19	Copying - Plaintiff's First Set of Interrogatories to Todd Swanson - Trustee 9 @ .25	0.90
	Copying - Plaintiff's First Set of Request for Admissions to Todd Swanson - Trustee 9 @ .25	2.25
	Copying - Plaintiff's First Set of Request for Production of Documents to Todd Swanson - Trustee 10 @ .25	2.50
	Copying - Plaintiff's First set of Request for Admission - Todd Swanson and Lyon Development. 20 @ .25	5.00
	Copying - Plaintiff's First Set of Request for Production of Documents - Todd Swanson and Lyon Development. 20 @ .25	5.00
Nov-30-19	Runner Service for November 2019	35.03

	Courier Expense	35.03
Dec-09-19	Parking @ court house	9.00
Dec-16-19	Lewis Street Garage Las Vegas, Nevada	15.00
Mar-03-20	Parking	9.00

Totals	\$260.00
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<b>Total Fee &amp; Disbursements</b>	<b>\$2,927.50</b>
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Previous Balance	9,479.84
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Previous Payments	9,479.84
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<b>Balance Now Due</b>	<b>\$2,927.50</b>
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TAX ID Number 82-1847362

#### PAYMENT DETAILS

Oct-07-19	Payment for Inv#1230 - 0030.003 - CK#26	9,479.84
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<b>Total Payments</b>	<b>\$9,479.84</b>
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# EXHIBIT D



# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Todd Swanson, M.D.

*Via Electronic Mail*

Through 02/05/20

**Re: Swanson, et al. adv. Folino**

9/6/19	JTH	Emails (2x) to and from Nicky Whitfield regarding Rakeman Plumbing interactions prior to closing	0.3	81.00
9/17/19	JTH	Emails (3x) to and from Todd Swanson regarding Aaron Hawley (Rakeman Plumbing) affidavit to accompany Motion to Dismiss/Motion for Summary Judgment regarding Folino's Second Amended Complaint	0.4	108.00
9/19/19	JTH	Meeting with Aaron Hawley and Rocky Gerber (Rakeman Plumbing) regarding February service and repair of water leak and May 23, 2017 invoice, for drafting affidavit to accompany Motion to Dismiss/Motion for Summary Judgment regarding Folino's Second Amended Complaint	1.4	378.00
9/20/19	JTH	Further communication with Aaron Hawley, drafting and revising affidavit to accompany MTD/MSJ Folino's Second Amended Complaint	1.1	297.00
9/26/19	JTH	Draft and revise MTD/MSJ Folino's Second Amended Complaint regarding Folino's claims for fraud and violation of NRS Chapter 113	6.3	1701.00
10/28/19	JTH	Review Folino's Opposition. Outline issues for Reply	1.8	486.00
10/29/19	JTH	Research NRCP 11 and NRS 18.010 regarding Folino's Motion for Sanctions	1.5	405.00

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104  
Tel: 702-735-0049 Fax: 702-735-0204

JA001920

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

10/29/19	JTH	Draft Reply in support of MTD/MSJ and Opposition to Motion for Sanctions	3.7	999.00
10/30/19	JTH	Final revisions to Reply and Opposition for filing and hand-delivery to Judge Crockett	0.9	243.00
11/7/19	JTH	Preparation for and attend hearing on our Motion to Dismiss Plaintiffs' Second Amended Complaint	2.2	594.00
11/26/19	JLG	Meeting with CMY re: facts of case, current status and future handling;	1.0	270.00
11/27/19	JLG	Prepare for and attend Early Case Conference with opposing counsel	1.0	270.00
12/3/19	JLG	TCW Jay Hopkins re: status of case and future handling;	0.3	81.00
12/9/19	JTH	Telephone call to Dr. Swanson regarding Plaintiffs' discovery requests	0.2	54.00
12/19/19	JLG	Multiple communications with OC re: consolidation of depositions of TS, Shiraz Trust and Lyons development. E-mail to client re: same.	0.5	135.00
12/20/19	JLG	Draft and finalize Defendants initial list of witnesses and documents pursuant to NRCP 16.1	5.5	1485.00
12/23/19	JLG	Finalize responses to Interrogatories and Requests for Admissions served on all 3 defendants. Serve same upon Plaintiff's counsel	6.0	1620.00
1/6/20	JTH	Pre-deposition meeting with Dr. Swanson and JLG	2.5	675.00
1/6/20	JLG	Prep client for deposition	2.5	675.00
1/7/20	JLG	Multiple e-mail communications with OC re: rescheduling of witness depositions	0.5	135.00
1/14/20	JLG	Receipt and review of multiple declarations of service of various notices of deposition.	0.4	N/C
1/14/20	JLG	Receipt of documents and telephone conversation with Dr. Swanson re: SDT served upon Nicky Whitfield	0.4	108.00

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JA001921

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

1/14/20	JLG	Receipt and review of correspondence form Darren Welsh, counsel for Sher and Contenta re: deposition scheduling	0.3	N/C
1/14/20	JLG	Receipt and review of Plaintiffs 2 <sup>nd</sup> supplement to NRCP 16.1 production (Berkshire Hathaway docs)	2.0	540.00
1/15/20	JLG	Receipt and review of Plaintiffs 3 <sup>rd</sup> supplement to NRCP 16.1 production (The Ridges Community Association docs)	1.8	486.00
1/21/20	JLG	Receipt and review of Plaintiffs 4 <sup>th</sup> supplement to NRCP 16.1 production	1.5	405.00
1/23/20	JLG	Prepare and serve Defendant's First Supplement to NRCP 16.1 disclosure	1.2	324.00
1/24/20	JLG	Defend deposition of Todd Swanson	8.0	2160.00
1/27/20	JLG	Receipt and review of Plaintiffs 5 <sup>th</sup> supplement to NRCP 16.1 production (Uponor docs)	2.0	540.00
1/27/20	JLG	Receipt and review of additional documents from client re: Blue Heron. Prepare and file Defendants' Second Supplement to NRCP 16.1 disclosure	3.5	945.00
1/28/20	JLG	Telephone conference with OC and counsel for Berkshire Hathaway re: depositions of Ivan Sher and Kelly Contenta	0.4	108.00
1/28/20	JLG	Receipt and review of notices of deposition for Ivan Sher and Kelly Contenta	0.2	54.00
1/29/20	JLG	Prepare for and defend deposition of Nicky Whitfield	4.0	1080.00
1/31/20	JLG	Prepare for and attend deposition of William "Rocky" Gerber	2.0	540.00
1/31/20	JLG	Prepare for and attend deposition of Aaron Hawley	3.0	810.00
TOTAL			70.3	18792.00

Total: 18792.00

Retainer on deposit: 0.00

**Total due this bill: 18792.00**

Please make checks payable to "GALLIHER LEGAL PC" Tax ID # 82-2688661

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Tel: 702-735-0049 Fax: 702-735-0204

JA001922

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Todd Swanson, M.D.

*Via Electronic Mail*

Through 03/10/20

**Re: Swanson, et al. adv. Folino**

2/4/20	JLG	Receipt and review of request for extension from OC. Forward same to client and co-counsel.	.04	N/C
2/6/20	JLG	Prepare for and defend continued deposition of Dr. Swanson. TCW client re: same.	3.5	945.00
2/7/20	JLG	Receipt and review of stipulation regarding extension of time for supplemental briefs and hearing. Execute same for filing with the court.	0.3	81.00
2/14/20	JLG	Receipt and review of Plaintiff's Supplemental Brief and list of exhibits.	2.1	567.00
2/14/20	JLG	Review of deposition transcripts of A. Hawley and W. Gerber, for relevance to Plaintiff's Supplemental Brief and Defendant's Reply;	1.9	513.00
2/17/20	JLG	Review of deposition transcripts of K. Contenta, N. Whitfield and T. Swanson for relevance to Plaintiff's Supplemental Brief and Defendant's Reply;	1.5	405.00
2/14/20	JTH	Detailed analysis of Plaintiffs' Supplemental Brief and prepare outline of potential arguments in response	3.1	837.00
2/18/20	JTH	Begin detailed review of Plaintiffs' Supplemental List of Witnesses and Production of Documents (5429 pp) for preparing Defendants' Supplemental Reply	2.7	729.00
2/18/20	JTH	Strategy meeting with JLG regarding structure of Supplemental Reply in light of Plaintiffs' arguments and mis-stated recitation of facts	3.0	810.00
2/20/20	JLG	Meeting with JTH regarding contents of Plaintiff's Supplemental Brief and strategy for our Reply.	3.0	810.00

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JA001923

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

2/20/20	JTH	Continued analysis of Plaintiffs' Supplemental Production and all discovery, including depositions of Dr. Swanson, Aaron Hawley, Rocky Gerber, Nicky Whitfield and Ivan Sher, for deposition excerpts to support Defendants' Supplemental Reply	2.0	540.00
2/24/20	JTH	Continued drafting and revising Defendants' Supplemental Brief	4.9	1323.00
2/25/20	JTH	Continued drafting and revising Defendants' Supplemental Brief	5.5	1485.00
2/28/20	JLG	Receipt and review of text message printout from N. Whitfield.	0.9	243.00
2/27/20	JLG	Draft and finalize supplemental brief to final form with JTH; File and serve brief and deliver courtesy copy to Dept. 24;	7.0	1890.00
2/27/20	JTH	Final strategy meeting w/ JLG regarding Supplemental reply	5.0	1350.00
2/28/20	JLG	Receipt and review of text message printout from N. Whitfield.	0.9	243.00
3/3/20	JTH	Preparation with JLG and attend Hearing on Motion for Summary Judgment	1.5	405.00
3/3/20	JLG	Prepare for and attend hearing on Defendants' Motion to Dismiss. Meeting with JTH re: same.	1.5	405.00
3/10/20	JLG	Receipt and review of acceptance of service of amended deposition subpoena for Ashley Oakes-Lazosky. Draft correspondence to R. Graf re: same.	0.8	216.00
<b>TOTAL</b>		<b>FEES</b>	<b>51.5</b>	<b>13797.00</b>
1/24/20		Deposition transcript – Todd Swanson Vol I		1,404.30
1/29/20		Deposition Transcript – Nicole Whitfield		908.10
1/31/20		Deposition Transcript – Aaron Hawley		586.85
1/31/20		Deposition Transcript – William Gerber		641.49
2/6/20		Deposition Transcript - Todd Swanson Vol II		587.02
2/27/20		Copies – Courtesy binder for court	.15	37.50
<b>TOTAL</b>		<b>COSTS</b>		<b>4165.26</b>

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JA001924

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Total Fees:	13797.00
Total Costs:	4165.26
Retainer on Deposit:	0.00
Balance Forward:	0.00
<b>Total due this bill:</b>	<b>17962.26</b>

Please make checks payable to "GALLIHER LEGAL PC" Tax ID # 82-2688661

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104  
Tel: 702-735-0049 Fax: 702-735-0204

JA001925

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

Todd Swanson, M.D.

*Via Electronic Mail*

Through 04/15/20

**Re: Swanson, et al. adv. Folino**

2/20/20	JTH	Begin drafting Defendants' Supplemental Reply	5.3	1431.00
2/26/20	JTH	Finalize drafting and revising Defendants' Supplemental Reply	4.7	1269.00
4/6/20	JLG	Review of file materials in preparation for scheduled hearing.	0.8	216.00
4/7/20	JLG	Prepare for and attend continued hearing on Defendant's motion for summary judgment; TCW client re: same.	3.0	810.00
4/7/20	JTH	Attend hearing on Defendants' Motion for Summary Judgment	2.5	675.00
4/9/20	JTH	Drafting Findings of Fact and Conclusions of Law as directed by Judge Crockett	6.5	1755.00
4/10/20	JLG	Begin draft of motion for attorney's fees and costs.	3.0	810.00
4/10/20	JTH	Revising Findings of Fact and Conclusions of Law. Supplemental research regarding fraud claims being derivative of concealment claims under NRS Chapter 113	5.3	1431.00
4/14/20	JLG	Legal research re: availability of fees from inception of suit for inclusion in motion for fees and costs.	1.1	297.00
4/14/20	JLG	Continue drafting of motion for attorney's fees and costs including review of record and filed papers.	3.6	972.00

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JA001926

# GALLIHER LEGAL PC

A Professional Corporation Of Counsel to  
The Galliher Law Firm

4/15/20	JTH	Finalizing Findings of Fact and Conclusions of Law	3.4	918.00
4/15/20	JLG	Make edits to motion for attorney's fees and costs; Forward same to JTH for review and comment.	2.5	675.00
4/17/20	JLG	Revise and edit Order Dismissing Suit and forward same to Plaintiffs' counsel for review.	1.2	324.00
4/17/20	JLG	Assemble declaration and exhibits and revise and edit motion for attorney's fees and costs to final form and file and serve same.	2.1	567.00
<b>TOTAL</b>		<b>FEES</b>	<b>45.0</b>	<b>12150.00</b>

Total Fees: 12150.00

Retainer on Deposit: 0.00

Balance Forward: 0.00

**Total due this bill: 12150.00**

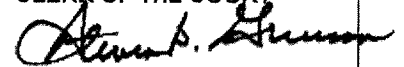
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Tel: 702-735-0049 Fax: 702-735-0204

JA001927



# EXHIBIT E



1 **NOAC**  
2 GALLIHER LEGAL P.C.  
3 Jeffrey L. Galliher, Esq.  
4 Nevada Bar No. 8078  
5 1850 East Sahara Avenue, Suite 107  
6 Las Vegas, Nevada 89104  
7 Telephone: (702) 735-0049  
8 Facsimile: (702) 735-0204  
9 jgalliher@galliherlawfirm.com  
10 Attorneys for Defendants

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JOSEPH FOLINO, an individual, and ) CASE NO.: A-18-782494-C  
14 NICOLE FOLINO, an individual; ) DEPT. NO.: XXIV  
15 )  
16 )

17 Plaintiffs, )  
18 )

19 v. )  
20 )

21 TODD SWANSON, an individual; )  
22 TODD SWANSON, Trustee of the )  
23 SHIRAZ TRUST, a Trust of unknown )  
24 origin; LYONS DEVELOPMENT, )  
25 LLC, a Nevada limited liability )  
26 company; DOES I-X and ROES I-X, )  
27 )

28 Defendants. )  
29 )

30 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

31 PLEASE TAKE NOTICE that JEFFREY L. GALLIHER, ESQ. of GALLIHER LEGAL P.C.  
32 has associated with CHRISTOPHER M. YOUNG and JAY T. HOPKINS, ESQ. of CHRISTOPHER  
33 M. YOUNG, PC, as counsel for defendants herein.

34 ///

35 ///

36 ///

37 ///

1 It is respectfully requested that a copy of all future documents in this action be served upon each of  
2 the undersigned counsel.

3 DATED this 26th day of November 2019.  
4

5 CHRISTOPHER M. YOUNG, PC

GALLIHER LEGAL, P.C.

6  
7 /s/ Christopher M. Young

8 Christopher M. Young, Esq.

9 Nevada Bar Number 7961

10 Jay T. Hopkins, Esq.

11 Nevada Bar Number 3223

12 2640 Professional Court, #200

13 Las Vegas, Nevada 89128

14 Attorney for Defendants  
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/s/ Jeffrey L. Galliher

Jeffrey L. Galliher, Esq.

Nevada Bar Number 8078

1850 E. Sahara Avenue, Ste. 107

Las Vegas, Nevada 89104

Attorney for Defendants

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of CHRISTOPHER M. YOUNG PC, and that service of a true and correct copy of the above and foregoing **NOTICE OF ASSOCIATION OF COUNSEL** was served on the 26th day of November 2019, to the following addressed parties by:

\_\_\_\_\_ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

\_\_\_\_\_ Facsimile, pursuant to EDCR 7.26 (as amended)

\_\_\_\_\_ Electronic Mail/Electronic Transmission

\_\_\_\_\_ Hand Delivered to the addressee(s) indicated

\_\_\_\_\_ Receipt of Copy on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, acknowledged by,

\_\_\_\_\_

Rusty Graf, Esq.  
Black & Lobello  
10777 W. Twain Ave., 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
*Attorneys for Plaintiffs*

/s/Myra Hyde

An employee of CHRISTOPHER M. YOUNG PC

GALLIHER LEGAL P.C.  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

# EXHIBIT F

1 CHRISTOPHER M. YOUNG, ESQ.  
Nevada Bar No. 7961  
2 JAY T. HOPKINS, ESQ.  
Nevada Bar No. 3223  
3 CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
4 Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
5 Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
6 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

7 Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
8 GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
9 Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
10 Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

11 Attorneys for Defendants  
12

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

16 Plaintiff(s),  
17

18 v.

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

22 Defendant(s).  
23

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

**OFFER OF JUDGMENT**

24 TO: JOSEPH FOLINO and NICOLE FOLINO, Plaintiffs

25 TO: RUSTY J. GRAF, ESQ., Attorney for Plaintiffs  
26

27 PLEASE TAKE NOTICE that pursuant to the provisions of NRCP 68 and Chapter 17  
28 of the Nevada Revised Statutes, Defendants, TODD SWANSON, individually, TODD

1 SWANSON as Trustee of the SHIRAZ TRUST, the SHIRAZ TRUST, and LYON  
2 DEVELOPMENT, LLC, by and through their attorneys of record, CHRISTOPHER M.  
3 YOUNG, ESQ., JAY T. HOPKINS, ESQ. and JEFFREY L. GALLIHER, ESQ., hereby offers  
4 to have judgment taken against them in the total sum of ONE HUNDRED FIFTY  
5 THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00). This offer is inclusive of costs,  
6 fees and interest.  
7

8 DATED this 11th day of December, 2019.  
9

10  
11 */s/ Jeffrey L. Galliher*

12 CHRISTOPHER M. YOUNG, ESQ.  
13 Nevada Bar No. 7961  
14 JAY T. HOPKINS, ESQ.  
15 Nevada Bar No. 3223  
16 CHRISTOPHER M. YOUNG, PC  
17 2460 Professional Court, #200  
18 Las Vegas, Nevada 89128  
19 Tel: (702) 240-2499  
20 Fax: (702) 240-2489  
21 [cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
22 [jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

18 Jeffrey L. Galliher, Esq.  
19 Nevada Bar No. 8078  
20 GALLIHER LEGAL P.C.  
21 1850 East Sahara Avenue, Suite 107  
22 Las Vegas, Nevada 89104  
23 Telephone: (702) 735-0049  
24 Facsimile: (702) 735-0204  
25 [jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

26 *Attorneys for Defendants*  
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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 11th day of December, 2019, I caused the foregoing OFFER OF JUDGMENT to be electronically filed and e-served on counsel as follows:

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

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

H:\Open Case Files\0300.003\PLEADING\16.1



# EXHIBIT G

## **DECLARATION OF JEFFREY L. GALLIHER**

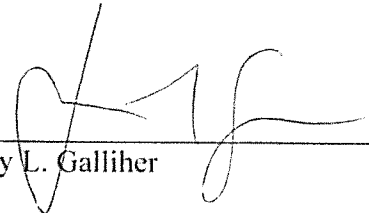
I, Jeffrey L. Galliher, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am the principal of Galliher Legal P.C., Of Counsel to the Galliher Law Firm and counsel for all Defendants herein.
2. This Declaration is made in support of Defendants' Motion for Attorney's Fees and Costs. I have personal knowledge of the attorney fees incurred by my firm in defense of Defendants in this case. The amount of attorney's fees incurred by Defendants is \$44,739.00. This amount is true and correct to the best of my knowledge and belief. These attorney's fees have been necessarily and actually incurred and paid in this action. True and correct copies of the billings are attached hereto as Exhibit A.
3. My educational and professional background is as follows: I am a solo practitioner Of Counsel to The Galliher Law Firm. I was previously a partner in the law firms of Cobeaga Tomlinson, LLP, Ham Galliher, LLP and Buckley King, LLP. I graduated from the Sandra Day O'Connor College of Law at Arizona State University. I have been admitted in Nevada since 2003 and was admitted in Indiana from 2010-2013. I have served as an Alternate Municipal Court Judge for the City of Las Vegas and as a court-appointed Arbitrator for the Eighth Judicial District Court since 2015. I have tried approximately 30 cases to verdict, including two with this very court. I am rated AV/Preeminent in Litigation by Martindale-Hubbell.
4. I was retained to represent defendants as lead counsel in December of 2020. Since that time I have performed legal work relevant to this case, including, but not limited to responding to all of Plaintiff's propounded written discovery, making Defendants'

initial disclosures pursuant to NRCP 16.1 and all supplements thereto, preparing for and defending or otherwise participating in the depositions of Dr. Swanson (twice), his assistant (Nikki Whitfield), two employees of Rakeman Plumbing (Aaron Hawley and William Gerber) and two of the selling agent's team (Ivan Sher and Kelly Contenta), preparation of Defendants' response to Plaintiffs' supplemental brief and preparing for and appearing at two motion hearings.

5. In addition, I have contracted for the services of attorney Jay T. Hopkins, Esq. to assist in the defense of this case. Mr. Hopkins' time is billed though my firm or through CHRISTOPHER M. YOUNG P.C., as appropriate to the timing and circumstances
6. Attached to the motion for fees and costs are copies of my firm's invoices, including time entries, incurred in the defense of this case.
7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 17 day of April 2020.

  
\_\_\_\_\_  
Jeffrey L. Galliher

# EXHIBIT H

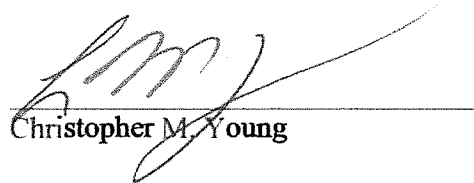
## **DECLARATION OF CHRISTOPHER M. YOUNG**

I, Christopher M. Young, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am the principal of Christopher M. Young P.C., and counsel for all Defendants herein.
2. This Declaration is made in support of Defendants' Motion for Attorney's Fees and Costs. I have personal knowledge of the attorney fees incurred by my firm in defense of Defendants in this case. The amount of attorney's fees paid to my firm and incurred by Defendants is \$37,282.50. Costs incurred are \$739.59 (disbursements on invoices) plus \$2,035.00 (pre-litigation mediation). This amount is true and correct to the best of my knowledge and belief. These attorney's fees have been necessarily and actually incurred and paid in this action. True and correct copies of the billings are attached hereto as Exhibit A (Invoice #s 1121, 1150, 1195, 1230,1277) between February 2018 to present) .
3. My educational and professional background is as follows: I am a solo practitioner for Christopher M. Young, PC. I began my Nevada career with Beckley, Singleton Jemison, Cobeaga & List. Thereafter I was a partner in the law firms of Cobeaga Tomlinson and The Cobeaga Firm from 2003-2017. I graduated from Stanford University A.B., The University of Houston Law Center J.D, and Temple University Beasley School of Law L.L.M. I have been admitted in Texas since 1994 and Nevada since 2001. I have served as an as a court-appointed Arbitrator and Short Trial Judge since 2005 for the Eighth Judicial District Court.
4. I was retained to represent defendants in January of 2018.

5. Since that time, I have performed legal work relevant to this case, including, but not limited to a pre-litigation mediation with Floyd Hale, and the filing of three motions to dismiss.
6. Attached to the motion for fees and costs are copies of my invoices, including time entries, incurred in the defense of this case.
7. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 14<sup>th</sup> day of April 2020.

  
Christopher M. Young

# EXHIBIT I

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)  
Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Defendants

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

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

Plaintiff(s),

v.

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

Defendant(s).

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

**DEFENDANTS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS**

Pursuant to NRS 18.020, NRS 18.005, NRS 18.110 and NRCP 68 Defendants, TODD  
SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST,  
a Trust of unknown origin; LYON DEVELOPMENT, LLC, (hereinafter referred to as



1 “Defendants”) by and through their counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY  
2 T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L.  
3 GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., hereby moves this court to  
4 recover costs of suit. These costs were actually incurred and are reasonable in amount.  
5

6 Defendants are entitled to recover statutory interest on the above costs from the date the costs  
7 were incurred through the date of entry of judgment pursuant to NRS 17.130 and Gibellini v. Klindt,  
8 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of the calculation of prejudgment interest, the  
9 actual date or latest date each reasonable cost was incurred is set forth. Further, Defendants are  
10 entitled to post-judgment statutory interest from the date of entry of judgment.

11 COST	DATE	TOTAL
12 1. Mediation deposit	7/16/18	\$2,035.00
13 2. Runner	7/23/19	29.10
14 3. Runner	8/6/19	36.44
15 4. Filing fees	9/15/19	7.00
16 5. NVEFile	10/15/19	3.50
17 6. Mediation final bill	11/7/19	49.50
18 7. Copies	11/20/19	15.75
19 8. Copies	11/22/19	15.65
20 9. Runner	11/30/19	70.06
21 10. Deposition (Swanson I)	1/24/20	1404.30
22 11. Deposition (Whitfield)	1/29/20	908.10
23 12. Deposition (Gerber)	1/31/20	641.49
24 13. Deposition (Swanson II)	2/6/20	587.02

GALLIHER LEGAL P.C.  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

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**TOTAL COSTS**

**\$5840.41**

DATED this 22nd day of April 2020.

GALLIHER LEGAL P.C.

*/s/ Jeffrey L. Galliher*

Jeffrey Galliher, Esq.

Nevada Bar No. 8078

1850 E. Sahara Ave., Suite 107

Las Vegas, NV 89104

GALLIHER LEGAL P.C.  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

**CERTIFICATE OF MAILING**

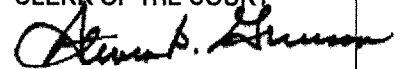
I HEREBY CERTIFY that, on the 22<sup>nd</sup> day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** postage prepaid and addressed to the following:

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

*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC

GALLIHER LEGAL P.C.  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

Electronically Filed  
4/22/2020 10:59 AM  
Steven D. Grierson  
CLERK OF THE COURT



Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

Attorneys for Defendants

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

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

Plaintiff(s),

v.

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

Defendant(s).

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

**DEFENDANTS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS**

Pursuant to NRS 18.020, NRS 18.005, NRS 18.110 and NRCP 68 Defendants, TODD  
SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST,  
a Trust of unknown origin; LYON DEVELOPMENT, LLC, (hereinafter referred to as

1 “Defendants”) by and through their counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY  
2 T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L.  
3 GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., hereby moves this court to  
4 recover costs of suit. These costs were actually incurred and are reasonable in amount.  
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6 Defendants are entitled to recover statutory interest on the above costs from the date the costs  
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8 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of the calculation of prejudgment interest, the  
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2/27/20

37.50

**TOTAL COSTS**

**\$5840.41**

DATED this 22nd day of April 2020.

GALLIHER LEGAL P.C.

*/s/ Jeffrey L. Galliher*

Jeffrey Galliher, Esq.

Nevada Bar No. 8078

1850 E. Sahara Ave., Suite 107

Las Vegas, NV 89104

GALLIHER LEGAL P.C  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 22<sup>nd</sup> day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** postage prepaid and addressed to the following:

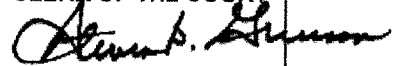
Rusty Graf, Esq.  
Shannon M. Wilson, Esq.  
10777 West Twain Avenue, 3rd Floor  
Las Vegas, Nevada 89135  
rgraf@blacklobello.law  
swilson@blacklobello.law

*/s/ Kimalee Goldstein*  
An employee of Galliher Legal PC

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

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4/23/2020 7:51 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 Defendants' Motion for Fees and Costs in the above-entitled matter is set for hearing as follows:

**Date:** June 09, 2020

**Time:** 9:00 AM

**Location:** Phoenix Building Courtroom - 11th Floor  
Phoenix Building  
330 S. 3<sup>rd</sup> Street  
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/ Ivonne Hernandez  
Deputy Clerk of the Court

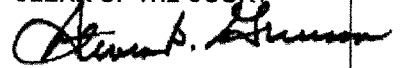
**CERTIFICATE OF SERVICE**

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/ Ivonne Hernandez  
Deputy Clerk of the Court

JA001951





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

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 JOSEPH FOLINO, an individual and NICOLE  
14 FOLINO, an individual,

15 Plaintiff,

16 v.

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

23 Defendants.

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

**PLAINTIFFS' MOTION TO RETAX  
COSTS**

**HEARING REQUESTED**

24 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through  
25 their attorney of record Rusty Graf, Esq., of Black & LoBello, hereby moves the Court to Retax  
26 the Costs sought by Defendants in their Memorandum of Costs and Disbursements, filed with  
27 this Court on April 22, 2020.

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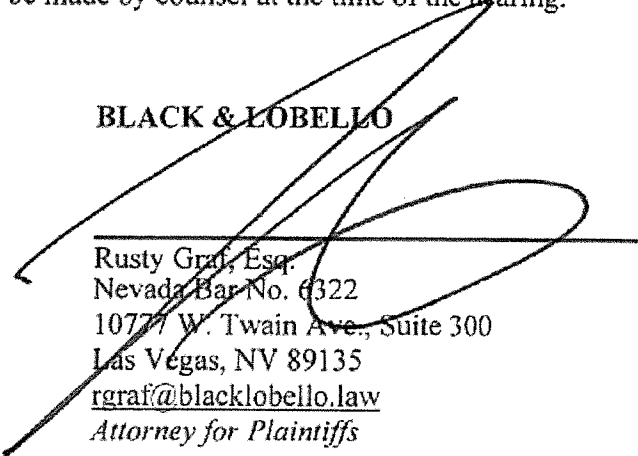
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BLACK & LOBELLO  
10777 W. Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

1 This Motion is based upon the pleadings and papers on file in this action, the Points and  
2 Authorities set forth herein, and argument to be made by counsel at the time of the hearing.

3 DATED this 26<sup>th</sup> day of April 2020.

4 **BLACK & LOBELLO**

5  
6   
7 Rusty Graf, Esq.  
8 Nevada Bar No. 6322  
9 10777 W. Twain Ave., Suite 300  
10 Las Vegas, NV 89135  
11 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
12 *Attorney for Plaintiffs*

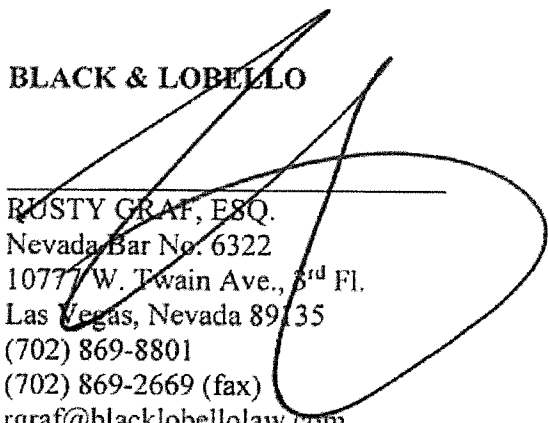
13 **NOTICE OF MOTION**

14 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

15 PLEASE TAKE NOTICE that the undersigned will bring the foregoing PLAINTIFFS'  
16 MOTION TO RETAX FEES AND COSTS for hearing before the above entitled Court on the  
17 \_\_\_\_ day of \_\_\_\_, 2020, at the hour of \_\_\_\_ a.m./p.m. in Department No. XXIV, or as soon  
18 thereafter as Plaintiffs can be heard.

19 DATED this 26<sup>th</sup> day of April 2020.

20 **BLACK & LOBELLO**

21   
22 RUSTY GRAF, ESQ.  
23 Nevada Bar No. 6322  
24 10777 W. Twain Ave., 3<sup>rd</sup> Fl.  
25 Las Vegas, Nevada 89135  
26 (702) 869-8801  
27 (702) 869-2669 (fax)  
28 [rgraf@blacklobellolaw.com](mailto:rgraf@blacklobellolaw.com)  
*Attorney for Plaintiffs*

///

///

I.

**FACTUAL AND PROCEDURAL BACKGROUND**

On August 17, 2018 Plaintiffs and Defendants conducted a mediation conference which was unsuccessful in reaching a settlement agreement. On October 19, 2018, Plaintiffs filed their initial Complaint. On February 4, 2019 Defendants filed their first Motion to Dismiss which was denied, and the Court granted Plaintiffs leave to amend. On May 20, 2019, Defendants filed their Motion to Dismiss Plaintiffs' Amended Complaint. On July 18, 2019, the Court dismissed several of Plaintiffs' claims, but denied Defendants' Motion to Dismiss as to Plaintiffs' claims of Fraud and Concealment in violation of NRS 113.

On September 4, 2019 Plaintiffs filed their Second Amended Complaint. Defendants' Motion to Dismiss the Second Amended Complaint was heard by the Court on November 7, 2019, and the matter was ordered continued for this supplemental brief and production of documents. The hearing was held on April 7, 2020 and the Court granted Defendants' Motion to Dismiss the Second Amended Complaint. Thereafter, on April 22, 2020, Defendants filed a Memorandum of Costs and Disbursements ("Memorandum"), requesting this Court award \$5,840.41 in costs they claim were incurred in this matter. However, many of the costs listed in Defendants' Memorandum are not compensable under Nevada law.

II.

**LEGAL ARGUMENT**

A. **Legal Authority for Motion to Retax Costs**

An adverse party who disputes the costs contained in a verified memorandum may request the court determine the costs pursuant to NRS 18.110(4), which provides:

Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing

1 party claiming costs. Upon the hearing of the motion the court or judge  
2 shall settle the costs.

3 *See NRS 18.110(4).*

4 **B. Legal Authority for Awarding Costs.**

5 Costs may properly be recovered by a prevailing party pursuant to NRS 18.020, which  
6 provides that Costs be allowed to the prevailing party in the following cases:

- 7 1. In an action for the recovery of real property or a possessory right  
8 thereto.
- 9 2. In an action to recover the possession of personal property, where the  
10 value of the property amounts to more than \$2,500. The value must be  
11 determined by the jury, court or master by whom the action is tried.
- 12 3. In an action for the recovery of money or damages, where the plaintiff  
13 seeks to recover more than \$2,500.
- 14 4. In a special proceeding, except a special proceeding conducted  
15 pursuant to NRS 306.040.
- 16 5. In an action which involves the title or boundaries of real estate, or the  
17 legality of any tax, impost, assessment, toll or municipal fine,  
18 including the costs accrued in the action if originally commenced in a  
19 Justice Court.

20 *See NRS 18.020.*

21 Neither costs nor attorney fees incurred incident to litigation may be recovered unless  
22 authorized by statute or rule. *Sun Realty v. Eighth Judicial Dist. Ct.*, 91 Nev. 774, 776, 542 P.2d  
23 1072, 1074 (1975). Even in instances where a party is entitled to request its costs, the trial court  
24 still retains discretion when determining the reasonableness of the individual costs to be  
25 awarded. *See U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458,  
26 50 P.3d 170 (2002); *See also Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). "This  
27 discretion should be sparingly exercised when considering whether or not to allow expenses not  
28 specifically allowed by statute and precedent." *Bergmann v. Boyce*, 109 Nev. at 679. As such, the  
trial court should exercise restraint because "statutes permitting recovery of costs, being in  
derogation of the common law, must be strictly construed." *Id.* A strict construction of the statute  
"requires that the phrase 'reasonable costs' be interpreted to mean actual costs that are reasonable,

1 rather than a reasonable estimate or calculation of such costs based upon administrative  
2 convenience." *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540 (1994).

3 NRS 18.005 enumerates compensable costs as follows:

- 4 1. Clerks' fees.
- 5 2. Reporters' fees for depositions, including a reporter's fee for one copy of  
6 each deposition.
- 7 3. Jurors' fees and expenses, together with reasonable compensation of an  
8 officer appointed to act in accordance with NRS 16.120.
- 9 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless  
10 the court finds that the witness was called at the instance of the prevailing  
11 party without reason or necessity.
- 12 5. Reasonable fees of not more than five expert witnesses in an amount of  
13 not more than \$1,500 for each witness, unless the court allows a larger fee  
14 after determining that the circumstances surrounding the expert's  
15 testimony were of such necessity as to require the larger fee.
- 16 6. Reasonable fees of necessary interpreters.
- 17 7. The fee of any sheriff or licensed process server for the delivery or service  
18 of any summons or subpoena used in the action, unless the court  
19 determines that the service was not necessary.
- 20 8. Compensation for the official reporter or reporter pro tempore.
- 21 9. Reasonable costs for any bond or undertaking required as part of the  
22 action.
- 23 10. Fees of a court bailiff or deputy marshal who was required to work  
24 overtime.
- 25 11. Reasonable costs for telecopies.
- 26 12. Reasonable costs for photocopies.
- 27 13. Reasonable costs for long distance telephone calls.
- 28 14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and  
conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with  
the action, including reasonable and necessary expenses for computerized  
services for legal research.

22 See NRS 18.005.

23 The Nevada Supreme Court has held that this statute must be strictly construed to allow  
24 only the costs specifically enumerated therein, and only under the circumstances provided for in  
25 the statute. See *Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals*, 114 Nev.  
26 1348, 1352-53, 971 P.2d 383 (1998). Applying these principles to the instant matter, Plaintiffs  
27 respectfully submit that this Court should grant the Motion to Retax, as some of the costs  
28

1 delineated in Defendants' Memorandum of Costs and Disbursements are not recoverable under  
2 applicable and relevant authority.

3 C. The Requested Costs Are Not Compensable Under NRS 18.005.

4 Here, the following costs are not compensable under NRS 18.005 and therefore should be  
5 retaxed as non-recoverable:  
6

7 i. Mediation Costs

8 Defendants' Verified Memorandum of Costs and Disbursements ask the Court to tax  
9 Plaintiffs \$2,084.50 for costs described as follows:

- |    |           |                        |            |
|----|-----------|------------------------|------------|
| 10 | • 7/16/18 | "Mediation deposit"    | \$2,035.00 |
| 11 | • 11/7/19 | "Mediation final bill" | \$49.50    |

12 Here, these Mediation costs should be retaxed because (1) they are not enumerated under  
13 NRS 18.005 or any other relevant statute and the Nevada Supreme Court has held that only the  
14 fees and costs specifically enumerated by statute are compensable; (2) the Nevada Mediation  
15 Rules suggest that mediation costs are intended to be split between the parties unless otherwise  
16 stipulated; and (3) any argument by Defendants that these costs do fall under one of the  
17 categories enumerated by NRS 18.005 is inapplicable as they were incurred prior to the litigation  
18 of the matter. Further, Defendants do not cite any legal authority authorizing the taxing of such  
19 costs, and Court is to use its discretion sparingly "when considering whether or not to allow  
20 expenses not specifically allowed by statute and precedent". *See Bergmann, 109 Nev. at 679, 856*  
21 *P.2d at 565-566.*  
22

23  
24 First, Plaintiffs would reiterate that mediation costs are not specifically enumerated under  
25 NRS 18.005. Therefore, Defendants' only potential argument as to the validity of these costs is  
26 that they fall under NRS 18.005(17) which states "any other reasonable and necessary expense  
27 incurred in connection with the action" are compensable. (emphasis added) *See NRS*  
28

1 18.005(17). As stated above, mediation costs are not mentioned specifically by any provision of  
2 NRS 18.005 and thus the Court is to use any discretion as to awarding these fees and costs  
3 "sparingly". These facts, combined with Defendants' failure to cite any statutes or authority to  
4 the contrary, are sufficient for the mediation costs to be retaxed. Arguendo, even if the Court did  
5 determine that NRS 18.005(17) could potentially encompass some mediation costs, it would not  
6 still not be applicable to the instant mediation costs because they were not a "necessary expense"  
7 and they were not "incurred in connection with the action" as required by the statute. *Id.*

9 The mediation costs were not a "necessary expense" as required by NRS 18.005(17)  
10 because mediation is an optional process that occurs prior to the commencement of litigation.  
11 Neither Plaintiffs or Defendants were compelled to conduct a mediation, they freely determined  
12 that they wished to do so. Therefore, the costs cannot be considered "necessary" as Defendants  
13 could have declined to participate in mediation without forfeiting any rights or impacting the  
14 subsequent litigation process in any manner.

16 Further, the mediation costs were not "incurred in connection with the action" as is also  
17 required by NRS 18.005(17). *Id.* NRCP 3 states that "A civil action is commenced by filing a  
18 complaint with the court." *See NRCP 3.* In the instant action, Plaintiffs filed their Complaint on  
19 October 19, 2018. *See attached Exhibit 1, Plaintiffs' First Complaint.* This is over two (2)  
20 months after the Parties conducted the mediation conference, which occurred on August 17,  
21 2018. Therefore, as the instant action was not commenced until October 19, 2018, mediation  
22 costs incurred on August 17, 2018 cannot be "incurred in connection with the action" as required  
23 to be compensable under NRS 18.005(17). The action did not exist at the time these expenses  
24 were incurred. This is further validated by a letter that was sent by the mediator, Floyd A. Hale,  
25 to both Plaintiffs and Defendants following the mediation conference. The letter summarized  
26 what occurred during the conference and stated, "Since I anticipate that litigation will

1 commence soon if there is no settlement, let me know your responses by September 4, 2018.”  
2 (emphasis added) See attached Exhibit 2, August 20, 2018 Letter from Floyd A. Hale. Defendants  
3 cannot rationally argue that the mediation costs were “necessary expense” which were “incurred  
4 in connection with the action”, and therefore compensable under NRS 18.005, when the action  
5 and thus the litigation process had not yet commenced.  
6

7 Finally, though it is clear that the mediation expenses are not compensable under NRS  
8 18.005, Plaintiffs would also note that consideration of this Court’s own Nevada Mediation  
9 Rules weighs heavily against Plaintiffs’ being taxed for these costs. Specifically, NMR 10(C)  
10 states that the “fees and costs of the mediator are paid equally by the parties unless otherwise  
11 stipulated”. See NMR 10(C). This demonstrates that the Court’s intention is for pre-litigation  
12 mediation costs to be borne by both parties equally. There was no stipulation by the Parties as to  
13 the mediation costs. Therefore, these costs should be retaxed.  
14

15 ii. Runner Costs  
16

17 Defendants’ Verified Memorandum of Costs and Disbursements ask the Court to tax  
18 Plaintiffs \$135.60 for costs described as follows:

19	• 7/23/19	"Runner"	\$29.10
20	• 8/6/19	"Runner"	\$36.44
21	• 11/30/19	"Runner"	\$70.06

22 The costs Defendants seek to recover for the use of Runners should also be retaxed  
23 because (1) these costs are also not specifically enumerated by NRS 18.005; (2) the Court is to  
24 use any discretion as to unenumerated costs “sparingly” and Defendants again do not cite any  
25 legal authority authorizing the taxing of such costs; and (3) there is persuasive legal authority  
26 which suggests that such costs are not compensable.  
27  
28



1 Federal courts have consistently held that overhead costs, such as administrative fees,  
2 supplies and the use of runners are not properly taxable. *See, e.g., Warner Chilcott Labs. Ireland*  
3 *Ltd. v. Impax Labs., Inc.*, 2013 WL 1876441, at \*12 (D. N.J. April 18, 2013) (holding costs slip  
4 sheets, tabs, binders, folders, redweld file pockets and labels. . . .constitute[d] attorney's overhead  
5 and as such, [was] not taxable"); *N.J. Mfrs. Ins. Group v. Electrolux, Inc.*, 2013 WL 5817161, at  
6 \*12 (D. N.J. Oct. 21, 2013) (holding costs "for labels and binders, which constitute attorney's  
7 overhead and as such, are not taxable"); *J-Way Leasing, Ltd. v. Am. Bridge Co.*, 2010 WL  
8 816439, at \*4 (N.D. Ohio March 4, 2010) ("[C]osts for marking exhibits are overhead expenses  
9 and not taxable . . . ."); *Butler v. Wright*, 2010 WL 599387, at \*8 (M.D. Fl. Feb 16, 2010)  
10 (holding "operating overhead is not taxable"); *Osorio v. Dole Food Co.*, 2010 WL 3212065, at \*7  
11 (S.D. Fl. July 7, 2010) ("Courts have held that costs for tabs and binders are not taxable costs  
12 because they are subsumed within operating overhead."); *Van Voorhis v. Hillsborough Bd. of*  
13 *County Comm'rs*, 2008 WL 2790244, at \*5 (M.D. Fl. July 18, 2008) (finding cost of supplies  
14 movant purchased from Staples was "subsumed within operating overhead and . . . not taxable.").

15 Again, as runner costs are not specifically mentioned under any of the provisions of NRS  
16 18.005, Defendants' only reasonable argument regarding these costs is that they fall under NRS  
17 18.005(17). It's implicit in both the language of the statute and its application in relevant case  
18 law, that the Court analyzes whether non-specifically enumerated costs and fees are compensable  
19 under NRS 18.005(17) by putting the burden on the party seeking to tax the costs to demonstrate  
20 that those costs are reasonable and necessary (in addition to being incurred in connection with  
21 the action). *See Bergmann v. Boyce*, 109 Nev. at 679; *See U.S. Design & Const. Corp. v.*  
22 *International Broth. of Elec. Workers*, 118 Nev. 458, 50 P.3d 170 (2002); *See Bobby Berosini,*  
23 *Ltd v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352-53, 971 P.2d 383  
24 (1998); *See also NRS 18.005(17)*. The demonstration that unenumerated costs are reasonable and  
25  
26  
27  
28

1 necessary must be sufficiently compelling as to persuade the Court that it is appropriate to  
2 exercise discretion that the Nevada Supreme Court has directly stated should only be used  
3 "sparingly" and deem the costs compensable. *Id.* Here, runner fees is an unenumerated cost and  
4 Defendants do not cite any legal authority which would either compel or reasonably persuade the  
5 Court to exercise discretion meant to be used "sparingly". Thus, the costs are not compensable  
6 and should be retaxed.  
7

8 III.

9 CONCLUSION

10 Based on the foregoing reasons, Plaintiffs respectfully request that the Court grant their  
11 Motion, and Retax and deny the costs contained in Defendants' Memorandum of Costs and  
12 Disbursements as outlined herein.

13 DATED this 26<sup>th</sup> day of April 2020.

14  
15 BLACK & LOBELLO

16  
17 Rusty Graf, Esq.  
18 Nevada Bar No. 6372  
19 10777 W. Twain Ave., Suite 300  
20 Las Vegas, NV 89135  
21 [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
22 Attorney for Plaintiffs  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 24<sup>th</sup> day of April 2020, I caused the above and foregoing document **PLAINTIFFS' MOTION TO RETAX FEES AND COSTS** to be served as follows:

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

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

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

☐ hand delivered

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

Christopher M. Young, Esq.

Nevada Bar No. 7961

Jay T. Hopkins, Esq.

Nevada Bar No. 3223

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

Jeffrey L. Galliher, Esq.

Galliher Legal, P.C.


Nevada Bar No. 8078

1850 E. Sahara Ave., #107

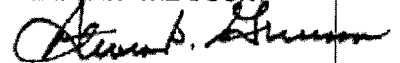
Las Vegas, NV 89104

Attorneys for Defendants

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

  
An Employee of Black & LoBello

# **EXHIBIT 1**



1 **COMP**  
2 Rusty Graf, Esq.  
3 Nevada Bar No. 6322  
4 Shannon M. Wilson, Esq.  
5 Nevada Bar No. 13988  
6 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
7 Las Vegas, Nevada 89135  
8 Telephone: (702) 869-8801  
9 Facsimile: (702) 869-2669  
10 E-mail: [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
11 E-mail: [swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
12 *Attorneys for Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

CASE NO.:  
DEPT. NO.:

A-18-782494-C

12 Plaintiff,

Department 24

13 v.

**COMPLAINT**

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

18 Defendants.

19  
20 Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty  
21 Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for  
22 his Complaint against Defendants asserts, alleges and complains as follows:

23 **I.**

24 **PARTIES, JURISDICTION AND VENUE**

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

27 2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS"  
28 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 or event, the existence of fungi/mold or  
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss  
5 issues at this Subject Property. *Id.*

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



50. Defendants, and each of them, including DOES I-X and ROES I-X, directly benefited and/or received the funds paid by the Plaintiff based upon the false representations and Plaintiff's reliance upon those false representations.

## IV.

## SECOND CAUSE OF ACTION

**(Negligent Misrepresentation)**

56. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 55 inclusive, and incorporate the same as if fully set forth herein.

57. Defendants, and each of them, communicated on or about October 24, 2017, to the Plaintiff that there were no defects in the house, the systems or the structure

1           58.     The Defendants, and each of them, induced the Plaintiffs into completing the  
2 purchase of the Subject Property, all the while knowing that there were defects in the structure,  
3 house and workmanship of the Subject Property.

4           59.     Defendants, and each of them intended by their negligent representations to  
5 induce the Plaintiff into entering into said transactions.

6           60.     Plaintiffs relied upon the negligent representations when the Plaintiffs completed  
7 the transaction in favor of the Defendants.

8           61.     Plaintiffs would not have completed the transaction had they known of the facts  
9 withheld from them by the Defendants.

10          62.     The Defendants negligently, and with the intent to deceive the Plaintiffs, failed to  
11 identify the defects, prior water losses and other material misrepresentations on the SRPD.

12          63.     Defendants, and each of them, including DOES I-X and ROES I-X, directly  
13 benefited and/or received the funds paid by the Plaintiff based upon the negligent representations  
14 in Plaintiff's reliance upon those false representations.

15          64.     Defendants, and each of them, including DOES I-X and ROES I-X, knew or  
16 should have known that the representations made were false, and that the Defendants knew or  
17 should have known that there was an insufficient basis for making the representations to the  
18 Plaintiff.

19          65.     Plaintiff's reliance on the above representations was justified and reasonable in  
20 light of the facts and circumstances alleged herein.

21          66.     The Defendants, and each of them, in the course of entering into the transaction  
22 referenced above, in which the Defendants, and each of them, had a pecuniary interest, had a  
23 duty to exercise reasonable care or competence in obtaining or communicating information to the  
24 Plaintiffs and in conducting that transaction, and the Defendants failed to do so as alleged herein.

25          67.     That as a direct and proximate result of Defendant's fraudulent representations,  
26 Plaintiffs have been damaged in the sum in excess of \$15,000, an exact amount to be proven at  
27 the time of trial.

28

68. 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.

V.

**THIRD CAUSE OF ACTION**

(Violation of Nevada Statutes Governing Deceptive Trade Practices –

Violation of NRS 598.010 et seq.)

69. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 68, inclusive, and incorporate the same as if fully set forth herein.

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

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

72. As a direct and proximate result of the Defendants' deceptive actions, and each of them, and pursuant to violation of the Nevada DPA, Plaintiffs are entitled to recover treble damages.

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

VI.

**FOURTH CAUSE OF ACTION**

(Violation of Nevada Statutes Governing Sale of Real Property and Disclosure of Known

Defects –

Violation of NRS 113.100 et seq.)

75. Defendants, and each of them, committed violations of Nevada's rules and regulations regarding the Conditions of Residential Property Offered for Sale, and including, but not limited to, NRS 113.100 et seq, and specifically NRS 113.150, by failing to inform the Plaintiff that there were defects known to the Defendants at the time they executed and affirmed compliance with the SRPD regarding the Subject Property, its plumbing system and the structure being purchased by the Plaintiffs from the Defendants.

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

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

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

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

VII.

### FIFTH CAUSE OF ACTION

(Civil RICO Claim)

80. Plaintiffs repeat and realleges the allegations set forth in paragraphs 1 through 79, inclusive, and incorporate the same as if fully set forth herein.

81. Defendants, and each of them, together with their agents, heirs, assigns, employees, managers and or any other persons acting in concert with the defendants, including

DOES I-X and ROES I-X, were parties to an agreement, whether that agreement was explicit or tacit, whose unlawful purpose, aim and/or goal, was to defraud the Plaintiffs out of their money, in an amount in excess of \$15,000.00 by requiring the Plaintiffs to pay for the Subject Property, all the while knowing that the home contained significant defects in its workmanship and structure, and all in violation of the SRPD.

82. The Defendants, and each of them, acted in concert, with the intent to accomplish the unlawful objective of defrauding the Plaintiffs out of their personal property, i.e. lawful money of the United States, when the Defendants, and each of them, using fraudulent and deceptive trade practices, without justification, intentionally defrauded the Plaintiffs out of their personal property, i.e. lawful money of the United States.

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

84. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously, oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to recover punitive damages from the Defendants in an amount to be proven at the time of trial.

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

### VIII.

#### SIXTH CAUSE OF ACTION

##### (Respondent Superior)

86. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 85, inclusive, and incorporate the same as if fully set forth herein.

87. At all times relevant hereto, the Defendants, and each of them, including and not limited to DOES I-x and ROES I-X, were agents, servants and/or employees of the Defendants, and each of them, and was acting within the scope of his agency, and/or employment with the

1 knowledge, purpose, permission and consent of his employers, the Defendants, and each of them,  
2 including and not limited to DOES I-x and ROES I-X, who are responsible for the actions of  
3 their agent, servants and/or employees, as described herein under the theory of Respondent  
4 Superior.

5 88. Pursuant to the theory of Respondent Superior, and as a result of the Defendants,  
6 and each of them, including and not limited to DOES I-x and ROES I-X, acted in a willfully,  
7 fraudulently, maliciously, oppressively and/or with a conscious disregard of the Plaintiff's rights  
8 and/or with the intent to vex, annoy or harass Plaintiffs, and either expressly or with a conscious  
9 disregard, affirmed, sanctioned and/or approved of the willful, fraudulent, malicious and or  
10 oppressive actions of their employees, and as such are liable for any and all punitive damages  
11 awarded as a result of those employees, agents, servants or independent contractors.

12 89. That as a direct and proximate result of Defendants' actions alleged herein,  
13 Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven  
14 at the time of trial.

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

18 PRAYER

19 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- 20 1. For general damages in an amount in excess of \$15,000.00;  
21 2. For special damages in an amount in excess of \$15,000.00;  
22 3. For punitive damages in an amount in excess of \$15,000.00;

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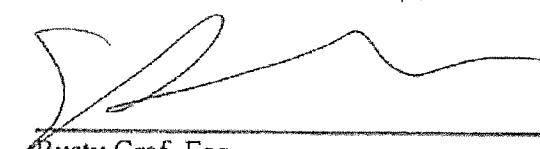


4. For treble any damages awarded for Deceptive Trade Practices in an amount in excess of \$15,000.00;
5. For reasonable attorney's fees;
6. For costs incurred in the pursuit of this action; and
7. For such other further relief as the court deems proper.

DATED this \_\_\_\_ day of October, 2018.

BLACK & LOBELLO

#13988



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Rusty Graf, Esq.  
Nevada Bar No. 6322  
Shannon M. Wilson, Esq.  
Nevada Bar No. 13988  
10777 W. Twain Ave., Suite 300  
Las Vegas, NV 89135  
[rgraf@blacklobello.law](mailto:rgraf@blacklobello.law)  
[swilson@blacklobello.law](mailto:swilson@blacklobello.law)  
*Attorneys for Plaintiffs*

# **EXHIBIT 1**

JA001977



## 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

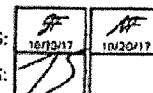
Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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

BUYER(S) INITIALS:

SELLER(S) INITIALS:



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

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

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 25 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.

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

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

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

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

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

## 5. ESCROW:

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

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

Buyer's Name: Joseph Folino and Nicole Folino



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

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

	
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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.

Buyer's Initials 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

BUYER(S) INITIALS:

SELLER(S) INITIALS:

**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

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

BUYER(S) INITIALS:

SELLER(S) INITIALS:

*JS* *MF*  
10/20/17 10/20/17

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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 TSD ☒ 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

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

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

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10/28/17 10/28/17

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

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

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

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



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

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



18. **DEFAULT:**

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

BUYER(S) INITIALS:

   
10/20/17 10/20/17  
17:34AM EDT 12:15AM EDT

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

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BUYER(S) INITIALS:

SELLER(S) INITIALS:

   
10/20/17 10/20/17  
17:34AM EDT 12:15AM EDT

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## Instructions to Escrow

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

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

## Brokers

21. **BROKER'S COMPENSATION/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

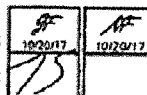
Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

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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

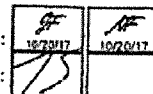
Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

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BUYER(S) INITIALS:

SELLER(S) INITIALS:



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

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

27. ADDENDUM(S) ATTACHED: \_\_\_\_\_

28. ADDITIONAL TERMS: \_\_\_\_\_

### Buyer's Acknowledgement of Offer

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

Buyer's Broker: Ashley Oakes-Lazosky

Company Name: Vegas Homes and Fine Estates LLC

Broker's License Number: B.1000869

Phone: 702-281-1198

Fax: 702-446-4536

Agent's Name: Ashley Oakes-Lazosky

Agent's License Number: B.1000869

Office Address: 1180 N. Town Center Dr Ste 100

City, State, Zip: Las Vegas, NV 89144

Email: ashley@vhfelv.com

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

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

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

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

*Joseph Folino* dotloop verified  
10/20/17 12:34AM EDT  
5HGZ-T3OB-TCAL-MN2H

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  
DC1P-LQDA-1Y5S-WUFW

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

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This form presented by Ashley Oakes-Lazosky | Vegas Homes & Fine Estates | 702-281-1198 | ADMIN@VHFELV.COM

InstanteForms

JA001986

## Seller's Response

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

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

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

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

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

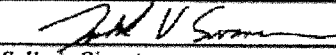
**FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A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

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

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

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

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

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">  </div> Seller's Signature	Todd V. Swanson Seller's Printed Name Co-trustee, the Shiraz Trust, Manager, Lyons Development, LLC	11/21/2017 6:30 Date Time	<input type="checkbox"/> AM / <input checked="" type="checkbox"/> PM
<div style="border: 1px solid black; height: 20px; width: 100%;"></div> Seller's Signature	_____ 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  

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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 12:05 PM EDT  
B10P-2VJN-MPH-R3MD

☒ Buyer ☐ Seller

Signature

Time:                     

Nicole Folino  
dotloop verified  
10/22/17 12:02 PM EDT  
MVE-FUJN-GDH5-DNH4

☒ 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

Authenticator:  
Todd Swanson, Co-Trustee  
10/22/2017 6:45:20 PM EDT

☐ Buyer ☒ Seller

Signature

Time: 11:30 am

☐ Buyer ☐ Seller

Signature

Counter Offer Rev. 5/12

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# **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 Title 702-432-1111, TaciG@equitynv.com
5. No personal property to be included in the sale.
6. Seller time to respond to original offer is hereby to be extended to midnight October 21st, 2017.

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

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

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

Date: 10/21/2017

Authenticsign  
Jedd 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 6:33 PM EDT  
MWF-PLW-K5GC-SFL1

☒ Buyer ☐ Seller

Signature

Time:       

Nicole Folino  
dotloop verified  
10/22/17 6:33 PM EDT  
VWE-PLW-NARF-F5NG

☐ Buyer ☐ Seller

Signature



# **EXHIBIT 4**

## SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date 10/24/2017

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

Property address 42 Meadowhawk Lane

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

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

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

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

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

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

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

TS  
Seller(s) Initials

[Signature]  
11/02/17  
Signature  
Buyer(s) Initials

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

Are you aware of any of the following?:

- Structure:
  - Previous or current moisture conditions and/or water damage? ..... ☐ ☒
  - Any structural defect? ..... ☐ ☒
  - Any construction, modification, alterations, or repairs made without required state, city or county building permits? ..... ☐ ☒
  - 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)
- Land / Foundation:
  - Any of the improvements being located on unstable or expansive soil? ..... ☐ ☒
  - Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ..... ☐ ☒
  - Any drainage, flooding, water seepage, or high water table? ..... ☐ ☒
  - The property being located in a designated flood plain? ..... ☐ ☒
  - Whether the property is located next to or near any known future development? ..... ☐ ☒
  - Any encroachments, easements, zoning violations or nonconforming uses? ..... ☐ ☒
  - Is the property adjacent to "open range" land? ..... ☐ ☒

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
- Roof: Any problems with the roof? ..... ☐ ☒
- Pool/spa: Any problems with structure, wall, liner, or equipment? ..... ☐ ☒ ☐
- Infestation: Any history of infestation (termites, carpenter ants, etc.)? ..... ☐ ☒
- Environmental:
  - 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? ..... ☐ ☒
  - 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? ..... ☐ ☒
- Fungi / Mold: Any previous or current fungus or mold? ..... ☐ ☒
- 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? ..... ☐ ☒
- 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? ..... ☒ ☐
  - Common Interest Community Declaration and Bylaws available? ..... ☒ ☐
  - Any periodic or recurring association fees? ..... ☒ ☐
  - Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ..... ☐ ☒
  - Any litigation, arbitration, or mediation related to property or common area? ..... ☐ ☒
  - Any assessments associated with the property (excluding property taxes)? ..... ☒ ☐ (SID or LID)
  - Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ..... ☐ ☒
- Any problems with water quality or water supply? ..... ☐ ☒
- Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ..... ☐ ☒
- Lend-Based Paint: Was the property constructed on or before 12/31/77? ..... ☐ ☒

(If yes, additional Federal EPA notification and disclosure documents are required)
- 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.
- Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ..... ☐ ☒
- Solar panels: Are any installed on the property? ..... ☐ ☒

If yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐
- Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐
- This property is subject to a Private Transfer Fee Obligation? ..... ☒ ☐

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

(standard transfer tax)

TS  
Seller(s) Initials

MF  
Buyer(s) Initials

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

TS  
Seller(s) Initials

MR  
12/12/17 7:34 PM EST  
Buyer(s) Initials

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

**CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE**

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

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

(Added to NRS by 1995, 842; A 1999, 1446)

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

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

(Added to NRS by 1995, 844)

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

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.

2. Provides notice:

- (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
- (b) That the disclosures set forth in the form are made by the seller and not by his agent.
- (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 842)

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

1. Except as otherwise provided in subsection 2:

(a) At least 10 days before residential property is conveyed to a purchaser:

(1) The seller shall complete a disclosure form regarding the residential property; and

(2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.

(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:

(1) Rescind the agreement to purchase the property; or

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

2. Subsection 1 does not apply to a sale or intended sale of residential property:

(a) By foreclosure pursuant to Chapter 107 of NRS.

(b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.

(c) Which is the first sale of a residence that was constructed by a licensed contractor.

(d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates 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, 340; 2003, 1339; 2005, 598; 2011, 2833)

TS  
Seller(s) Initials

MF  
11/21/17 1:01PM EST  
Buyer(s) Initials

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

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

(a) Provide to the initial purchaser a copy of NRS 113.130 to 113.135, 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): Joseph V. Serrano Date: 10/24/2017  
Co-trustee, the Shiraz Trust  
Seller(s): Manager, Lyons Development LLC Date: \_\_\_\_\_

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100 to 113.150, including attached forms four (4) and five (5).

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

# **EXHIBIT 5**





**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.

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

Caveat Emptor LV

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JA002000

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

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

### Condensed Findings:

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

**Grounds Findings:**

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

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

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

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

**Exterior / Roof Findings:**

### HVAC & Fireplace Findings:

**Pool / Spa Findings:**

**Notes:**

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

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

**Notes:**

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

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

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

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

**Plumbing Findings:**

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

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

**Electrical Findings:**

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

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

**Bathroom(s) Findings:**

**General Interior Findings:**

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

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

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

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

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

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JA002003

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

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

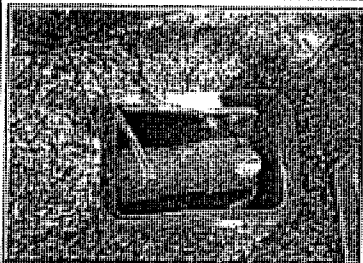


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Photo: 0303 (1)



Photo: 0313 (1)

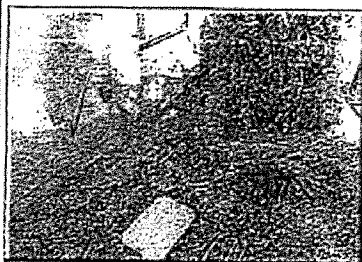


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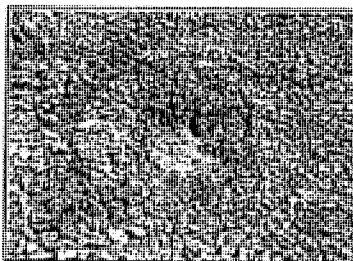


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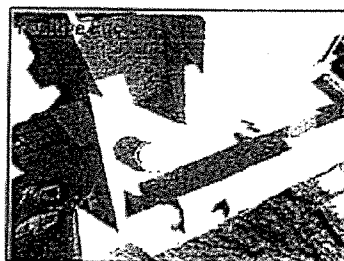


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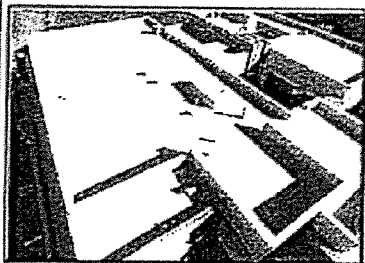


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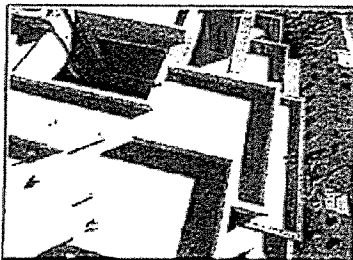


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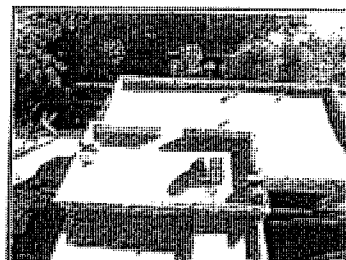


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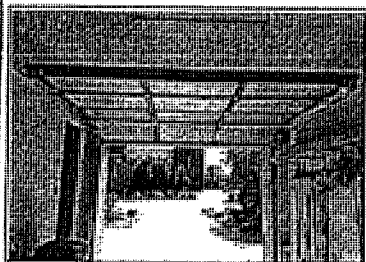


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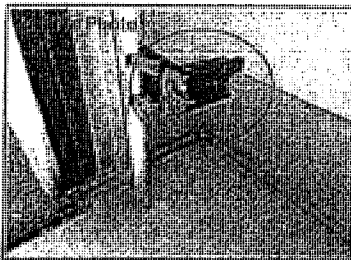


Photo: 1.2 (1)



Photo: 2.02 (1)

Condensed Report Version Prepared For: Joe & Nicole Solino

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

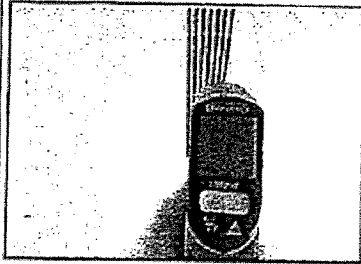


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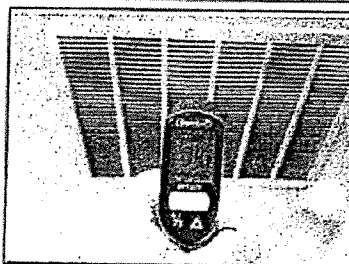


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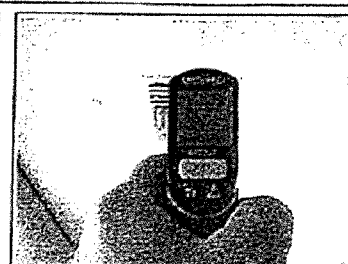


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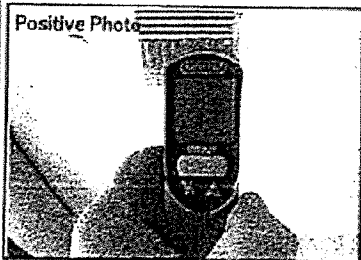


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Photo: 2.04 (2)

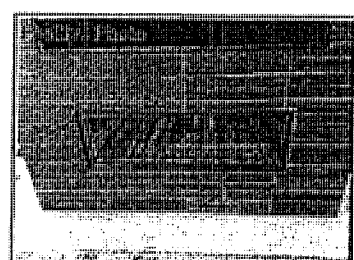


Photo: 2.52 (1)



Photo: 3.33 (1)

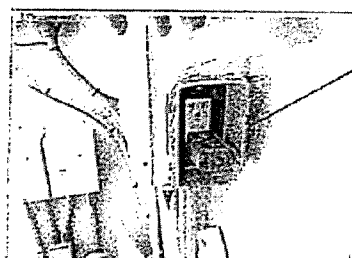


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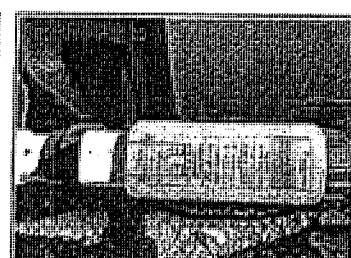


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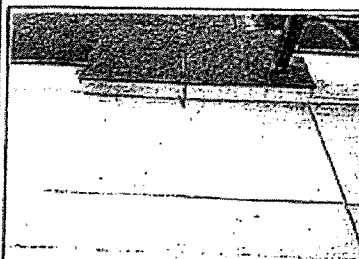


Photo: 3162 (1)

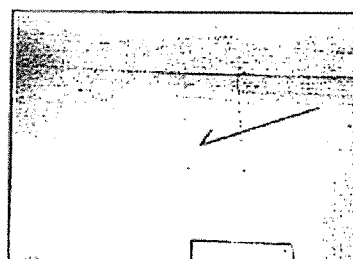


Photo: 3162 (2)

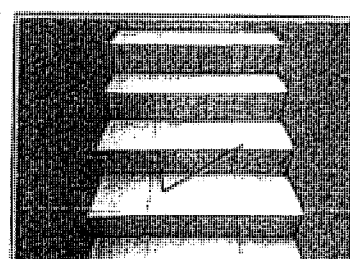


Photo: 3162 (3)

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

Caveat Emptor LV

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JA002005

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

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

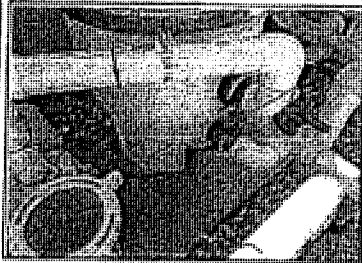


Photo: 3770.02 (1)

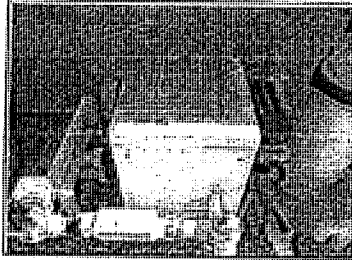


Photo: 3800 (1)

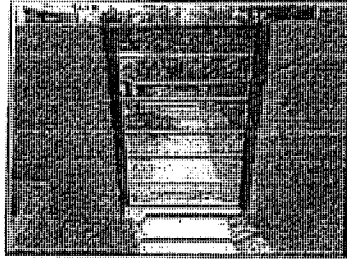


Photo: 3911 (1)

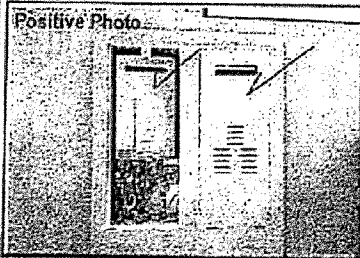


Photo: 4.07 (1)

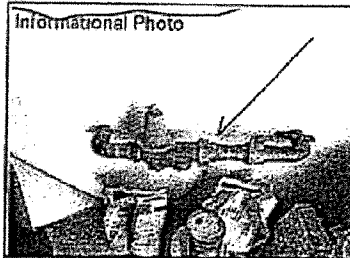


Photo: 4.16 (1)

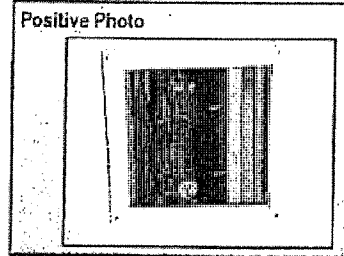


Photo: 4.171 (1)

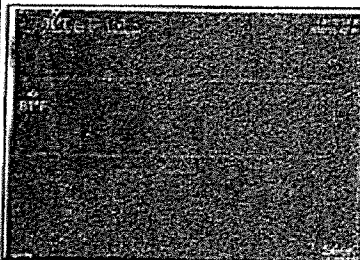


Photo: 4.18 (1)

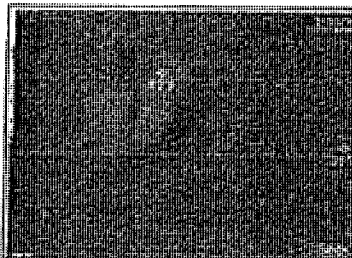


Photo: 4.18 (2)

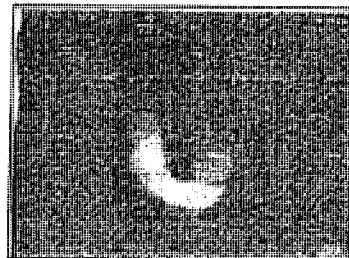


Photo: 4.18 (3)

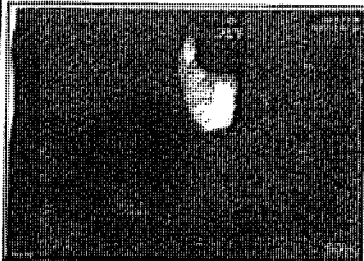


Photo: 4.18 (4)

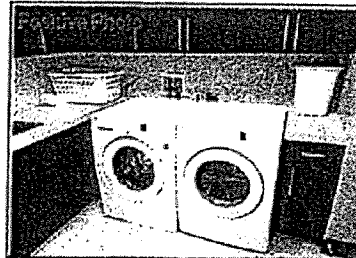


Photo: 4.21 (1)

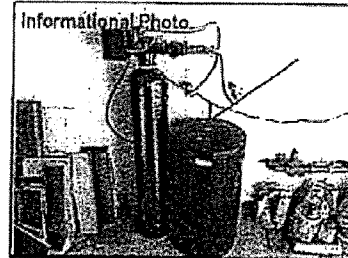


Photo: 4.96 (1)

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

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JA002006



**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

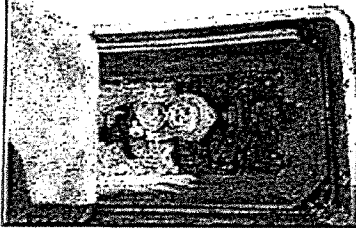


Photo: 4500 (1)

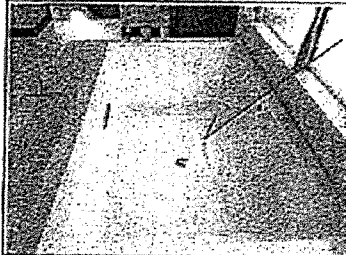


Photo: 4684 (1)

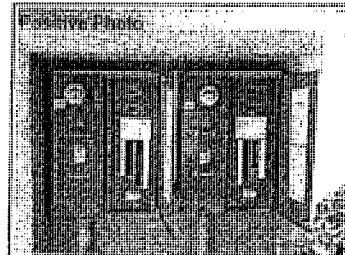


Photo: 5.2 (1)

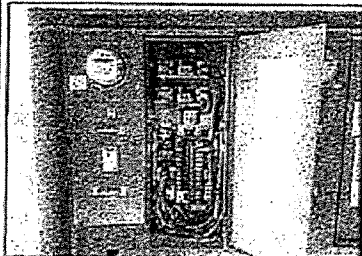


Photo: 5.2 (2)

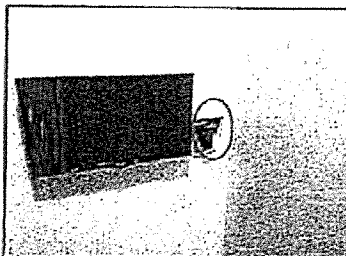


Photo: 5645 (1)

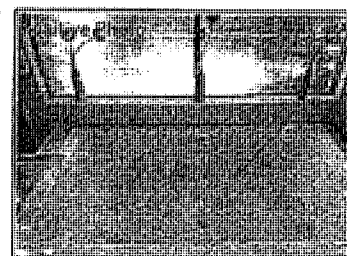


Photo: 6.15 (1)

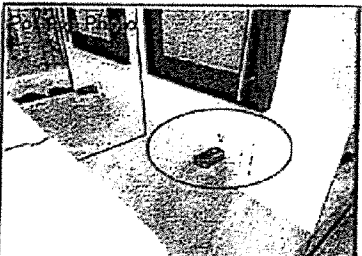


Photo: 6.410 (1)

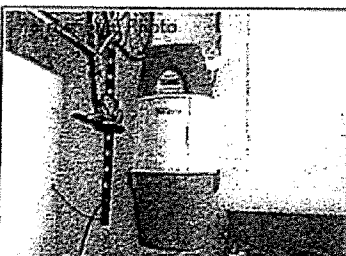


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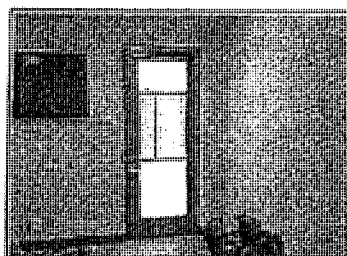


Photo: 7424 (1)



Photo: 8.04 (1)



Photo: 8.04 (2)

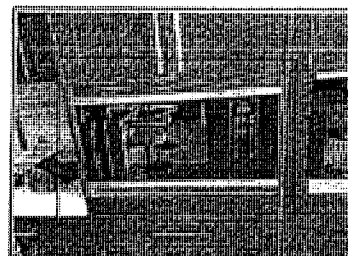


Photo: 8.07 (1)

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

### Caveat Emptor LV

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JA002007



**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

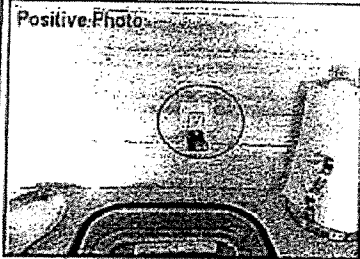


Photo: 8.110 (1)

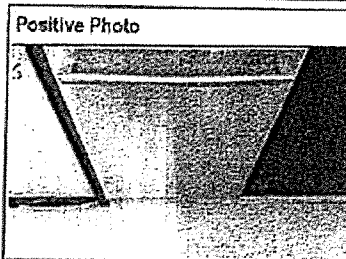


Photo: 8.2003 (1)

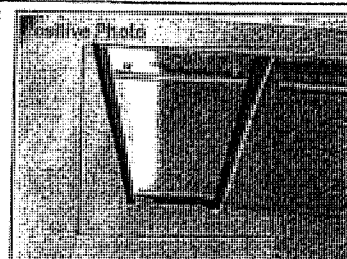


Photo: B.31 (1)



Photo: 8.91 (1)



Photo: 8.91 (2)

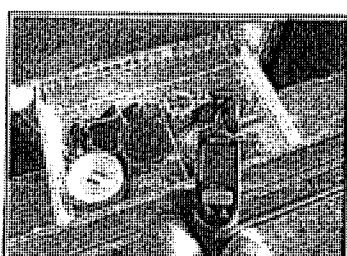


Photo: 8.91 (3)

# **EXHIBIT 6**

JA002009



*Vegas Homes*  
AND FINE ESTATES



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.

*JF*  
11/08/17  
11:55AM EST

*NF*  
11/13/17  
12:17PM EST

Copies of the following reports are attached:

☒ Inspection Report

☐ \_\_\_\_\_

☐ \_\_\_\_\_

☐ \_\_\_\_\_

DocuSigned by:

*Joe Folino*

CO095888FAD7481...

Buyer Joseph Folino

10/30/17

Date

DocuSigned by:

*Nicole Folino*

121E7F788D28A21...

Buyer Nicole Folino

10/30/17

Date





# **EXHIBIT 7**

JA002012

APN NO.: 164-14-414-014

RECORDING REQUESTED BY:  
EQUITY TITLE OF NEVADA

WHEN RECORDED MAIL TO:

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

MAIL TAX STATEMENTS TO:  
SAME AS ABOVE

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

Inst #: 20171117-0003032

Fees: \$40.00

RPTT: \$15300.00 Ex #:

11/17/2017 03:21:08 PM

Receipt #: 3252384

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: RYUD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

---

**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH THAT:

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

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

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

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

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

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

SUBJECT TO:

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

SELLER:

Lyons Development, LLC

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

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

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

Karen Coffey  
Notary Public  
My commission expires: 3/29/18

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

## 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.

Approved for Release by NSA on 08-25-2013 pursuant to E.O. 13526



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**



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**



June 9, 2017

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

Re: Uponor Reference No.: RMA 746512

Dear Mr. Hawley:

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

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

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

Sincerely,

Christy Wegner  
Claims Coordinator  
Christy.Wegner@uponor.com

Enclosure: Check

**Uponor North America**

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

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

JA002021

014805

UPONOR 5925 148TH STREET WEST APPLE VALLEY, MN 55124

109030 RAKEMAN PLUMBING Jun 7, 2017 14805

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

UPONOR

5925 148TH STREET WEST  
APPLE VALLEY, MN 55124PNC Bank  
National Association  
Jeannette, PA  
60-162/433

014805

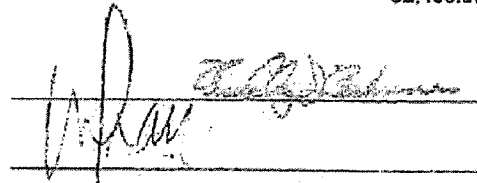
Check Date

07-Jun-2017

Check Amount

\$2,496.00

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

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


⑈014805⑈ ⑆043301627⑆ ⑆001149485⑈

JA002022

# **EXHIBIT 10**

JA002023



## Rusty Graf

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

Hi Nicole,

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

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

### Claimant And Jobsite Information

#### Claimant Information

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

#### Jobsite Information

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

#### Past Occurrences

#### Estimated Claim Amount

#### Past Occurrences

<b>Amount</b>	\$5000 to \$10000
<b>Preferred Reimbursement</b>	Cash
<b>Repairs Complete</b>	No

## Installation Information

### Application

### Contractor Information

<b>Application</b>	Plumbing	rakeman plumbing
<b>Recirculation</b>	Yes	aaron hawley
<b>Recirc Type</b>	Timed/On Demand	4075 losee rd
<b>Failure Location</b>	Supply	NORTH LAS VEGAS, NV
<b>Location Detail</b>	master bed room closet	US
		aaron@rakeman.com
		Ph 702 642 8553
		Installing? Yes

### Temperature/Pressure

### Other Information

<b>Temperature</b>	Hot	<b>Present for destructiv</b>
<b>System Temp Hot</b>	120 F	<b>Phase of Constructio</b>
<b>System Pressure</b>	65 PSI	<b>Builder</b>

### Water Source

### Customer Comment(s)

<b>Water Source</b>	Municipal	tubing split at fitting. Cu
---------------------	-----------	-----------------------------

### Dates

<b>Est. Installed Date</b>	19-JUN-2013
<b>Failure Date</b>	16-FEB-2017

## Product Information

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

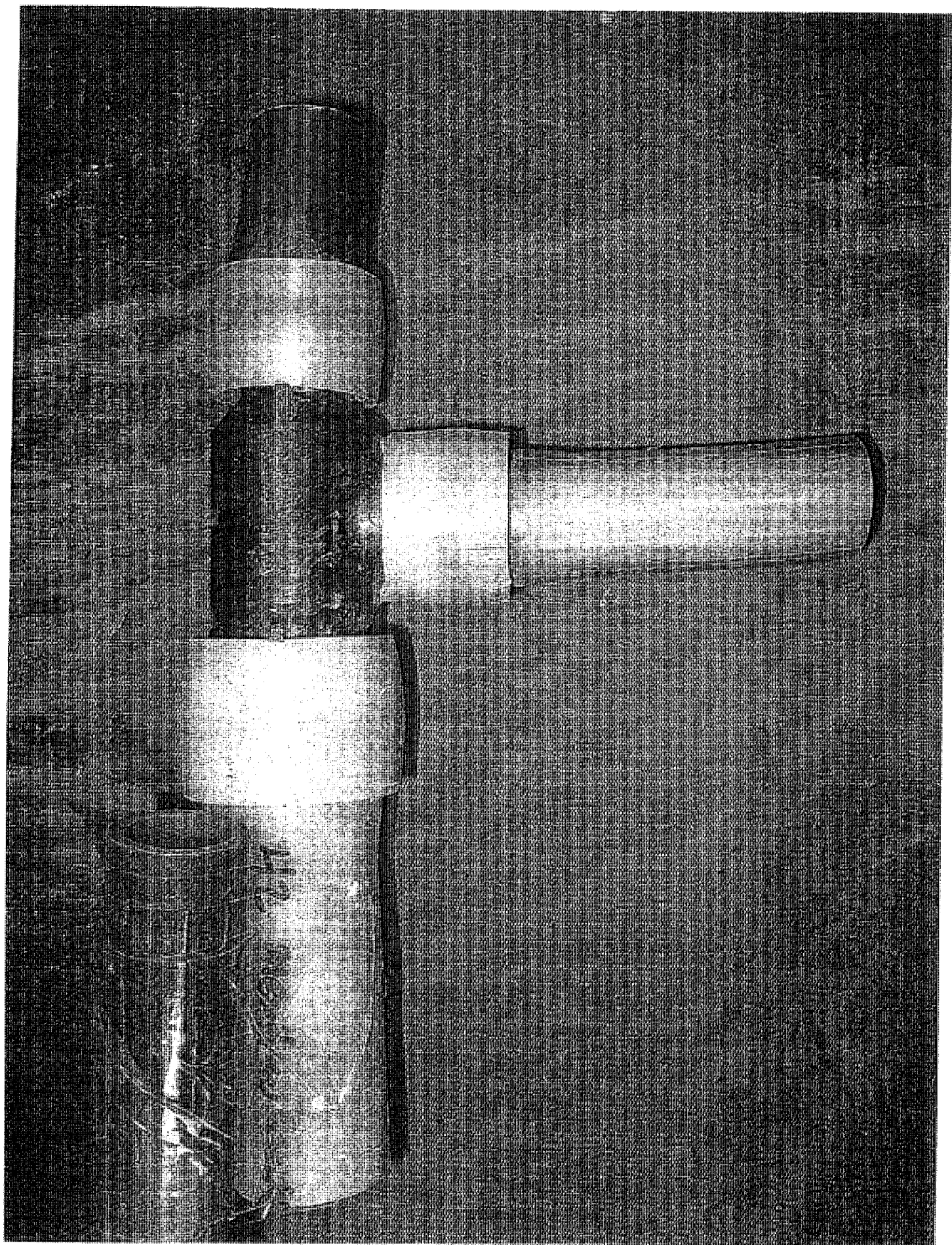
Stacey Beisse!  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

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

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

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# **EXHIBIT 11**

## Rusty Graf

---

**From:** Beissel, Stacey <Stacey.Beissel@uponor.com>  
**Sent:** Wednesday, December 13, 2017 12:47 PM  
**To:** Nicole Folino  
**Cc:** Joe Folino  
**Subject:** Uponor Warranty Claim - RMA 748395 (42 Meadowhawk)  
**Attachments:** 748395 As Received (1) (1).JPG; 748395\_As\_Received\_\_2\_ (1).JPG

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

### Claimant And Jobsite Information

#### Claimant Information

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

#### Jobsite Information

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

#### Estimated Claim Amount

Amount	\$1000 to \$2500
Preferred Reimbursement	Cash

#### Past Occurrences

#### Past Occurrences

#### Past Occurrences Ref

# Installation Information

## Application

## Contractor Information

Application

Plumbing

rakeman plumbing

Recirculation

No

alison brooks

Location Detail

master bath closet below water heater

4075 losee rd

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Ph 702 642 8553

Installing? Yes

Temperature/Pressure

Temperature

Cold

Other Information

System Temp

70 F

System Pressure

65 PSI

Present for destructive

Phase of Construction

Water Source

Builder

Water Source

Municipal

Customer Comment(s)

Dates

Blue pipe split at fitting

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017



## Product Information

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

LF4517575	ProPEX LF Brass Sweat Adapter, 3/4" PEX x 3/4" Copper	
-----------	---	--

Problem: blue tubing split at fitting

Review Result:

F3040750	3/4" Uponor AquaPEX Blue, 100-ft. coil	
----------	--	--

Problem: blue tubing split at fitting

Review Result: Manufacturing

Thank you  
Stacey

# Uponor

**Stacey Beissel**  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

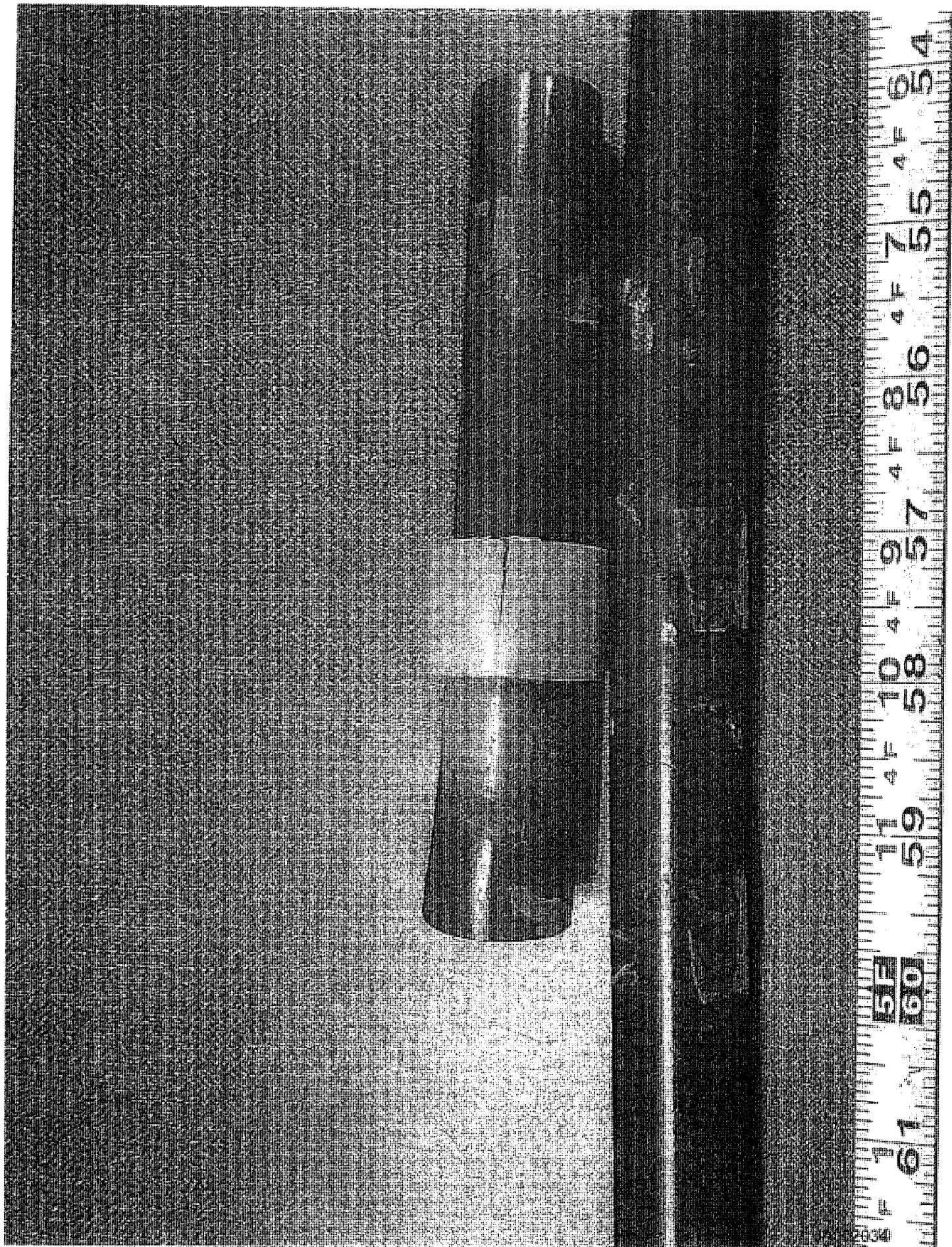
[www.uponor-usa.com](http://www.uponor-usa.com)  
[www.uponorpro.com](http://www.uponorpro.com)

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

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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

Contractor Information

Application

Plumbing

rakeman plumbing

Recirculation

No

alison brooks

Location Detail

master bath closet below water heater

4075 losee rd

NORTH LAS VEGAS, NV

US

alison@rakeman.com

Temperature/Pressure

Ph 702 642 8553

Installing? Yes

Temperature

Cold

Other Information

System Temp

70 F

System Pressure

65 PSI

Present for destructive

Phase of Construction

Water Source

Builder

Water Source

Municipal

Customer Comment(s)

Dates

Blue pipe split at fitting

Est. Installed Date

15-JUL-2013

Failure Date

07-NOV-2017

## Product Information

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

Thank you  
Stacey

# uponor

**Stacey Beissel**  
Warranty Manager  
Uponor North America

T +19529978984  
M +16512531956

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

Uponor, Inc.  
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](http://www.uponor-usa.com)

**Uponor**

## **EXHIBIT 2**

**FLOYD A. HALE**  
LAW OFFICE

Practice limited to serving as:

Special Master, Mediator and Arbitrator  
services administered and scheduled by JAMS  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169

email:  
fhaile@floydahale.com

JAMS  
Fax (702) 437-5287  
Telephone (702) 457-5267  
website: www.jamsadr.com

August 20, 2018

Sent by Email

Rusty Graf, Esq.  
Black & Lobello  
10777 West Twain Ave., 3<sup>rd</sup> floor  
Las Vegas, NV 89135  
Attorneys for Plaintiffs  
rgraf@blacklobellolaw.com

Christopher Young, Esq.  
Cobeaga Law Firm  
550 East Charleston Blvd. #D  
Las Vegas, NV 89104  
Attorneys for Defendant  
cyoung@cottonlaw.com

Re: Joseph and Nicole Folino v. Todd Swanson; Lyons Development, LLC  
Mediation: August 17, 2018

Dear Counsel:

This letter will confirm that we were not successful in reaching a settlement of this dispute during our August 17, 2018, Mediation conference. The Mediation concluded with the Folino's lowest demand to settle the case in the amount of \$225,000.00. The final settlement offer by Dr. Todd Swanson was \$125,000.00. I appreciate the clients working so hard to move the negotiations to these final figures. I will certainly welcome counsel to contact me if we can finalize this dispute since there was substantial movement toward a settlement figure.

It is my suggestion that the parties agree to settle this dispute for \$200,000.00. Since I anticipate that litigation will commence soon if there is no settlement, let me know your responses by September 4, 2018. Unless an agreement is reached, I will not advise the parties of the responses received to my proposal from the adverse party.

I would like to thank you for retaining me for the handling of this mediation and if I can be of any further service, please do not hesitate to give me a call.

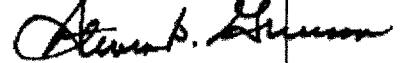
Very truly yours,

  
Floyd A. Hale

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

Electronically Filed  
4/27/2020 8:06 AM  
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 Plaintiff's Motion to Retax Costs in the above-entitled matter is set for hearing as follows:

**Date:** June 11, 2020

**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/ Ondina Amos  
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/ Ondina Amos  
Deputy Clerk of the Court

JA002043

A-18-782494-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Tort**

**COURT MINUTES**

**April 29, 2020**

---

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

---

**April 29, 2020**

**Status Check**

**HEARD BY:** Crockett, Jim

**COURTROOM:** Phoenix Building 11th Floor  
116

**COURT CLERK:** Rem Lord

**JOURNAL ENTRIES**

COURT NOTES as of 4/28/2020 the Order Granting Summary Judgement has not been filed and ORDERED, matter CONTINUED. COURT FURTHER ORDERED, matters SET 6/9/2020 CONTINUED to 6/11/2020.

CONTINUED TO: 6/11/2020 9:00 AM... MOTION TO RETAX... MOTION FOR FEES

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /rl 4/29/2020

PRINT DATE: 04/29/2020

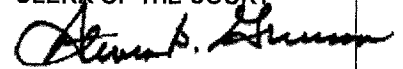
Page 1 of 1

Minutes Date: April 29, 2020

JA002044

THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
702-735-0049 Fax: 702-735-0204

Electronically Filed  
5/11/2020 3:01 PM  
Steven D. Grierson  
CLERK OF THE COURT



Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
CHRISTOPHER M. YOUNG, PC  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489  
[cyoung@cotomlaw.com](mailto:cyoung@cotomlaw.com)  
[jaythopkins@gmail.com](mailto:jaythopkins@gmail.com)

Jeffrey L. Galliher, Esq.  
Nevada Bar No. 8078  
GALLIHER LEGAL P.C.  
1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
Telephone: (702) 735-0049  
Facsimile: (702) 735-0204  
[jgalliher@galliherlawfirm.com](mailto:jgalliher@galliherlawfirm.com)

*Attorneys for Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiff(s),

v.

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

Defendant(s).

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

**I.**

**PREAMBLE**

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

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

JA002045

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

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

10 **II.**

11 **PROCEDURAL HISTORY**

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

17 ***Plaintiffs' Complaint***

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

23  
24  
25 <sup>1</sup> While the Defendants styled their instant motion as a motion to dismiss, Defendants acknowledged in their motion that  
26 because the motion and supplements referenced and attached documents outside the pleadings, this Court must invoke the  
summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

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

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

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

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

***Plaintiffs' First Amended Complaint***

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

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

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

***Plaintiffs' Second Amended Complaint***

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

---

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



1 also sought punitive damages.

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

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

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

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

17 ***The Plaintiffs' Discovery***

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

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

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

4 On April 7, 2020, this Court held a hearing regarding the Defendants' motion, and makes the  
5 following findings of fact and conclusions of law.  
6

7 **III.**

8 **LEGAL STANDARDS**

9 The following legal standards are applicable to this case:

10 **A. Summary Judgment Standards**

11 Because the parties presented matters outside the pleadings, this Court treats the Defendants'  
12 motion "as one for summary judgment and disposed of as provided in Rule 56." *See* NRCP 12(c) and  
13 *Kopicko*, 114 Nev. at 1336, 971 P.2d at 790 (1998).  
14

15 Since *Wood v. Safeway*,<sup>5</sup> the Nevada Supreme Court has followed a gradual trend toward  
16 favoring summary judgment as a "valuable tool to weed out meritless cases [which is] no longer a  
17 'disfavored procedural shortcut.'" *Boesiger v. Desert Appraisals, LLC*, 444 P.3d 436, 438-439, 2019  
18 Nev. LEXIS 39, \*4-5 (July 3, 2019) ("[s]ummary judgment is an important procedural tool by which  
19 factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the  
20 attendant unwarranted consumption of public and private resources"). *See also Wood*, 121 Nev. at  
21 730, 121 P.3d at 1030 (summary judgment "is an integral part of the [rules of civil procedure] as a  
22 whole, which are designed to secure the just, speedy and inexpensive determination of every action.")  
23

24 "Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the  
25 light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact  
26

27 <sup>5</sup> *Wood v. Safeway*, 121 Nev. 724, 727, 121 P.3d 1026, 1028 (2005).  
28

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

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

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

NRS §113.140 provides:

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

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

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

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

1 NRS §113.150(2) provides:

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

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

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

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

11 IV.

12 **SUMMARY OF FINDINGS OF FACT**

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

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

25 \_\_\_\_\_  
26 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." NRS 113.150(5).

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

October 24, 2017 Sellers' Real Property Disclosure form;

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

1 mold tests at the property;

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

18 V.

19 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

***Dr. Swanson’s Testimony***

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

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



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

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

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

5 The Defendants' responses to Plaintiffs' interrogatories confirmed the February 16, 2017 date.  
6

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

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

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

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

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

14 Dr. Swanson also testified as follows:  
15

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

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

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

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

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

25 \*\*\*

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

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///

***Rakeman Plumbing Testimony***

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

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

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

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

***Uponor Documents***

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

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

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

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

6 *Nicky Whitfield’s Testimony*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **C. The Plaintiffs’ Election to Close Bars Their Concealment Action**  
7

8 The Plaintiffs’ election to close escrow bars their claims under general waiver principles. *See*  
9 *e.g. Udevco, Inc. v. Wagner*, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984) (discussing elements of  
10 waiver as: (1) voluntary and intentional relinquishment of a known right; and (2) made with  
11 knowledge of all material facts.) Waiver of a known right can be implied by conduct. *Id.* The  
12 Plaintiffs’ conduct shows that they relinquished their rights to refuse to close.  
13

14 NRS 113.150(2) incorporates these waiver principles. Under NRS §113.150(2), the Plaintiffs’  
15 options were to either “rescind the agreement to purchase the property at any time before the  
16 conveyance of the property to the purchaser; or close escrow and accept the property with the defect  
17 as revealed by the seller or the seller’s agent without further recourse.”  
18

19 The evidence is undisputed that prior to closing, the Defendants provided notice to the  
20 Plaintiffs regarding the November 2017 Uponor system leak. The evidence is undisputed that the  
21 Plaintiffs’ agent sent a detailed email to Defendants’ agent acknowledging that the Plaintiffs’ recourse  
22 was to elect to not close. The evidence is undisputed that with knowledge of all the material facts,  
23 Plaintiffs relinquished their right to walk by closing on the property on November 17, 2017.  
24

25 This Court finds that the Plaintiffs’ election to close escrow bars “further recourse,” as a matter  
26 of law.  
27  
28

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

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

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

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

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

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

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

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

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

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

**VI.**

**ORDER**

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

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

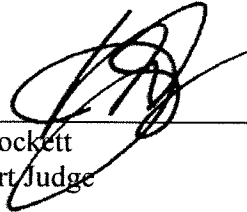
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<sup>13</sup> NRS Chapter 113 provides plaintiffs with a statutory remedy to redress a seller's failure to disclose a defect or condition in a real estate transaction. The statute preempts the Plaintiffs' fraud claim. *See Calloway v. City of Reno*,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



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

4 DATED this 11th day of May 2020.

6  
7   
8 Hon. Jim Crockett  
District Court Judge

9 Respectfully submitted by:

10  
11 /s/ **Jeffrey L. Galliher**  
12 Jeffrey L. Galliher, Esq.  
13 GALLIHER LEGAL P.C.  
14 1850 East Sahara Avenue, Suite 107  
Las Vegas, Nevada 89104  
Attorney for Defendants

15 Approved as to form and content:

16  
17 Risty Graf, Esq.  
18 BLACK & LOBELLO  
19 10777 West Twain Avenue, 3rd Floor  
Las Vegas, Nevada 89135  
Attorney for Plaintiffs