

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

STEVEN L. DAY and STEVEN L.  
DAY, PC dba DAY & NANCE,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, THE  
HONORABLE ADRIANA ESCOBAR,

Respondents,

WLAB INVESTMENT, LLC, TKNR,  
INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG,  
an individual, and KENNY ZHONG LIN,  
aka KEN ZHONG LIN aka KENNETH  
ZHONG LIN aka WHONG K. LIN aka  
CHONG KENNY LIN aka ZHONG LIN,  
an individual, and LIWE HELEN CHEN  
aka HELEN CHEN, an individual and YAN  
QIU ZHANG, an individual and  
INVESTPRO LLC dba INVESTPRO  
REALTY, a Nevada Limited Liability  
Company, and MAN CHAU CHENG, an  
individual, and JOYCE A. NICKRANDT,  
an individual, and INVESTPRO  
INVESTMENTS LLC, a Nevada Limited  
Liability Company, and INVESTPRO  
MANAGER LLC, a Nevada Limited  
Liability Company and JOYCE A.  
NICKDRANDT, an individual and does 1  
through 15 and roe corporation I-XXX,

Real Parties in Interest

Supreme Court No:

District Court No: A-18-785917-C  
Electronically Filed  
May 03 2021 08:28 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITIONERS' APPENDIX TO**  
**PETITION FOR WRIT OF**  
**MANDAMUS VOLUME I**

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## **CERTIFICATE OF MAILING**

I hereby certify that on this 30<sup>th</sup> day of April, 2021, I served the foregoing  
PETITIONERS' APPENDIX TO PETITION FOR WRIT OF MANDAMUS  
VOLUME I upon the following parties by placing a true and correct copy thereof  
in the United States Mail in Henderson, Nevada with first class postage fully  
prepaid:

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318 S. Maryland Pkwy.  
Las Vegas, NV 89101

Honorable Adriana Escobar  
Nevada Eighth Judicial District Court  
Department 14  
200 Lewis Ave.  
Las Vegas, NV 89155  
*Respondent*

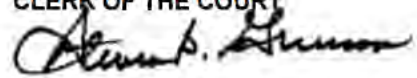
Aaron Ford  
Attorney General  
Nevada Department of Justice  
100 North Carson Street  
Carson City, NV 89701  
*Counsel for Respondent*

/s/ Brinley Richeson  
An Employee of Day & Nance



DOCUMENT 1

DOCUMENT 1



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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC

Plaintiff/Counterdefendant

vs.

Case # A-18-785917-C  
Dept # 14

TKNR, INC, a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an individual, and  
ZHONG KENNY LIN aka KENNY ZHONG LIN aka KEN  
ZHONG LIN aka KENNETH ZHONG LIN aka WHONG  
K.LIN aka CHONG KENNY LIN aka ZHONG LIN, an  
individual, and LIWE HELEN CHEN aka HELEN CHEN,  
an individual and YAN QIU ZHANG, an individual, and  
INVESTPRO LLC dba INVESTPRO REALTY,  
a Nevada Limited Liability Company, and  
MAN CHAU CHENG, an individual, and  
JOYCE A. NICKRANDT, an individual and  
INVESTPRO INVESTMENTS I LLC, a Nevada Limited  
Liability Company, and INVESTPRO MANAGER LLC,  
a Nevada Limited Liability Company, and  
Does 1 through 15 and Roe Corporations I - XXX

Defendants/Counterclaimants

SECOND  
AMENDED  
COMPLAINT

AND RELATED ACTIONS

Comes now Plaintiff W L A B Investment, LLC [hereinafter WLAB or  
Plaintiff] and files this SECOND AMENDED COMPLAINT and for its causes of  
action states as follows:

///

1 PLAINTIFF'S ALLEGATIONS OF FACT

2 A. IDENTITY OF DEFENDANTS

- 3
- 4 1. Defendant TKNR, INC, [hereinafter TKNR] was at all relevant times a
- 5 California Corporation doing business in Clark County, Nevada.
- 6 2. INVESTPRO LLC was at all relevant times a Nevada Limited Liability
- 7 Company dba INVESTPRO REALTY [hereinafter Investpro]. Investpro is a
- 8 real estate brokerage holding Nevada license # B.0144660.llc and a
- 9 property management company holding Nevada license # PM.0166824.bkr,
- 10 which licenses are registered to JOYCE A. NICKRANDT [herinafter
- 11 Nickrandt].
- 12 3. Nickrandt is a Nevada resident who, during all time relevant hereto, made
- 13 direct factual representations as TKNR's agent, WLAB's agent and
- 14 Investpro's agent. At all times relevant to this case, Nickrandt was a
- 15 manager of Investpro.
- 16
- 17 4. CHI ON WONG aka CHI KUEN WONG [hereinafter Wong] is a California
- 18 resident who owns and controls TKNR, INC and is the alter ego of TKNR.
- 19 TKNR was and is influenced and governed by Wong. There must is such a
- 20 unity of interest and ownership between Wong and TKNR that one is
- 21 inseparable from the other. Adherence to the fiction of separate entity
- 22 between Wong and TKNR would sanction a fraud or promote injustice.
- 23 5. ZHONG KENNY LIN aka KENNY ZHONG LIN aka KEN ZHONG LIN aka
- 24 KENNETH ZHONG LIN aka WHONG K.LIN aka CHONG KENNY LIN aka
- 25 ZHONG
- 26 LIN [hereinafter Lin] is a Nevada resident who, during all time relevant
- 27 hereto, made direct factual representations set forth below as both TKNR's
- 28 agent and Investpro's Chief Executive Officer and agent. At all times

relevant, Lin was also Chief Executive Officer of INVESTPRO INVESTMENT LLC and INVESTPRO MANAGER LLC. Lin is also founding chairman of INVESTPRO MANAGER LLC. Lin is also the Chairman and founder of Investpro.

6. YAN QIU ZHANG is a Nevada resident who, during all time relevant hereto, was a manager and registered agent of Investpro.

7. LIWEI HELEN CHEN aka HELEN CHEN [Chen] is a Nevada resident who, during all time relevant hereto, was a real estate agent employed, associated and/or the agent of Investpro who represented Plaintiff as the buyer of the Subject Property. Chen was the buyer's agent, representing Plaintiff.

8. INVESTPRO INVESTMENTS I LLC was at all relevant times a Nevada Limited Liability Company. INVESTPRO INVESTMENTS I LLC is the Flipping Fund described in below.

9. INVESTPRO MANAGER LLC was at all relevant times a Nevada Limited Liability Company. INVESTPRO MANAGER LLC presented and solicited investors for the Flipping Fund described below. INVESTPRO MANAGER LLC managed Investpro INVESTMENTS I LLC, the Flipping Fund, and also managed the renovation project of the Subject Property prior to the sale of the Subject Property to Plaintiff. INVESTPRO MANAGER LLC used TKNR as a sham owner of the Subject Property while in reality INVESTPRO MANAGER LLC retained control of all decisions regarding the Subject Property.

10. MAN CHAU CHENG is a Nevada resident who, during all time relevant hereto, was a manager of INVESTPRO MANAGER LLC and was a founder of INVESTPRO MANAGER LLC.

11. The true names of Defendants DOES 1 through 5 and ROE CORPORATIONS I - X, inclusive, are unknown to Plaintiff at this time.

1 Plaintiff sues those Defendants by such fictitious names pursuant to NRCP  
2 10 (a). Plaintiffs are informed and believe, and based on that information  
3 and belief allege, that each of the Defendants designated as a DOE or ROE  
4 is legally responsible for the events and happenings referred to in this  
5 complaint, and/or unlawfully caused the injuries and damages to Plaintiff  
6 alleged in this complaint, or who have an interest in the subject property as  
7 set forth below. When their true names and capacities of Doe or Roe  
8 Defendants are ascertained Plaintiff, if appropriate, will amend his  
9 Complaint accordingly to insert the correct name and capacity herein.

10 12. The true names of Defendants DOES 6 through 10 and ROE  
11 CORPORATIONS XI -XX, inclusive, are unknown to Plaintiff at this time.  
12 Plaintiff sues those Defendants by such fictitious names pursuant to NRCP  
13 10 (a). Plaintiffs are informed and believe, and based on that information  
14 and belief allege, that each of the Defendants designated as a DOE or ROE  
15 were the recipients of the assets immediately before, at or following the  
16 dissolution of Investpro INVESTMENTS I LLC in violation of NRS  
17 CHAPTER 112 - Uniform Fraudulent Transfer Act. When their true names  
18 and capacities of Doe or Roe Defendants are ascertained Plaintiff, if  
19 appropriate, will amend his Complaint accordingly to insert the correct name  
20 and capacity herein.

21 13. The true names of Defendants DOES 11 through 15 and ROE  
22 CORPORATIONS XXI - XXX, inclusive, are unknown to Plaintiff at this  
23 time. Plaintiff sues those Defendants by such fictitious names pursuant to  
24 NRCP 10 (a). Plaintiffs are informed and believe, and based on that  
25 information and belief allege, that each of the Defendants designated as a  
26 DOE or ROE were the recipients of the assets immediately before, at or  
27 following the dissolution of TKNR in violation of NRS CHAPTER 112 -  
28 Uniform Fraudulent Transfer Act. When their true names and capacities of

1 Doe or Roe Defendants are ascertained Plaintiff, if appropriate, will amend  
2 his Complaint accordingly to insert the correct name and capacity herein

3 14. This Court has jurisdiction and authority to issue judgment in this matter per  
4 NRS 13.010.

5  
6 B. TRANSACTIONS RESULTING IN THIS LAWSUIT

7  
8 15. That on or about December 15, 2017 TKNR sold Plaintiff a parcel of real  
9 property with a residential rental Unit A, Unit B and Unit C on it, specifically  
10 the real property located at 2132 Houston Dr Las Vegas, NV, referred to  
11 herein as the Subject Property. The Subject Property is a residential rental  
12 income multifamily apartment.

13 16. Investpro was at all relevant times the property manager on behalf of  
14 INVESTPRO MANAGER LLC and/or TKNR from September 30, 2015 to  
15 December 15, 2017, on behalf of Plaintiff from December 15, 2017 to July  
16 30, 2018 for the Subject Property.

17 17. Lin is the manager of a Flipping Fund and also represents himself as the  
18 "CEO of Investpro Investment LLC & Investpro Manager LLC". The  
19 Flipping Fund is represented in promotional material as follows :  
20

21  
22 FLIPPING FUND  
23 INVESTPRO INVESTMENTS I LLC  
24 PRESENT BY INVESTPRO MANAGER LLC  
25 KENNY LIN  
26 Phone : +1 (702) 726-0000  
27 Email : zhong.kenny@gmail.com

- 28
1. TERM : 1-3 YEARS
  2. MINIMUM UNITS: \$50,000 MINIMUM, \$1000 PER UNIT.

3. USE OF FUND: FLIPPING RESIDENTIAL PROPERTIES IN LAS VEGAS.
4. RETURNS: 8 % PREFERRED PER ANNUL PAYS EVERY QUARTER, HEN AFTER ALL MONEY RETURNED TO INVESTORS, THE NET PROCEED SPLIT 75% TO INVESTORS AND 25 % TO MANAGER LLC.
5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015

#### WHAT'S FLIPPING FUND?

Flipping Fund is established by Investro Investments Foundation. The fund will be investing on purchasing value increasing real estates in Las Vegas. Once reached the term, the property will be sold out. Profits will be put back into the fund for investing another property.

18. INVESTPRO INVESTMENTS I LLC is the business entity used by Lin for the Flipping Fund. Lin is the Chief Executive Officer of INVESTPRO INVESTMENTS I LLC.
19. INVESTPRO MANAGER LLC is the business entity used by Lin to present and solicit investors and funds to the Flipping Fund. INVESTPRO MANAGER LLC was also the project manager for renovation of the Subject Property as described below. Lin is the Chief Executive Officer of INVESTPRO MANAGER LLC.
20. Prior to the sale of the Subject Property, INVESTPRO MANAGER LLC performed as a general contractor without being licensed as a general contractor in that INVESTPRO MANAGER LLC identified scope of renovation, demolition, and construction work, managed the renovation, demolition, and construction work on the Subject Property from soliciting

- 1 subcontractors bids, evaluating bids from subcontractor, awarding contracts  
2 to subcontractors, monitoring subcontractor work and paying  
3 subcontractors, handypersons and unlicensed workers. INVESTPRO  
4 MANAGER LLC contracted for extensive renovation, demolition, and  
5 construction work on the Subject Property.
- 6 21. INVESTPRO MANAGER LLC was the project manager for the renovation  
7 of the Subject Property.
- 8 22. Investpro was also the real estate broker in the sale, representing both the  
9 buyer [WLAB] and the seller [TKNR].
- 10 23. TKNR and it's agent Investpro marketed and listed for sale.
- 11 24. Seller's Real Property Disclosure Form was prepared, presented and  
12 initialed by Lin on or about August 7, 2017.
- 13 25. TKNR failed to disclose one or more known condition(s) that materially  
14 affect(s) the value or use of the Subject Property in an adverse manner, as  
15 required by NRS Chapter 113, in a particular NRS 113.130.
- 16 26. TKNR and it's agent Investpro marketed and listed the Subject Property  
17 for sale.
- 18 27. Factual statements from the August 7, 2017 Seller Real Property Disclosure  
19 Form (SRPDF) are set forth in Paragraph 31 and the subsections thereof  
20 state whe the disclosures were either inadequate or false. The SRPDF  
21 states that it was prepared, presented and initialed by Kenny Lin.
- 22 28. All work on the Subject Property which is complained of herein was  
23 performed at the direction of INVESTPRO MANAGER LLC and Investpro,  
24 as TKNR's agent. Further, all work on the Subject Property which is  
25 complained of herein occurred within two years prior to the sale to Plaintiff  
26 and while the Subject Property was under TKNR's ownership and  
27 INVESTPRO MANAGER, LLC's control.
- 28 29. Since the Subject Property is a residential rental apartment, to protect



1 tenants and consumers, the applicable local building code requires all  
2 renovation, demolition, and construction work must be done by licensed  
3 contractors with permits and inspections to ensure compliance with the  
4 Uniform Building Code [UBC].

5 30. INVESTPRO MANAGER LLC is not a Nevada licensed general  
6 contractor.

7 31. Defendants Lin, Investpro, as TKNR's agent, TKNR, Wong and  
8 INVESTPRO MANAGER LLC, as the true owner of the Subject Property,  
9 did not disclose any and all known conditions and aspects of the property  
10 which materially affect the value or use of residential property in an adverse  
11 manner, as itemized below.

- 12
- 13 a. SRPDF stated that Electrical System had no problems or defects.  
14 The fact is that many new electric lines were added and many old  
15 electric lines were removed by Investpro Manager LLC . The swamp  
16 coolers that were removed were supplied by 110 volt power supply  
17 lines. Investpro Manager LLC first added one 220v power supply line  
18 for one new 5 ton heat pump package unit on one roof top area for  
19 the whole building for Unit A. Unit B and Unit C.  
20 Investro Manager, LLC then removed the one year old 5 ton heat  
21 pump packaged unit from the roof top with power supply lines and  
22 added two new 220v power supply lines for two new 2 ton heart pump  
23 package units, one each for Unit B and Unit C.  
24 Inestpro Manager, LLC then added one new 110 volt power supply  
25 line for two window cooling units for Unit A. The electrical system  
26 load for Unit A was increased due to the installation of two new  
27 cooling units and required 100 amp service, but the electrical service  
28 was not upgraded to 100 amp service from the existing 50 amp

1 service. Failure to upgrade the electrical service caused the fuses to  
2 be blown out multiple times during the cooling seasons of 2018. The  
3 tenants in Unit A could not use air conditioning units in cooling  
4 seasons of 2018, causing Unit A to be uninhabitable until the Unit A  
5 electrical supply panel was upgraded to 100 amp service.

6 All the electrical supply line addition and removal work were  
7 performed without code required electrical load calculation, permits  
8 and inspections. To save money, minimize flipping cost, minimize  
9 flipping time, maximize flipping fund profits, Investpro Manager LLC  
10 used unlicensed and unskilled workers to do the electrical work and  
11 used low quality materials used inadequate electrical supply lines.  
12 Further, to save money, minimize flipping cost, minimize flipping time,  
13 maximize flipping fund profits, Investpro Manager LLC used  
14 unskilled workers who did not know the UBC requirements to do the  
15 electrical work. This substandard work may lead electrical lines to  
16 overheat and cause fires in the attic when tenant electrical load is  
17 high.

18 Further, to save money, minimize flipping cost, minimize flipping time,  
19 maximize flipping fund profits, Investpro Manager LLC used  
20 unskilled workers who did not know the UBC requirements to do the  
21 electrical work. The outlets near the water faucets in kitchens,  
22 bathrooms and laundry areas were not GFCI outlets as required by  
23 the UBC.

- 24
- 25 b. SRPDF stated that Plumbing System had no problems or defects.  
26 The fact is that that within two years prior to the sale to Plaintiff,  
27 Investpro Manager LLC removed and plugged swamp cooler water  
28 supply lines without UBC required permits and inspections. To save

1 money, minimize flipping cost, minimize flipping time, and maximize  
2 flipping fund profits, Investpro Manager LLC used unlicensed and  
3 unskilled workers who just plugged high pressure water supply lines  
4 at rooftop instead of at ground level and who did not remove the water  
5 supply lines on top of the roof, inside the attic and behind the drywall.  
6 In cold winter, the high pressure water line which was left inside the  
7 building may freeze and break the copper line and lead flooding in the  
8 whole building.

9 Further, to save money, minimize flipping cost, minimize flipping time,  
10 and maximize flipping fund profits, Investpro Manager LLC used  
11 unlicensed and unskilled workers to remove and plug natural gas  
12 lines for the natural gas wall furnaces without UBC required permits  
13 and inspections.

14 Further, to save money, minimize flipping cost, minimize flipping time,  
15 and maximize flipping fund profits, Investpro Manager LLC used  
16 unlicensed and unskilled workers with little knowledge of natural gas  
17 pipe connection requirements. The unlicensed and unskilled workers  
18 used the wrong sealing materials and these sealing materials may  
19 degrade and lead to natural gas leaks and accumulation inside the  
20 drywall and the attic which may cause an explosion or fire.

21 Further, to save money, minimize flipping cost, minimize flipping time,  
22 and maximize flipping fund profits, Investpro Manager LLC used  
23 unlicensed and unskilled workers to completely renovate all three  
24 bathrooms in the Subject Property without UBC required permits and  
25 inspections. Some faucets and connections behind tile walls and  
26 drywall leak and are causing moisture conditions behind tile walls and  
27 drywalls.  
28

1 c. SRPDF stated that Sewer System and line had no problems or  
2 defects.

3 The subject property was built in 1954. Clay pipes were used at that  
4 time for sewer lines. Before the sale, within few days after tenants  
5 moved into apartment Unit B, they experienced clogged sewer line  
6 which caused the bathrooms to be flooded. The tenants called  
7 Investpro to ask them to fix the clogged pipes and address the  
8 flooding issues. After this report, Investpro asked tenants to pay to  
9 hire plumber to snake the sewer line. After tenants threatened to call  
10 the Las Vegas code enforcement office, to save money, minimize  
11 flipping cost, minimize flipping time, and maximize flipping fund  
12 profits, Investpro used unlicensed and unskilled workers to snake the  
13 clay sewer pipes. Licensed contractors must be hired to snake sewer  
14 pipes as code required. This approach to clearing the clog may  
15 break the clay sewer pipes and cause future tree root grown into  
16 sewer lines and clogs in sewer lines.

17  
18 d. SRPDF stated that Heating System had problems or defects.

19 No full explanation was provided, as required. Investro Manager, LLC  
20 disabled natural gas heating system without UBC required permits  
21 and inspections. To save money, minimize flipping cost, minimize  
22 flipping time, and maximize flipping fund profits, Investpro Manager  
23 LLC used unlicensed and unskilled workers with little knowledge  
24 about natural gas pipe connection requirements. They used the  
25 wrong sealing materials and these sealing materials may degrade and  
26 lead to a natural gas leak inside the drywall and the attic and may  
27 cause an explosion or fire.

28 Further, Investpro Manager LLC installed two electrical heat pump

1 heating systems without UBC required permits and inspections for  
2 Unit B and Unit C. The Unit A does not have an electrical heat pump  
3 heating system nor a natural gas wall furnace heating system now.  
4 Unit A has to use portable electrical heaters.

- 5
- 6 e. SRPDF stated that the Cooling System had problems or defects  
7 No full explanation was provided, as required. Investro Manager, LLC  
8 removed old swamp cooler systems without UBC required permits and  
9 inspections. To save money, minimize flipping cost, minimize flipping  
10 time, and maximize flipping fund profits, Investpro used unlicensed  
11 and unskilled workers to disconnect water supply lines, cover swamp  
12 cooler ducting holes, and disconnect 110V electrical supply lines.  
13 Further, as early as March of 2016, Investro Manager, LLC hired Air  
14 Supply Cooling to install one five ton new heat pump package unit  
15 with new rooftop ducting systems on one roof area to supply cooling  
16 and heating air to the whole building consisting of Unit A, Unit B and  
17 Unit C without UBC required weight load and wind load calculations,  
18 permits and inspections. The five ton heat pumps package unit was  
19 too big, too heavy and had control problems. To save money,  
20 minimize flipping cost, minimize flipping time, and maximize flipping  
21 fund profits, Investpro Manager LLC also used unlicensed and  
22 unskilled workers to remove the one year old five ton heat pump  
23 package unit with ducting system without UBC required permits and  
24 inspections. All of this work was done without UBC required  
25 structural calculation, permits and inspections.  
26 Further, in early June, 2017, Investro Manager, LLC hired The AIR  
27 TEAM to install two new two ton heat pump package units, one each  
28 for Unit B and Unit C. Invespro Manager, LLC also used unlicensed

1 and unskilled workers to install two window cooling units in Unit A's  
2 exterior walls. All of the above work was done without UBC required  
3 permits and inspections.

4 Further, to save money, minimize flipping cost, minimize flipping time,  
5 and maximize flipping fund profits, Investro Manager, LLC did not  
6 replace the old, uninsulated swamp cooler ducts with new insulated  
7 HVAC ducts as the UBC required. This resulted in the heat pump  
8 package units being overloaded and damaged during cooling season  
9 because cool air was heated by uninsulated attic hot air before  
10 delivering the cooled air to the rooms. The old, uninsulated swamp  
11 cooler ducts were also rusted and leaked due to high moisture air  
12 from the bathroom vent fans and the clothes washer/dryer  
13 combination unit exhaust vents. The heat pumps would run all the  
14 time but still could not cool the rooms.

15  
16 f. SRPDF stated that Smoker detector had no problems or defects  
17 During Plaintiff's inspection at August 10, 2017 afternoon, some  
18 smoke detectors were missing.

19  
20 g. SRPDF stated that no Previous or current moisture conditions and or  
21 water damage.

22 To save money, minimize flipping cost, minimize flipping time, and  
23 maximize flipping fund profits, Investro Manager, LLC used  
24 unlicensed and unskilled workers to vent high moisture bathroom fan  
25 exhaust and washer/dryer combination unit exhaust into the ceiling  
26 attic area instead of venting outside the building roof without UBC  
27 required permits and inspections. The improper ventings caused high  
28 moisture conditions in ceiling attic and water damages in ceiling and

1 attic. The high moisture conditions in the ceiling attic destroyed ceiling  
2 attic insulations, damaged the roof decking, damaged roof trusses  
3 and damaged roof structure supports.

4 To saving money, minimize flipping cost, minimize flipping time, and  
5 maximize flipping fund profits, Investpro Manager LLC used  
6 unlicensed and unskilled workers to complete renovation to all three  
7 bathrooms without UBC required permits and inspections. Some  
8 faucets and connections behind tile walls and drywall leaks and  
9 caused moisture conditions behind tile walls and drywalls.

10  
11 h. SRPDF stated that there was no structure defect.

12 Investpro Manager LLC added one new five ton heat pump package  
13 unit with ducting systems on the one roof top area for the whole  
14 building in early March, 2016 without UBC required weight load and  
15 wind load calculation, permits and inspections. Due to the five ton  
16 heat pump package unit being too big, too heavy and having control  
17 problems to save money, minimize flipping cost, minimize flipping  
18 time, and maximize flipping fund profits, Investro Manager, LLC used  
19 unlicensed and unskilled workers to remove the one year old five ton  
20 heat pump package unit with part of the ducting system again without  
21 UBC required permits and inspections. Investpro Manager LLC  
22 added two new two ton heat pump package units on the two roof top  
23 areas for Unit B and Unit C with new ducting systems without UBC  
24 required weight load and wind loan calculation, permits and  
25 inspections.

26 Further, to save money, minimize flipping cost, minimize flipping time,  
27 and maximize flipping fund profits, Investpro Manager LLC used  
28 unlicensed and unskilled workers to open two new window holes on

1 exterior walls for two window cooling units in Unit A without UBC  
2 required structure calculation, permits and inspections. This work  
3 damaged the building structure.

4 Further, the moisture condition behind tile walls and drywall due to  
5 faucets leaking damaged the building structure.

6 Further, Investpro Manager LLC's unlicensed and unskilled workers  
7 used the space between two building support columns as a duct to  
8 vent high moisture exhaust from the washer/dryer combination unit  
9 exhaust vent from Unit A without UBC required permits and  
10 inspections and this damaged the building structure.

11 The recent inspection of the exterior wall found multiple cracks which  
12 indicates structural problems caused by the heavy load on the roof.

- 13  
14 i. SRPDF marked Yes and NO for construction, modification,  
15 alterations or repairs made without required state. city or county  
16 building permits.

17 Defendants Lin, Investpro, as TKNR's agent, TKNR, and Wong did  
18 not provide detailed explanations. All renovation, demolition, and  
19 construction work was done by Investpro Manager LLC using  
20 unlicensed, and unskilled workers without UBC required weight load  
21 and wind load calculations, permits and inspections.

- 22  
23 j. SRPDF stated that there were not any problems with the roof.

24 The roof of the Subject Property was damaged by changing roof top  
25 HVAC units and ducting systems multiple times from October, 2015  
26 to June, 2017. Investpro Manager LLC removed the existing swamp  
27 coolers from roof top and covered the swamp coolers ducting holes.  
28 Investpro Manager LLC added a five ton heat pump package unit with



1 a new ducting system on one roof top area in March, 2016.

2 Investpro the removed the one year old five ton heat pump package  
3 unit with part of the ducting system from the one roof top area in June,  
4 2017. Then Investpro Manager LLC added two two ton heat pump  
5 package units on the two roof top areas in June, 2017. The work  
6 damaged the roof of the Subject Property to such an extent that when  
7 it rains the roof leaks. All of this renovation, demolition, and  
8 construction work was done without UBC required weight load and  
9 wind load calculations, permits and inspections and this damaged the  
10 building roof structure.

11  
12 k. SRPDF stated that no there were not any fungus or mold problems.  
13 To save money, minimize flipping cost, minimize flipping time, and  
14 maximize flipping fund profits, Investpro Manager LLC vented the  
15 bathroom high moisture fans and the washer/dryer combination unit  
16 exhaust vents into the ceiling and attic without venting outside of the  
17 roof. All of this renovation, demolition, and construction work was  
18 done without UBC required permits and inspections and this damaged  
19 the building structure. After the purchase of the Subject Property,  
20 Plaintiff discovered black color fungus mold was found inside ceiling  
21 and attic.

22  
23 l. SRPDF stated that there were not any other conditions or aspects of  
24 the property which materially affect its value or use in an adverse  
25 manner.

26 i. Problems with flooring.

27 To save money, minimize flipping cost, minimize flipping time,  
28 and maximize flipping fund profits, Investpro Manager LLC

1 used unlicensed and unskilled workers to lay low quality cheap  
2 ceramic tiles on the loose sandy ground rather than on a  
3 strong, smooth, concrete floor base. Within few months after  
4 tenants moving into the Subject Property, mass quantities of  
5 floor ceramic tiles cracked and the floor buckled. These  
6 cracked ceramic tiles may cut tenants' toes and create a trip  
7 and fall hazard. These are code violations had to be repaired  
8 before the units could be rented to tenants. The plaintiff has to  
9 spend lot money to replace all ceramic tile floor in Unit C with  
10 vinyl tile floor.

11 ii. Problems with the land/foundation.

12 Within few months after tenants moved into the Subject  
13 Property in 2017, large quantities of floor tiles cracked and the  
14 floor buckled. This indicated that there may have foundation  
15 problems likely due to heavy loads by the new HVAC systems  
16 and the venting of moisture into the ceiling and attic. Too much  
17 weight loads on the walls caused exterior wall cracking.

18 iii. Problems with closet doors.

19 To save money, minimize flipping cost, minimize flipping time,  
20 and maximize flipping fund profits, Investpro Manager LLC  
21 used unlicensed and unskilled workers to install closet doors  
22 with poor quality for Unit C, all closet doors fell down in three  
23 months after tenant move into Unit C.

- 24  
25 32. Plaintiff discovered the multiple defects and false or inaccurate statements,  
26 as set forth above, after purchasing the property on December 15, 2017,.  
27 33. After selling the property to Plaintiff, TKNR filed a dissolution with the State  
28 of California in September, 2018 and it is unknown at this time to whom

TKNR disbursed its assets in the dissolution.

34. The assets distributed by TKNR as part of it's dissolution were all of TKNR's assets and were disbursed with the intent to default Plaintiff..

35. Investpro Investments I LLC filed a dissolution with the State of Nevada on January 28, 2019, after the initial Complaint was served. It is unknown at this time to whom Investpro Investments I LLC disbursed its assets in the dissolution.

36. The assets distributed by Investpro Investments I LLC as part of it's dissolution were all of Investpro Investments I LLC's assets and were disbursed with the intent to defraud Plaintiff.

FIRST CAUSE OF ACTION - RECOVERY UNDER NRS CHAPTER 113  
[Defendants TKNR, Wong, and INVESTPRO MANAGER LLC]

37. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.

38. Due to the false or inaccurate statements of TKNR, Wong, and INVESTPRO MANAGER LLC as the true owner of the Subject Property, and/or the failure to disclose the defects set forth above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be set forth and proven at the time of trial.

39. Pursuant to NRS Chapter 113, Plaintiff is entitled to recover from TKNR, Wong and INVESTPRO MANAGER LLC treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees.

40. It has been necessary for Plaintiff to retain the services of an attorney and to

1 incur other court costs to prosecute this action. Defendants should be  
2 required to pay attorneys' fees and costs incurred by Plaintiff in this action.

3 41. Due to the violation of the requirements of NRS Chapter 113 by TKNR,  
4 Wong and INVESTPRO MANAGER LLC, as set forth above prior to the sale  
5 to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen  
6 Thousand Dollars (\$15,000.00), which amount will be set forth and proven  
7 at the time of trial.

8  
9 SECOND CAUSE OF ACTION - CONSTRUCTIVE FRAUD

10 [Defendants Investpro, Nickrandt and Chen]  
11

12 42. Plaintiff realleges and incorporates herein all of the allegations previously  
13 made in all previous paragraphs as though fully set forth herein.

14 43. Plaintiff was in a fiduciary or confidential relationship with Investpro,  
15 Nickrandt and Chen for the purchase of the Subject Property.

16 44. Investpro, Nickrandt and Chen's representations set forth above were  
17 deceptive or violated the confidence placed in them by Plaintiff.

18 45. Plaintiff reasonably relied on Investpro, Nickrandt and Chen's deceptive  
19 representations set forth above or the expected disclosures from Investpro,  
20 Nickrandt and Chen, which they did not provide.

21 46. Due to the constructive fraud of Investpro, Nickrandt and Chen set forth  
22 above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount  
23 in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be  
24 set forth and proven at the time of trial.

25 47. It has been necessary for Plaintiff to retain the services of an attorney and to  
26 incur other court costs to prosecute this action. Defendants Investpro,  
27 Nickrandt and Chen should be required to pay attorneys' fees and costs  
28

1 incurred by Plaintiff in this action.

2  
3 THIRD CAUSE OF ACTION - COMMON LAW FRAUD

4 [Defendants Investpro, INVESTPRO MANAGER LLC , TKNR, Wong and Lin]

5  
6 48. Plaintiff realleges and incorporates herein all of the allegations previously  
7 made in all previous paragraphs as though fully set forth herein.

8 49. Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong and Lin  
9 made misrepresentations of material fact regarding the Subject Property to  
10 Plaintiff, as set forth above.

11 50. Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong and Lin  
12 had knowledge of the misrepresentations of material fact regarding the  
13 Subject Property to Plaintiff, as set forth above.

14 51. Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong and Lin  
15 intended to defraud Plaintiff.

16 52. Plaintiff reasonably relied on the misrepresentations of material fact  
17 regarding the Subject Property made by Defendants Investpro, INVESTPRO  
18 MANAGER LLC, TKNR, Wong and Lin.

19 53. Due to the the misrepresentations of material fact regarding the subject  
20 property made by Defendants Investpro, INVESTPRO MANAGER LLC,  
21 TKNR, Wong and Lin set forth above prior to the sale to Plaintiff, Plaintiff  
22 has been damaged in an amount in excess of Fifteen Thousand Dollars  
23 (\$15,000.00), which amount will be set forth and proven at the time of trial.

24 54. It has been necessary for Plaintiff to retain the services of an attorney and to  
25 incur other court costs to prosecute this action. Defendants Investpro,  
26 INVESTPRO MANAGER LLC, TKNR, Wong and Lin should be required to  
27 pay attorneys' fees and costs incurred by Plaintiff in this action.  
28

1 FOURTH CAUSE OF ACTION - FRAUDULENT INDUCEMENT

2 [Defendants TKNR, INVESTPRO MANAGER LLC , Wong, Investpro and Lin]

3  
4 55. Plaintiff realleges and incorporates herein all of the allegations previously  
5 made in all previous paragraphs as though fully set forth herein.

6 57. Defendant TKNR, through it's agents, Wong, Investpro, INVESTPRO  
7 MANAGER LLC, and Lin made misrepresentations of material fact  
8 regarding the Subject Property, as set forth above.

9 58. Defendant Wong is the alter ego of TKNR.

10 59. Defendants' actions constitute Fraudulent Inducement because :

11 (1) A false representation(s) was/were made to Plaintiff as set forth above;

12 (2) Defendants TKNR, through it's agents, Wong, Investpro, INVESTPRO  
13 MANAGER LLC, and Lin had knowledge or belief that, as set forth above,  
14 the representations were false or they had knowledge that they had  
15 insufficient basis for making the representation;

16 (3) Defendants TKNR, through it's agents, Wong, Investpro, INVESTPRO  
17 MANAGER LLC, and Lin intended to induce Plaintiff to complete the  
18 purchase of the Subject Property;

19 (4) Plaintiff justifiably relied upon the misrepresentation of TKNR, through  
20 it's agents, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin; and

21 (5) Plaintiff suffered damages resulting from such reliance.  
22

23 60. Plaintiff has been damaged as a result of the fraudulent inducement of  
24 TKNR, through it's agents, Wong, Investpro, INVESTPRO MANAGER LLC,  
25 and Lin .

26 62. Due to the fraudulent concealment of material fact regarding the Subject  
27 Property by

28 Defendants TKNR, through it's agents, Wong, Investpro, INVESTPRO

MANAGER LLC, and Lin as set forth above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be set forth and proven at the time of trial.

63. It has been necessary for Plaintiff to retain the services of an attorney and to incur other court costs to prosecute this action. Defendants TKNR, Investpro, Investpro Manager LLC, and Lin should be required to pay attorneys' fees and costs incurred by Plaintiff in this action.

FIFTH CAUSE OF ACTION : FRAUDULENT CONCEALMENT

[Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin]

64. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.

65. Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin concealed or suppressed material facts as set forth above.

66. Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin were under a duty to disclose the concealed facts.

67. Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin intentionally concealed or suppressed the concealed facts with the intention of defrauding Plaintiff.

68. Plaintiff did not know about the concealed facts and would have acted differently had they known.

69. Due to the concealment of material facts regarding the Subject Property made by

Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin as set forth above prior to the sale to Plaintiff, Plaintiff has been

1 damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),  
2 which amount will be set forth and proven at the time of trial.

3 70. It has been necessary for Plaintiff to retain the services of an attorney and to  
4 incur other court costs to prosecute this action. Defendants TKNR, Wong,  
5 Investpro, INVESTPRO MANAGER LLC, and Lin should be required to pay  
6 attorneys' fees and costs incurred by Plaintiff in this action.

7  
8 SIXTH CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

9 [Defendants Investpro and Nickrandt and Chen]  
10

11 71. Plaintiff realleges and incorporates herein all of the allegations previously  
12 made in all previous paragraphs as though fully set forth herein.

13 72. Defendants Investpro and Nickrandt and Chen owed a fiduciary duty to the  
14 Plaintiff in acting as the real estate agent and/or broker for the Plaintiff.

15 73. Defendants Investpro and Nickrandt and Chen breached duties owed as a  
16 fiduciary because Defendants Investpro and Nickrandt and Chen failed to  
17 meet their duties owed to the Plaintiff, including without limitation, a duty to  
18 conduct their obligations in a reasonable and customary manner consistent  
19 with local standards, a duty to honestly inform the Plaintiff of the status and  
20 facts of the purchases and sales, and a duty to meet their obligations as  
21 agreed to in acting as a real estate agent and/or broker.

22 74. As a direct and proximate result of Plaintiff's reliance upon Defendants  
23 Investpro and Nickrandt and Chen in acting as their fiduciary, Plaintiff has  
24 suffered and will suffer general and consequential damages in excess of ten  
25 thousand dollars (\$15,000), exclusive of costs and interest, in an amount to  
26 be determined according to proof adduced at trial.

27  
28 75. Plaintiff has further been required to retain the services of an attorney to



1 prosecute this action on its behalf, and as such are entitled to attorney's  
2 fees and costs incurred in prosecuting this matter.

3  
4 ///

5 SEVENTH CAUSE OF ACTION - RICO

6 [Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO  
7 INVESTMENTS I LLC ]  
8

9 76. Plaintiff realleges and incorporates herein all of the allegations previously  
10 made in all previous paragraphs as though fully set forth herein.

11 77. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO  
12 INVESTMENTS I LLC engaged in criminal enterprise under the guise of a  
13 real estate investment fund, the Flipping Fund, to commit fraud on Plaintiff  
14 and at least one other individual by engaging in criminal activity by  
15 contracting and managing renovation projects for the Subject Property, and  
16 other properties, without a license.

17 78. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO  
18 INVESTMENTS I LLC engaged in criminal enterprise under the guise of a  
19 real estate investment fund, the Flipping Fund, to commit fraud on Plaintiff  
20 and at least one other individual by engaging in criminal activity by soliciting  
21 money and running the Flipping Fund without a federal license from the  
22 Security and Exchange Commission or a state license from the state of  
23 Nevada.

24 79. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO  
25 INVESTMENTS I LLC used the proceeds of the above described activity to  
26 purchase assets including, but not limited to, membership interest in TKNR.

27 80. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO  
28

INVESTMENTS I LLC used the proceeds of the above described activity to pay Flipping Fund investors a promised 23.69% compound rate.

81. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO INVESTMENTS I LLC used the proceeds of the above described activity to generate sales commissions for Investpro.

82. As a direct and proximate result of the actions of Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO INVESTMENTS I LLC, Plaintiff has suffered and will suffer general and consequential damages in excess of ten thousand dollars (\$15,000), exclusive of costs and interest, in an amount to be determined according to proof adduced at trial.

83. Plaintiff has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such are entitled to attorney's fees and costs incurred in prosecuting this matter.

#### EIGHTH CAUSE OF ACTION - DAMAGES UNDER NRS 645.257(1)

[Defendant Chen, Lin, Investpro and Nickrandt]

84. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.

85. At all relevant times Investpro was the real estate broker for the purchase and sale of the Subject Property.

86. Investpro represented both the buyer and the seller in the transaction.

87. At all relevant times Chen was the employee or agent of Investpro.

88. At all relevant times Lin was the employee or agent of Investpro.

89. At all relevant times Nickrandt was the licensee of Investpro.

90. NRS 645.252(1)(a) imposes a duty on a "licensee acting as agent in real estate transaction" to disclose to Plaintiff "Any material and relevant facts,

1 data or information which the licensee knows, or which by the exercise of  
2 reasonable care and diligence should have known, relating to the property  
3 which is the subject of the transaction.”

4 91. The facts of the renovation project on the Subject Property set forth in  
5 Paragraph 31 were material and relevant facts, data or information which  
6 Chen knew, or which by the exercise of reasonable care and diligence  
7 should have known.

8 92. Chen had an obligation under NRS 645.252(1)(a) to disclose the material  
9 facts of the renovation project on the Subject Property as set forth in  
10 Paragraph 31.

11 93. The facts of the renovation project on the Subject Property set forth in  
12 Paragraph 31 were material and relevant facts, data or information which  
13 Lin knew, or which by the exercise of reasonable care and diligence should  
14 have known.

15 94. Lin had an obligation under NRS 645.252(1)(a) to disclose the material facts  
16 of the renovation project on the Subject Property as set forth in Paragraph  
17 31.

18 95. The facts of the renovation project on the Subject Property set forth in  
19 Paragraph 31 were material and relevant facts, data or information which  
20 Nickrandt knew, or which by the exercise of reasonable care and diligence  
21 should have known.

22 96. Nickrandt had an obligation under NRS 645.252(1)(a) to disclose the  
23 material facts of the renovation project on the Subject Property as set forth  
24 in Paragraph 31.

25 97. Chen did not disclose the material facts of the renovation project on the  
26 Subject Property as set forth in Paragraph 31 to Plaintiff.

27 98. Lin did not disclose the material facts of the renovation project on the  
28 Subject Property as set forth in Paragraph 31 to Plaintiff.

1 99. Nickrandt did not disclose the material facts of the renovation project on the  
2 Subject Property as set forth in Paragraph 31 to Plaintiff.

3 100. Plaintiff seeks judgment for actual damages against Chen pursuant to NRS  
4 645.257(1).

5 101. Plaintiff seeks judgment for actual damages against Lin pursuant to NRS  
6 645.257(1).

7 102. Plaintiff seeks judgment for actual damages against Nickrandt pursuant to  
8 NRS 645.257(1).

9  
10 NINTH CAUSE OF ACTION - FAILURE TO SUPERVISE, INADEQUATE  
11 TRAINING AND EDUCATION

12 [Defendant Investpro, Zhang, and Nickrandt]  
13

14 103. Plaintiff realleges and incorporates herein all of the allegations previously  
15 made in all previous paragraphs as though fully set forth herein.  
16

17 104. At all relevant times Lin and Chen were the employees or agents of  
18 Investpro.

19 Nickrandt is the licensee of Investpro and Zhang is a manager of Investpro.

20 105. Investpro, Zhang, and Nickrandt failed to supervise their employees or  
21 agents, Lin and Chen.

22 106. Investpro, Zhang, and Nickrandt failed to adequately train their employees  
23 or agents, Lin and Chen to ensure that they complied with the law.

24 107. Investpro, Zhang, and Nickrandt failed to adequately educate their  
25 employees or agents, Lin and Chen to ensure that they complied with the  
26 law.

27 108. As a direct and proximate result of the actions of Defendants Investpro,  
28 Zhang, and Nickrandt failure to supervise, adequately train or adequately

1 educate their employees or agents, Lin and Chen Plaintiff has suffered and  
2 will suffer general and consequential damages in excess of ten thousand  
3 dollars (\$15,000), exclusive of costs and interest, in an amount to be  
4 determined according to proof adduced at trial.

5 109. Plaintiff has further been required to retain the services of an attorney to  
6 prosecute this action on its behalf, and as such are entitled to attorney's  
7 fees and costs incurred in prosecuting this matter.

8  
9 TENTH CAUSE OF ACTION : FRAUDULENT CONVEYANCE

10 [As to TKNR, Doe Defendants 6 - 10 and Roe Defendants XI - XX]  
11

12 110. Plaintiff realleges and incorporates herein all of the allegations previously  
13 made in all previous paragraphs as though fully set forth herein.

14 111. TKNR dissolved and transferred all of its assets to Doe Defendants 6 - 10  
15 and/or Roe Defendants XI - XX

16 113. TKNR transferred all of it's assets to Doe Defendants 6 - 10 and Roe  
17 Defendants XI - XX

18 (a) With actual intent to hinder, delay or defraud Plaintiff; or

19 (b) Without receiving a reasonably equivalent value in exchange for the  
20 transfer or obligation, and TKNR:  
21

22 (1) Was engaged or was about to engage in a business or a  
23 transaction for which the remaining assets of the debtor were  
24 unreasonably small in relation to the business or transaction; or

25 (2) Intended to incur, or believed or reasonably should have believed  
26 that the TKNR would incur, debts beyond its ability to pay as they  
27 became due.

28 114. Due to the actions of TKNR described above, Plaintiff seeks a declaratory

1 order attaching any judgment against TKNR to Doe Defendants 6 - 10  
2 and/or Roe Defendants XI - XX.

3  
4 ELEVENTH CAUSE OF ACTION : FRAUDULENT CONVEYANCE

5 [As to INVESTPRO INVESTMENTS I LLC, Doe Defendants 10 - 15 and Roe  
6 Defendants XXI - XXX]

7  
8 115. Plaintiff realleges and incorporates herein all of the allegations previously  
9 made in all previous paragraphs as though fully set forth herein.

10 116. Investpro Investments I LLC dissolved and transferred all of its assets to  
11 Doe Defendants 11 - 15 and/or Roe Defendants XXI - XXX

12 117. Investpro Investments I LLC transferred all of it's assets to Doe Defendants  
13 11-15 and Roe Defendants XXI -XXX

14 (a) With actual intent to hinder, delay or defraud Plaintiff; or

15 (b) Without receiving a reasonably equivalent value in exchange for the  
16 transfer or obligation, to INVESTPRO INVESTMENTS I LLC :

17 (1) Was engaged or was about to engage in a business or a  
18 transaction for which the remaining assets of the debtor were  
19 unreasonably small in relation to the business or transaction; or

20 (2) Intended to incur, or believed or reasonably should have believed  
21 that INVESTPRO INVESTMENTS I LLC would incur, debts beyond  
22 its ability to pay as they became due.

23  
24 118. Due to the actions of INVESTPRO INVESTMENTS I LLC described above,  
25 Plaintiff seeks a declaratory order attaching any judgment against  
26 INVESTPRO INVESTMENTS I LLC to Doe Defendants 11-15 and/or Roe  
27 Defendants XXI - XXX.  
28

1 TWELVETH CAUSE OF ACTION : CIVIL CONSPIRACY

2 [As to Defendant MAN CHAU CHENG, Lin, Investpro, Wong, TKNR,  
3 INVESTPRO INVESTMENTS I LLC and INVESTPRO MANAGER LLC]  
4

5 119. Plaintiff realleges and incorporates herein all of the allegations previously  
6 made in all previous paragraphs as though fully set forth herein.

7 120. All, or some combination of, Defendants MAN CHAU CHENG, Lin,  
8 Investpro, Wong, TKNR, INVESTPRO INVESTMENTS I LLC and  
9 INVESTPRO MANAGER LLC engaged in concerted action.

10 121. The concerted action engaged in by all, or some combination of, Defendants  
11 MAN CHAU CHENG, Lin, Investpro, Wong, TKNR, INVESTPRO  
12 INVESTMENTS I LLC and INVESTPRO MANAGER LLC was intended to  
13 accomplish an unlawful objective for the purpose of harming another.

14 122. Plaintiff was damaged by the act or acts of Defendants MAN CHAU  
15 CHENG, Lin, Investpro, Wong, TKNR, INVESTPRO INVESTMENTS I LLC  
16 and INVESTPRO MANAGER LLC and Plaintiff has suffered and will suffer  
17 general and consequential damages in excess of ten thousand dollars  
18 (\$15,000), exclusive of costs and interest, in an amount to be determined  
19 according to proof adduced at trial.

20 123. Plaintiff has further been required to retain the services of an attorney to  
21 prosecute this action on its behalf, and as such are entitled to attorney's  
22 fees and costs incurred in prosecuting this matter.  
23

24  
25 THIRTEENTH CAUSE OF ACTION - BREACH OF CONTRACT

26 [As to Defendant Investpro]  
27

28 124. Plaintiff realleges and incorporates herein all of the allegations previously

- 1 made in all previous paragraphs as though fully set forth herein.
- 2 125. At all relevant times Investpro was the real estate broker for the purchase  
3 and sale of the Subject Property.
- 4 126. By written contract, Investpro represented both the buyer and the seller in  
5 the transaction.
- 6 127. Pursuant to NRS 645.252(1)(a) Investpro was required to disclose to  
7 Plaintiff "Any material and relevant facts, data or information which the  
8 licensee knows, or which by the exercise of reasonable care and diligence  
9 should have known, relating to the property which is the subject of the  
10 transaction."
- 11 128. Investpro breached it's contractual duties as it failed to disclose material  
12 and relevant facts, data or information which Investpro knew, or which by  
13 the exercise of reasonable care and diligence should have known, relating  
14 to the Subject Property.
- 15 129. Plaintiff was damaged by the act or acts of Investpro and Plaintiff has  
16 suffered and will suffer general and consequential damages in excess of ten  
17 thousand dollars (\$15,000), exclusive of costs and interest, in an amount to  
18 be determined according to proof adduced at trial.
- 19 130. Plaintiff has further been required to retain the services of an attorney to  
20 prosecute this action on its behalf, and as such are entitled to attorney's  
21 fees and costs incurred in prosecuting this matter.
- 22

23 FOURTEENTH CAUSE OF ACTION - BREACH OF IMPLIED COVENANT OF  
24 GOOD FAITH AND FAIR DEALING

25 [As to Defendant Investpro]

26

27

- 28 131. Plaintiff incorporates all previous paragraphs as though fully set forth



1 herein.

2 132. Every contract in Nevada has an implied covenant of good faith and fair  
3 dealing which essentially forbids arbitrary, unfair acts by one party that  
4 disadvantage the other.

5 133. As set forth Investpro breached the implied covenant of good faith and fair  
6 dealing.

7 134. Plaintiff was damaged by the act or acts of Investpro and Plaintiff has  
8 suffered and will suffer general and consequential damages in excess of ten  
9 thousand dollars (\$15,000), exclusive of costs and interest, in an amount to  
10 be determined according to proof adduced at trial.

11 135. Plaintiff has further been required to retain the services of an attorney to  
12 prosecute this action on its behalf, and as such are entitled to attorney's  
13 fees and costs incurred in prosecuting this matter.

14  
15 FIFTEENTH CAUSE OF ACTION : ABUSE OF PROCESS

16 [As to all Defendants]

17  
18  
19 136. Plaintiff incorporates all previous paragraphs as though fully set forth  
20 herein.

21 137. Following service of the initial Complaint, Defendants willfully embarked on  
22 a pattern and strategy of deception and delay with an ulterior purpose other  
23 than resolving this legal dispute and used the legal process to implement  
24 this strategy, all of which is not proper in the regular conduct of this legal  
25 proceeding, with specific examples being set forth below.

- 26 a. Stating in their Answer filed March 19, 2019 that they “are without  
27 knowledge or information sufficient to form a belief as to the truth of  
28 the allegation” that the assets distributed by Investpro Investments I

1 LLC as part of it's dissolution in January, 2019 [after the Complaint  
2 was served] were all of Investpro Investments I LLC's assets.  
3 Defendants, including state in their Amended Answer filed \_\_\_\_\_,  
4 2020 the same baseless statement about lack of knowledge or  
5 information about Investpro Investments I LLC. In fact, their  
6 Amended Answer filed \_\_\_\_\_ doesn't even have an answer filed by  
7 Investpro Investments I LLC.

- 8 b. Failing to provide ANY disclosure or discovery for Investpro  
9 Investments I LLC
- 10 c. Failing to provide ANY disclosure or discovery for INVESTPRO  
11 MANAGER LLC.
- 12 d. Filing a frivolous Motion for Summary Judgment on January 7, 2019  
13 before discovery had even commenced.
- 14 e. Filing a Counterclaim for Abuse of Process over twenty months after  
15 the Amended Complaint.
- 16 f. Filing a Third-Party Complaint against a mechanical The Air Team,  
17 LLC d/b/a the Air Team Heating and Cooling, a Nevada Limited  
18 Liability Company over 23 months after attaching the invoice to their  
19 frivolous Motion for Summary Judgment filed on January 7, 2019.
- 20 g. Filing a Motion to Enlarge Discovery Deadlines on October 15, 2020,  
21 fifteen days before the close of discovery, when discovery deadlines  
22 had already been extended on May 28, 2020 due to the corona virus  
23 situation. Defendants' Motion to Enlarge Discovery Deadlines on  
24 October 15, 2020 was filed without a meet and confer conference in  
25 violation of EDCR 2.34(d), was filed later than 21 days before the  
26 discovery cut-off date in violation of EDCR 2.35(a), and was filed  
27 directly to the District Court Judge instead of "to the Discovery  
28 Commissioner in strict accordance with EDCR 2.35" as required by

the trial order filed June 26, 2020

- h. Failing to disclose a rebuttal expert within the deadline.
- i. Repeatedly falsely stating, while knowing of the falsity, that Plaintiff did not inspect the Subject Property, knowing that Plaintiff had inspected the Subject Property and had made demands for repairs.
- j. Asserting that the opinion of Plaintiff's expert witness, Amin Sani, create a basis for Abuse of Process when Mr. Sani was (1) timely disclosed as Plaintiff's expert witness in compliance with all legal rules and procedures and (2) is solely expressing an honest opinion with his scope of expertise.
- k. Defendants have failed to disclose insurance coverage, as required by NRCP 16.1(a)(1)(D).
- l Defendants abuse of the legal system is ongoing and because of the ongoing nature of Defendants' action, Plaintiff have will seek leave to amend the complaint to add any additional actions taken by Defendants after they occur.

138. Defendants engaged in the above identified actions within this wsuit for (1) an ulterior purpose other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding. *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441 42 (1993).

139. The delay tactics, repeated knowing false statements, and questionable discovery tactics by Defendants is abuse of process.

140. The use of false, misleading statements about Plaintiff's "expert" is abuse of process.

141. Stating that "suing the Property Manager / Broker agents despite the clear language in the RPA related to both liability and limitation of damages is abuse of process" when (1) the allegations against Defendants have

1 ALREADY been the subject of Defendants' Motion for Summary Judgment,  
2 which was denied and (2) the allegations against the Property Manager /  
3 Broker have been clearly set forth is abuse of process.

4 142. Additional areas of abuse of process have not been yet obtained byway of  
5 discovery and, additionally, are ongoing. When additional information of  
6 evidence of Defendants' abuse of process is obtained, Defendants will  
7 disclose such information accordingly.

8 143. In order to prosecute this action, Plaintiff had to retain attorneys to represent  
9 it, and it is entitled to fair and reasonable attorneys' fees associated with  
10 protecting its rights.costs incurred as foreseeable damages arising from  
11 tortious conduct of abuse of process; as such, these fees are considered  
12 special damages and must be pleaded as special damages pursuant to  
13 Nevada Rule of Civil Procedure 9(g). International Indus. v. United Mtg. Co.,  
14 96 Nev. 150, 606 P.2d 163 (1980) (failure to plead damages precluded  
15 recovery); City of Las Vegas v. Cragin Industries, 86 Nev. 933, 478 P.2d  
16 585 (1970) (fees not properly pleaded in the complaint); Brown v. Jones, 5  
17 Nev. 374 (1870) (complaint must allege with distinctness fees resulting only  
18 from dissolution of injunction). Plaintiff specially pleads for attorneys' fees to  
19 meet the requirements set forth by the Nevada Supreme Court. Young v.  
20 Nevada Title Co., 103 Nev. 436, 438, 744 P.2d 902, 903 (1987). The  
21 attorneys' fees are the natural and proximate consequence of the injurious  
22 conduct specified herein. Peterson v. Wiesner, 62 Nev. 184, 146 P.2d 789  
23 (1944) (failure to distinguish fees incurred in wrongful attachment action  
24 from fees incurred in collateral criminal case resulted in denial of fees as  
25 damages). It has been necessary for Plaintiff to retain the services of an  
26 attorney to prosecute this action, and Plaintiff should therefore be entitled to  
27 an award of reasonable attorney's fees and costs.  
28

1 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 2  
3 1. As to Defendant TKNR, Wong and INVESTPRO MANAGER LLC, pursuant  
4 to NRS 113.150, judgment jointly and severally for treble the amount  
5 necessary to repair or replace the defective part of the Subject Property,  
6 which amount is in excess of Fifteen Thousand Dollars (\$15,000), plus court  
7 costs and reasonable attorney's fees;
- 8 2. As to Defendants Investpro, Nickrandt and Chen, judgment jointly and  
9 severally for compensatory damages in an amount in excess of Fifteen  
10 Thousand Dollars (\$ 15,000.00) plus for exemplary and/or punitive damages  
11 in the amount of three times the compensatory damages awarded; and
- 12 3. As to Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong  
13 and Lin, judgment jointly and severally for compensatory damages in an  
14 amount in excess of Fifteen Thousand Dollars (\$ 15,000.00) plus for  
15 exemplary and/or punitive damages in the amount of three times the  
16 compensatory damages awarded; and
- 17 4. As to Defendants Lin, Cheng, INVESTPRO MANAGER LLC and  
18 INVESTPRO INVESTMENTS I LLC, pursuant to NRS 204.470, judgment  
19 jointly and severally for treble Plaintiff's actual damages, which amount is in  
20 excess of Fifteen Thousand Dollars (\$15,000), plus attorney's fees in the  
21 trial and appellate courts and costs of investigation and litigation reasonably  
22 incurred; and
- 23 5. As to Defendant Chen, pursuant to NRS 645.257(1) judgment for Plaintiff's  
24 actual damages, which amount is in excess of Fifteen Thousand Dollars  
25 (\$15,000); and
- 26 6. As to Defendant Lin, pursuant to NRS 645.257(1) judgment for Plaintiff's  
27 actual damages, which amount is in excess of Fifteen Thousand Dollars  
28 (\$15,000); and

- 1 7. As to Defendant Investpro, pursuant to NRS 645.257(1) judgment for  
2 Plaintiff's actual damages, which amount is in excess of Fifteen Thousand  
3 Dollars (\$15,000); and
- 4 8. As to Defendant Nickrandt, pursuant to NRS 645.257(1) judgment for  
5 Plaintiff's actual damages, which amount is in excess of Fifteen Thousand  
6 Dollars (\$15,000); and
- 7 9. As to Defendants Investpro, Zhang, and Nickrandt, judgment jointly and  
8 severally Plaintiff's actual damages, which amount is in excess of Fifteen  
9 Thousand Dollars (\$15,000); and
- 10 10. For a declaratory order attaching any judgment against TKNR to Doe  
11 Defendants 6 - 10 and/or Roe Defendants XI - XX; and
- 12 11. For a declaratory order attaching any judgment against INVESTPRO  
13 INVESTMENTS I LLC to Doe Defendants 11-15 and/or Roe Defendants XXI  
14 - XXX; and
- 15 12. As to Defendant MAN CHAU CHENG, Lin, Investpro, Wong, TKNR,  
16 INVESTPRO INVESTMENTS I LLC and INVESTPRO MANAGER LLC,  
17 judgment jointly and severally for Plaintiff's actual damages, which amount  
18 is in excess of Fifteen Thousand Dollars (\$15,000) plus for exemplary  
19 and/or punitive damages in the amount of three times the compensatory  
20 damages awarded; and
- 21 13. As to Defendant Investpro, judgment for Plaintiff's actual damages, which  
22 amount is in excess of Fifteen Thousand Dollars (\$15,000); and
- 23 14. As to all Defendants, judgment jointly and severally, for it's attorney fees  
24 and court costs due to Defendants' abuse of process, which amount is in  
25 excess of Fifteen Thousand Dollars (\$15,000) plus for exemplary and/or  
26 punitive damages in the amount of three times the compensatory damages  
27 awarded; and  
28

1 15. For such other and further relief as the Court may deem just and proper

2  
3 /s/ Benjamin B. Childs

4 BENJAMIN B. CHILDS, ESQ.  
5 Nevada Bar No. 3946  
6 Attorney for Plaintiff

7 CERTIFICATE OF SERVICE

8 This SECOND AMENDED COMPLAINT, with Exhibits, was served through  
9 the Odyssey File and Serve system to opposing counsel at filing. Electronic  
10 service is in lieu of mailing.

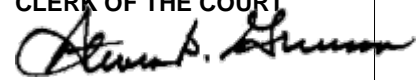
11  
12 /s/ Benjamin B. Childs, Sr.

13 BENJAMIN B. CHILDS, Sr.ESQ.  
14 NEVADA BAR # 3946  
15  
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DOCUMENT 2

DOCUMENT 2





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Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,  
  
Plaintiff,  
  
vs.

CASE NO.: A-18-785917-C  
DEPT. NO.: XIV

**HEARING REQUESTED**

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL SUMMARY  
JUDGMENT**

Date of Hearing:  
Time of Hearing:

TKNR INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an  
individual, and KENNY ZHONG LIN, aka  
KEN ZHONG LIN aka KENNETH ZHONG  
LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, an  
individual, and LIWE HELEN CHEN aka  
HELEN CHEN, an individual and YAN QIU  
ZHANG, an individual, and INVESTPRO  
LLC dba INVESTPRO REALTY, a Nevada  
Limited Liability Company, and MAN  
CHAU CHENG, an individual, and JOYCE  
A. NICKRANDT, an individual, and  
INVESTPRO INVESTMENTS LLC, a  
Nevada Limited Liability Company, and  
INVESTPRO MANAGER LLC, a Nevada  
Limited Liability Company and JOYCE A.  
NICKRANDT, an individual and Does 1  
through 15 and Roe Corporation I - XXX,

Defendants.

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG  
LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO  
LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT  
("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO  
MANAGER LLC (hereinafter collectively referred to as the "Defendants"), by and through their  
counsel of record, MICHAEL B. LEE, P.C., hereby files this Motion for Summary Judgment, or in  
the Alternative, Partial Summary Judgment ("Motion"). This Motion is made on the following

Memorandum of Points and Authorities, any affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to as “Plaintiff” or “WLAB”.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

#### **A. Overview**

Summary Judgment is appropriate as a matter of law. The overwhelming case law in Nevada applies the doctrine of caveat emptor on buyers of real property. Notably, the Property was 63 years old at the time of purchase and being used as a rental property. Nevertheless, Plaintiff waived her inspections twice as it relates to the Property, defined below, as she cancelled her original purchase agreement and entered into a new one. Despite the clear statements that she needed to get an inspection done, and clear disclosures related to the conditions of the Property, Plaintiff still waived her inspection and forged ahead with the purchase. The entire crux of Plaintiff’s action is premised that that there was alleged work done without permits, but TKNR disclosed that it the Seller’s Disclosures. Additionally, permit work is publicly available on the City of Las Vegas’ website, which illustrates that Plaintiff should have known about this issue at the time of purchase, absolving Defendants of any liability.

Moreover, alleged conditions identified by Plaintiff’s alleged expert were all open and obvious, and would have been uncovered by an inspection. Plaintiff’s alleged expert never did any destructive testing, so an inspector would have had the same opportunity to observe everything that he did. Importantly, Plaintiff is a sophisticated commercial buyer who has purchased and renovated several similar properties, so it has a higher burden to demonstrate why it waived inspections. As Defendants disclosed all conditions known to them at the time of the sale, Nevada law does not permit this action to continue. This justifies Summary Judgment on all of Plaintiff’s claims, including the frivolous claims for RICO, fraudulent conveyance, and abuse of process.

Finally, sanctions are also justified against Plaintiff. Astonishingly, Plaintiff is claiming \$16.25 Million in damages related to the purchase of the Property (original purchase price -

\$200,000). Incredibly, the original demand by Plaintiff for settlement was \$10,000. Regardless of whether Plaintiff or Plaintiff's counsel, who have charged Plaintiff approximately \$64,000 for this matter so far, are responsible for the violation of Rule 11 in prosecuting this frivolous claim, Rule 11 permits sanctions against both, which should include an award of attorneys' fees and costs to Defendants.

**B. Statement of Facts**

1. *First Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations*

The Property (defining as 2132 Houston Drive, Las Vegas, NV 89104) was originally constructed in 1954. MLS Listing attached as **Exhibit A**. On or about August 11, 2017, Marie Zhu ("Zhu"), the original purchaser, executed a residential purchase agreement ("RPA") for the Property. Residential Purchase Agreement attached as **Exhibit B** (Plaintiff's Disclosure) 26 of 166. At all times relevant, Ms. Zhu and Frank Miao ("Miao"), the managing member of Plaintiff, were sophisticated buyers related to "property management, property acquisition, and property maintenance." ROG Response (excerpt) at 3:3-4 attached as **Exhibit N**. The purchase price for the property was \$200,000. *Id.* Through the RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

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.

*Id.* at 28 of 166 at 7(A) lines 36-39.

Ms. Zhu did not cancel the contract related to any issues with the Property. *Id.* Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition. *Id.* Under Paragraph 7(D) of the RPA, it provided:

*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.

*Id.* Ms. Zhu waived any liability of Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. *Id.* Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection. *Id.*

Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to satisfy her use. *Id.* Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Brokers" or "Broker Defendants") had "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." *Id.*

On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. Plaintiff's Disclosure Page 36 of 166 attached as **Exhibit C**. In fact, TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." *Id.* at Page 38. Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. *Id.* Seller also disclosed that it had done construction, modification, alterations, or repairs without permits. *Id.* at 37. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries. *Id.*

2. *Second Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations*

On or before December 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. Chen-Ms. Zhu email attached as **Exhibit D**. As such, Ms. Chen confirmed that Ms. Zhu would do a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections:

Please note that seller agree the rest of terms and request to add the below term on the contract:  
"Buyer agree to pay the difference in cash if appraisal come in

lower than purchase price, not to exceed purchase price of \$200k"  
I just send you the docs, please review and sign if you are agree.  
Thank you!  
**(Per buyer's request will waive licensed home inspector to do  
the home inspection)**

*Id.* (emphasis added).

On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, Addendum No. 1 attached as **Exhibit E**, and entered into a new Residential Purchase Agreement dated September 5, 2017 (“2<sup>nd</sup> RPA”). 2<sup>nd</sup> RPA attached as **Exhibit F**. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the close of escrow (“COE” or “Closing”). *Id.* at DEF4000355. The COE was set for September 22, 2017. *Id.* at DEF4000357 at ¶ 5C.

Notably, although Ms. Zhu had not initialed the “Failure to Cancel or Resolve Objections” provision in the RPA, Ex. B. at Page 29 at ¶ 7(c), she initialed the corresponding provision in the 2<sup>nd</sup> RPA. Ex. F at DEF4000358 at ¶ 7(c). This was consistent with Ms. Zhu’s instructions to Ms. Chen. Ex. D. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2<sup>nd</sup> RPA that strongly advised to get an inspection done.

As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the 2<sup>nd</sup> RPA. *Id.* at DEF4000357 at ¶ 7. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. *Id.* Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. *Id.* Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to Plaintiff. *Id.* at DEF4000366.

### 3. No Reliance on Broker Agents

As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker’s agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to

1 satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu  
2 waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors  
3 related to Ms. Zhu’s failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full  
4 responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she  
5 deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all  
6 circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.*

7 4. Inspection Would Have Revealed Alleged Conditions

8 On November 17, 2020, Defendants’ expert, Neil D. Opfer, an Associate Professor of  
9 Construction Management at UNLV and overqualified expert, conducted an inspection of the  
10 Property. Opfer Report attached as **Exhibit G**. At that time, while he only had interior access to  
11 one of the three units due to the failure of Plaintiff to accommodate the request for the  
12 inspection, he did a visual inspection of all the areas specified in Plaintiff’s expert’s report. *Id.*  
13 Moreover, he also found pictures of the Property from 2017 that depicted the condition of the  
14 Property prior to August 11, 2017. *Id.* at DEF5000368. While Professor Opfer illustrated the  
15 dubious findings by Plaintiff’s expert with citations showing the actual misstatements of the  
16 building code requirements as it relates to permits, he noted that TNKR did disclose that it did  
17 the work without permits through its disclosures. *Id.* at DEF5000371.

18 As to the alleged issues, Professor Opfer noted that the alleged conditions identified by  
19 Plaintiff’s alleged expert were open and obvious:

20 [n]ote that the Plaintiff could have hired an inspector or contractor  
21 to evaluate this real-estate purchase beforehand but did not. Items  
22 complained about in the Sani Report were open and obvious at the  
23 roof area, attic area, and on the exterior and interior areas of the  
24 Property.

25 Ex. G at DEF5000372.

26 Professor Opfer also noted that Plaintiff’s expert did not do any destructive testing, so the  
27 same alleged conditions that the alleged expert noted, would have been made by an inspector at  
28 the time of the purchase. *Id.* at DEF5000372-373. Similarly, he later noted:

it is the fault of the Plaintiffs for not conducting requisite  
inspections of the Property prior to its purchase. Since this issue is  
apparently open and obvious as per the Sani Report, it would have

1                   been open and obvious as well during a pre-purchase inspection.  
2     *Id.* at DEF5000380. Moreover, he also noted that Plaintiff’s alleged expert did “not recognize  
3     prior conditions in existence before any work took place by the Defendants.” *Id.* at  
4     DEF5000376.

5                   As to the open and obvious nature of the alleged issues, Professor Opfer noted the  
6     following:

- 7                   1.     the photographs from 2017 showed extensive cracking to  
8                         the stucco and slab to the Property prior to any work by  
9                         Defendants and/or the licensed contractor it hired to install  
10                        the HVAC. *Id.*
- 11                  2.     the alleged attic issues could have been inspected at the  
12                         time of the purchase. *Id.* at DEF5000378
- 13                  3.     “any deficient electrical work related to this 220-volt  
14                         service situation could have been readily ascertained by an  
15                         inspection at the time of purchase by the Plaintiff”. *Id.* at  
16                         DEF5000379
- 17                  4.     the alleged HVAC issues were open and obvious. *Id.* at  
18                         DEF5000381
- 19                  5.     “the conditions complained about as to venting and ducting  
20                         were present at the Property prior to Defendants owning the  
21                         Property”. *Id.* at DEF5000388,
- 22                  6.     Plaintiff could have conducted an online search related to  
23                         the permits or lack of permits for the Property. *Id.* at  
24                         DEF5000389.
- 25                  7.     The basis of the Sani Estimate is nonsensical in the first  
26                         place and there is nothing seen from this Sani Report that  
27                         was not present at the time of sale of the Triplex Property.  
28                         There were cracks in the stucco system and concrete slab  
                          system existing in 2017. Roof venting/duct venting had not  
                          been changed by Defendants and was existing in 2017 and  
                          could have been inspected by Plaintiff. *Id.* at DEF5000391.
8.     Any deficiencies with this electrical installation were open,  
                          obvious and could have been inspected prior to purchase as  
                          with all other items with this Triplex Property. Any cracks  
                          such as wall or floor cracks subsequent to the purchase  
                          would obviously be new but again this occurs even on new  
                          homes across the Las Vegas Valley and elsewhere. *Id.* at  
                          DEF5000392.

                    Professor Opfer also noted that it was well known at the time of the purchase that the  
Property was a 63 year old rental property that was subject to potential renter abuse:

Rental properties experience more-severe-service requirements due to many factors often including a lack of knowledge in order to care for a Property on the part of tenants along with often an uncaring attitude as well.

*Id.* at DEF5000379.

### C. Statement of Procedure

On November 23, 2020, Plaintiff filed its second amended complaint (“SAC”). In large part, the SAC completely failed to acknowledge the waivers by Ms. Zhu related to the inspection of the Property and/or the open and obvious nature of the alleged defects in the then-63 year old Property at the time of purchase. That said, the SAC alleges fifteen causes of action: (1) Recovery Under NRS Chapter 113 [Defendants TKNR, Wong, and Investpro Manager LLC]; (2) Constructive Fraud [Defendants Investpro, Nickrandt, and Chen]; (3) Common Law Fraud [Defendants Investpro, Investpro Manager LLC , TKNR, Wong and Lin]; (4) Fraudulent Inducement [Defendants TKNR, Investpro Manager LLC , Wong, Investpro and Lin]; (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR, Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro]; and (15) Abuse of Process [As To All Defendants].

## II. DISCUSSION

The following Discussion is organized into six Parts. Part A sets forth the legal standards for summary judgment and real estate disclosures. Part B provides the supporting facts and application of the law to illustrate that the waiver of inspections is fatal to Plaintiff’s case as a matter of law. In four subparts, it provides an analysis of (1) the disclosures by TKNR, (2) the



waiver of inspections, (3) the alleged deficiencies were open and obvious, and (4) Defendants did not know about any of those conditions. Part C asserts Nevada law does not permit any claims against the Broker Defendants. Part D, in four parts, specifies the lack of merit of the ancillary claims for (1) RICO, (2) Fraudulent Conveyance, (3) Civil Conspiracy, and (4) Abuse of Process. Part E, in the alternatively, requests partial summary judgment of the uncontested facts and law if Summary Judgment is not awarded. Finally, Part F requests Rule 11 sanctions.

**A. Legal Standards**

**1. Summary Judgment**

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exist, and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Substantive law controls whether factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

The Nevada Supreme Court has held that the non-moving party may not defeat a motion for summary judgment by relying “on gossamer threads of whimsy, speculation and conjecture.” *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court has also made it abundantly clear when a motion for summary judgment is made and supported as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon general allegations and conclusions, but must by affidavit or otherwise set forth specific facts demonstrating the existence of a genuine factual issue. *Id.*

Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment, or partial summary judgment. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The court may rely upon the admissible evidence cited in the moving papers

1 and may also consider other materials in the record as well. *Id.* at 56(c). “If the court does not  
2 grant all the relief requested by the motion, it may enter an order stating any material fact —  
3 including an item of damages or other relief — that is not genuinely in dispute and treating the  
4 fact as established in the case.” *Id.* at 56(g).

5 The pleadings and proof offered in a Motion for Summary Judgment are construed in the  
6 light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725  
7 P.2d 238, 241 (1986). However, the non-moving party still “bears the burden to ‘do more than  
8 simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid  
9 summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at 1031. “To successfully  
10 defend against a summary judgment motion, ‘the nonmoving party must transcend the pleadings  
11 and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue  
12 of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev. 2008) (quoting *Cuzze v.*  
13 *Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

14 The non-moving party bears the burden to set forth specific facts demonstrating the  
15 existence of a "genuine" issue for trial or have summary judgment entered against him. *Collins*  
16 *v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). When there  
17 is no genuine issue of material fact and the non-moving party provides no admissible evidence to  
18 the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US 317, 322  
19 (1986). When a motion for summary judgment is made and supported, an adversary party who  
20 does not set forth specific facts showing a genuine issue to be resolved at trial may have a  
21 summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99 Nev.  
22 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414,  
23 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

## 24 2. Real Estate Disclosures

25 “Under NRS Chapter 113, residential property sellers are required to disclose any defects  
26 to buyers within a specified time before the property is conveyed.” *Nelson v. Heer*, 163 P.3d  
27 420, 425 (Nev. 2007) (citing NRS 113.140(1)). “NRS 113.140(1), however, provides that a  
28 seller is not required to ‘disclose a defect in residential property of which [she] is not aware.’ A

1 ‘defect’ is defined as “a condition that materially affects the value or use of residential property  
2 in an adverse manner.” *Id.* (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

3 [a]scribing to the term “aware” its plain meaning, we determine  
4 that the seller of residential real property does not have a duty to  
5 disclose a defect or condition that “materially affects the value or  
6 use of residential property in an adverse manner,” if the seller does  
7 not realize, perceive, or have knowledge of that defect or  
8 condition. Any other interpretation of the statute would be  
unworkable, as it is impossible for a seller to disclose conditions in  
the property of which he or she has no realization, perception, or  
knowledge. The determination of whether a seller is aware of a  
defect, however, is a question of fact to be decided by the trier of  
fact.

9 *Id.* at 425 (citations omitted). Thus, in the context where the plaintiff cannot demonstrate an  
10 omitted disclosure that caused damage, the seller is entitled to summary judgment as a matter of  
11 law. *Id.* at 426.

12 Generally, “[n]ondisclosure by the seller of adverse information concerning real property  
13 . . . will not provide the basis for an action by the buyer to rescind or for damages when property  
14 is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552  
15 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer either  
16 knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v.*  
17 *Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general rule  
18 foreclosing liability for nondisclosure when property is purchased as-is does not apply when the  
19 seller knows of facts materially affecting the value or desirability of the property which are  
20 known or accessible only to [the seller] and also knows that such facts are not known to, or  
21 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at  
22 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

23 A buyer waives its common law claims of negligent misrepresentation, fraudulent or  
24 intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would  
25 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close  
26 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*  
27 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).  
28 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is

1 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on  
2 common law claims. *Id.* (citation omitted).

3 The terms and conditions of the purchase agreement do not create  
4 a duty to disclose. Rather, these disclosures are required by NRS  
5 Chapter 113, which sets forth specific statutory duties imposed by  
6 law independent of the purchase agreement's terms and conditions.  
7 Additionally, the terms of the purchase agreement do not require  
8 [the seller] to do anything other than provide the listed disclosures.

9 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at \*5 (Nev. App. Nov. 25,  
10 2020).

11 Nevada Revised Statute (“NRS”) § 113.140 clearly provides that the Seller Disclosures  
12 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to  
13 exercise reasonable care to protect himself. NRS § 113.140 also provides that the Seller does not  
14 have to disclose any defect that he is unaware of. Similarly, NRS § 113.130 does not require a  
15 seller to disclose a defect in residential property of which the seller is not aware. A completed  
16 disclosure form does not constitute an express or implied warranty regarding any condition of  
17 residential property. NRS § 113.140(2). Chapters 113 and “645 of Nevada Revised Statutes do  
18 not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself  
19 or herself.” *Id.* at § 113.140(2).

20 **B. The Two Waivers of Inspection and the Open and Obvious Nature of the**  
21 **Alleged Deficiencies are Fatal to Plaintiff’s Claims as a Matter of Law**

22 Summary Judgment is appropriate as a matter of law on all of Plaintiff’s claims. It is  
23 undisputed that the alleged deficiencies were either disclosed by Defendants, could have been  
24 discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu had notice of  
25 them at the time she purchased the Property, or were unknown to Defendants at the time of the  
26 sale.

27 **1. Disclosures by Seller**

28 On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known  
conditions of the Subject Property. Ex. C. TKNR disclosed that “3 units has (sic) brand new AC  
installed within 3 months,” and further that the “owner never resided in the property and never

visited the property.” *Id.* at Page 38. Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. *Id.* TNKR also disclosed that it was aware of issues with the heating and cooling systems, *Id.* at 36, there was construction, modification, alterations, or repairs done without permits, *Id.* at 37, and lead-based paints. *Id.*

As such, Summary Judgment is appropriate under NRS § 113.140(1) (seller is not required to disclose a defect in residential property of which she is not aware). Under this statute, “[a]scribing to the term ‘aware’ its plain meaning, . . . 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.” *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007). Thus, as Plaintiff cannot demonstrate an omitted disclosure that caused damage, Defendants are entitled to summary judgment as a matter of law. *Id.* at 426.

Moreover, information related to permits is publicly available. The City of Las Vegas has a website<sup>1</sup> that allows anyone in the public to search for permits. Permit Search for Property attached as **Exhibit H**. NRS § 645.259(2) precludes any liability for misrepresentation or under Chapter 113 if the information is a public record:

[e]xcept as otherwise provided in this subsection, the failure of the seller to make the disclosures required by NRS 113.130 and 113.135 if the information that would have been disclosed pursuant to NRS 113.130 and 113.135 **is a public record which is readily available to the client.**

(Emphasis Added). As the SAC is largely premised on the allegation that TNKR allegedly did not disclose that it did not use licensed contractors who obtained permits, SAC at ¶ 29, NRS 645.259(2) precludes any of these claims as a matter of law. As such, Summary Judgment is appropriate as TNKR disclosed that it did not have permits and the information was publicly available.

In total, under NRS § 113.140(1) (seller is not required to disclose a defect in residential

<sup>1</sup> <https://www.lasvegasnevada.gov/Business/Permits-Licenses/Building-Permits/Permit-Application-Status?search=address&addrkey=237304>

property of which she is not aware), *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007), and NRS § 645.259(2), Defendants are entitled to Summary Judgment on Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing]. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

2. Waiver of Inspections

On August 11, 2020, through the original RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

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.

Ex. B at 28 of 166 at 7(A) lines 36-39.

Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries. *Id.* In fact, Ms. Zhu only cancelled the original RPA, Ex. E, because of an issue related to her financing, not because of any concerns related to the Seller's Disclosures. Notably, she included the explicit waiver of the inspections, which included her initialing the provision that she had not done in the original RPA. Ex. F. Ms. Zhu even directly informed her agent to waive all inspections. Ex. D. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. *Id.* Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. *Id.* Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu

1 later changed the purchaser to Plaintiff. *Id.* at DEF4000366.

2 As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations  
3 made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the  
4 Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to  
5 satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu  
6 waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors  
7 related to Ms. Zhu's failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full  
8 responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she  
9 deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all  
10 circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.*

11 As to the waivers, Paragraph 7(D) of the both the RPA and 2<sup>nd</sup> RPA expressly provided:

12 *It is strongly recommended that Buyer retain licensed Nevada*  
13 *professionals to conduct inspections.* If any inspection is not  
14 completed and requested repairs are not delivered to Seller within  
15 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.

16 *Id.* Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as  
17 to satisfy her use. *Id.* Nevertheless, Ms. Zhu waived her inspection related to the original RPA  
18 and the 2<sup>nd</sup> RPA, reinforced further by actually initialing next to the waiver in the 2<sup>nd</sup> RPA. Ex.  
19 F. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal  
20 inspection, mechanical inspection, soil inspection, and structural inspection. *Id.* Thereby, Ms.  
21 Zhu waived any liability of Defendants for the cost of all repairs that inspection would have  
22 reasonably identified had it been conducted. *Id.* The RPA and the 2<sup>nd</sup> RPA clearly indicated that  
23 Ms. Zhu was purchasing the Property "AS-IS, WHERE-IS without any representations or  
24 warranties." *Id.* at DEF4000361 at ¶ 22.

25 Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no responsibility to  
26 assist in the payment of any repair, correction or deferred maintenance on the Property which  
27 may have been revealed by the above inspections, agreed upon by the Buyer and Seller or  
28 requested by one party." *Id.*

As a matter of law, Plaintiff is precluded from seeking damages from Defendants because of her failure to inspect. “Nondisclosure by the seller of adverse information concerning real property . . . will not provide the basis for an action by the buyer to rescind or for damages when property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property “as-is” within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable care to protect himself. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and “645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself.” *Id.* at § 113.140(2).

Thus, Plaintiff waived its common law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close of escrow, and the information regarding Property was reasonably accessible to the buyer. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).

In this context, Summary Judgment is appropriate as a matter of law. *Id.* (citation omitted). Defendants are entitled to Summary Judgment as to Plaintiff’s claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance,



(11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

3. Alleged Deficiencies Open and Obvious

The alleged conditions identified by Plaintiff's alleged expert in the Property were open and obvious:

[n]ote that the Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.

Ex. G at DEF5000372.

Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase. *Id.* at DEF5000372-373. Similarly, Professor Opfer noted:

it is the fault of the Plaintiffs for not conducting requisite inspections of the Property prior to its purchase. Since this issue is apparently open and obvious as per the Sani Report, it would have been open and obvious as well during a pre-purchase inspection.

*Id.* at DEF5000380. The open and obvious nature of the alleged issues include the following:

1. the photographs from 2017 showed extensive cracking to the stucco and slab to the Property prior to any work by Defendants and/or the licensed contractor it hired to install the HVAC. *Id.*
2. the alleged attic issues could have been inspected at the time of the purchase. *Id.* at DEF5000378
3. "any deficient electrical work related to this 220-volt service situation could have been readily ascertained by an inspection at the time of purchase by the Plaintiff". *Id.* at DEF5000379
4. the alleged HVAC issues were open and obvious. *Id.* at DEF5000381
5. "the conditions complained about as to venting and ducting were present at the Property prior to Defendants owning the Property". *Id.* at DEF5000388,
6. Plaintiff could have conducted an online search related to the permits or lack of permits for the Property. *Id.* at DEF5000389.

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7. The basis of the Sani Estimate is nonsensical in the first place and there is nothing seen from this Sani Report that was not present at the time of sale of the Triplex Property. There were cracks in the stucco system and concrete slab system existing in 2017. Roof venting/duct venting had not been changed by Defendants and was existing in 2017 and could have been inspected by Plaintiff. *Id.* at DEF5000391.
8. Any deficiencies with this electrical installation were open, obvious and could have been inspected prior to purchase as with all other items with this Triplex Property. Any cracks such as wall or floor cracks subsequent to the purchase would obviously be new but again this occurs even on new homes across the Las Vegas Valley and elsewhere. *Id.* at DEF5000392.
9. Rental properties experience more-severe-service requirements due to many factors often including a lack of knowledge in order to care for a Property on the part of tenants along with often an uncaring attitude as well. *Id.* at DEF5000379.

Summary Judgment is appropriate as Plaintiff either knew of or could have discovered the defects prior to the purchase. *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). Clearly, the open and obvious issues were within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted). In this context, Summary Judgment is appropriate as a matter of law. *Id.* (citation omitted). Defendants are entitled to Summary Judgment as to Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing.

4. Unknown to any Defendant

At all times relevant, no Defendant was aware of any issues related to any of the alleged complaints raised by Plaintiff and/or Plaintiff's alleged expert. Declaration of Kenny Lin attached as **Exhibit I**. The only issues that Defendants were aware of were properly disclosed with an explanation. No Defendant was aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the

Property before the time of the sale to Ms. Zhu. *Id.* Nor was any Defendant aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property at the time of the sale to Ms. Zhu. *Id.* As to the HVAC issue, Defendants were aware that tenants of the Property complained about the cooling of the Property, which is why TKNR paid to have the system upgraded by a licensed contractor. Air Team Invoice attached as **Exhibit J**.

At all times relevant, during the Due Diligence Period, Plaintiff had access to inspect: the mechanical systems, the structure of the Property, the windows, for mold / fungus, the electrical systems, the plumbing systems, the gas lines, the attic, the bathroom exhaust vent / washer /dryer exhaust vent, the ceiling insulation, the roof decking, the roof trusses, the roof support structures, the duct system, and the flooring and tiles. Ex. G. At all times relevant, Plaintiff knew that the Property was originally constructed in 1954. *Id.* at ¶ 70.

NRS § 113.140 provides that the Seller does not have to disclose any defect that he is unaware of. Similarly, NRS § 113.130 does not require a seller to disclose a defect in residential property of which the seller is not aware. The Nevada Supreme Court has also made it abundantly clear that a seller does not have any liability for unknown defects and/or where the diligent buyer should have done an inspection. *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007) (citing NRS 113.140(1)); *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993) (nondisclosure by the seller of adverse information concerning real property will not provide the basis for an action by the buyer for damages when property is sold as is); *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015) (“[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase.”); *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018) (buyer waives its common law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close of escrow, and the information was reasonably accessible to the buyer); *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL

6955438, at \*5 (Nev. App. Nov. 25, 2020) (the terms of the purchase agreement do not require the seller to do anything other than provide the listed disclosures).

Therefore, the overwhelming authority demands Summary Judgment in favor of Defendants as a matter of law. As such, Summary Judgment is appropriate as a matter of law. *Id.* (citation omitted). Defendants are entitled to Summary Judgment as to Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

**C. Summary Judgment is Warranted as to Broker Defendants**

As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.* Additionally, Ms. Zhu also agreed that the Brokers Defendants had "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." *Id.*

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1 NRS 645.252 sets forth the duties of real estate agents. Based on the Seller's  
2 Disclosures, the RPA, and the 2<sup>nd</sup> RPA, Defendants clearly do not have any liability to Plaintiff  
3 under Nevada law. Plaintiff had a separate agent representing them for the purchase of the  
4 Property. As noted earlier, Plaintiff cancelled the first RPA and entered into the second with  
5 actual knowledge of the Seller's Disclosures and the roles of all Defendants. Exs. A-F. NRS  
6 645.252(4) clearly specifies that agents do not owe a duty to "(a) [i]ndependently verify the  
7 accuracy of a statement made by an inspector certified pursuant to chapter 645D of NRS or  
8 another appropriate licensed or certified expert" or "(c) [c]onduct an investigation of the  
9 condition of the property which is the subject of the real estate transaction."

10 In addition to the authority cited above, Summary Judgment is appropriate as a matter of  
11 law on Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3)  
12 Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of  
13 Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate  
14 training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of  
15 Implied Covenant of Good Faith and Fair Dealing]. It also eliminates the causes of action for (7)  
16 RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process  
17 since they have no basis in fact or law.

18 **D. No Basis for Extraneous Claims**

19 The SAC contains claims that appear to be loosely associated with the alleged non-  
20 disclosure claims related to the sale of the Property: (7) RICO; (10) Fraudulent Conveyance; (11)  
21 Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process. As noted in the prior  
22 sections, each of these claims fall as a matter of law based on the aforementioned authority and  
23 facts. Nevertheless, this Section will address the lack of merit of each of these claims.

24 **1. RICO**

25 In 1970, the United States Congress passed the Racketeer Influenced and Corrupt  
26 Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), as a portion of the Organized Crime  
27 Control Act of 1970. In passing RICO, "Congress created a wide array of novel civil and  
28 criminal weapons to use against crime and corruption." *Chappell v. Robbins*, 73 F.3d 918, 919

(9th Cir. 1996). Similarly, “Congress created a private claim under RICO at least in part to compensate victims of racketeering.” *Id.* at 1153 (citing *Petro-Tech, Inc. v. Western Co. of North America*, 824 F.2d 1349, 1358 (3d Cir.1987)). Nevertheless, “RICO was intended to combat organized crime, not to provide a federal cause of action and treble damages to every tort plaintiff.” *Oscar v. University Students Co-op. Ass’n*, 965 F.2d 783, 786 (9th Cir. 1992). “[A]s a matter of law, personal injury, including emotional distress, is not compensable under section 1964(c) of RICO.” *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990). RICO “provides compensation only for damages caused by racketeering activity.” *Oscar*, 965 F.2d at 813.

“Nevada’s anti-racketeering statutes . . . are patterned after the federal [RICO] statutes.” *Hale v. Burkhardt*, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988). Nevada codified its own version of RICO under NRS §§ 207.350-207.520. NRS 207.400(1)(a) specifies that it is unlawful for a person **with criminal intent** received any proceeds derived, directly or indirectly, **from racketeering activity**. (Emphasis added). For a federal RICO claim, a plaintiff must allege the following elements to prevail on a RICO claim under a pattern of racketeering activity: (1) the conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. *See Sun Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 191 (9th Cir.1987).

However, “Nevada’s civil RICO statute differs in some respects from the federal civil RICO statute.” *Hale*, at 635, 764 P.2d at 868. One critical distinction is found in comparing the language of 18 U.S.C. § 1961(5) with that of NRS 207.390. The federal statute provides that a claimant must plead a pattern of racketeering activity and that such a pattern requires at least two predicate acts; Nevada’s RICO statute does not speak in terms of a “pattern of racketeering” and provides that racketeering activity means two predicate acts of the type described in NRS 207.390 and NRS 207.360. Thus, there is no pattern/continuity requirement as is required under federal law. *Siragusa v. Brown*, 971 P.2d 801, 811 (Nev. 1998).

a. An Enterprise

Under RICO, an “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact

1 although not a legal entity. 18 U.S.C. § 1961(4). It is “ ‘a being different from, not the same as  
2 or part of, the person whose behavior the act was designed to prohibit.’ ” *Rae v. Union Bank*,  
3 725 F.2d 478, 481 (9th Cir.1984) (quotation omitted). For the purposes of a single action, a  
4 corporate defendant cannot be both the RICO person and the RICO enterprise under section  
5 1962(c). *See Wilcox v. First Interstate Bank of Oregon*, 815 F.2d 522, 529 (9th Cir.1987). In  
6 terms of a pleading, problems arise when the named defendant is both the “person” and the  
7 “enterprise.” *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1534 (9th Cir. 1992).

8 b. Racketeering Activity

9 “[R]acketeering activity” is any act indictable under several provisions of Title 18 of the  
10 United States Code, and includes the predicate acts of mail fraud, wire fraud and obstruction of  
11 justice. . . .” *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) (citing 18 U.S.C. § 1961(1)).  
12 It includes general crimes involving acts or threats of murder, kidnapping, gambling, arson,  
13 robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance. *Id.* at  
14 § 1961(1)(A). It also includes specific enumerated federal crimes related to various crimes  
15 involving theft, fraud, immigration violations, and obstruction of justice. *Id.* at § 1961(1)(B)-  
16 (G).

17 “Continuity” is both a closed and open-ended concept, referring either to a closed period  
18 of repeated conduct, or to past conduct that by its nature projects into the future with a threat of  
19 repetition. A party alleging a RICO violation may demonstrate continuity over a closed period  
20 by proving a series of related predicates extending over a substantial period of time. Predicate  
21 acts extending over a few weeks or months and threatening no future criminal conduct do not  
22 satisfy this requirement[.]

23 c. No Basis for RICO Claim

24 Incorporating the prior sections related to the lack of merit of any of the other claims,  
25 there is no “racketeering” or form of predicate misconduct that “by its nature projects into the  
26 future with a threat of repetition”, *Religious Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 366 (9th  
27 Cir.1992), related to the sale of the Property to Plaintiff. First, there is no “Racketeering  
28 Activity” as it is legal to sell real property to a third party. Also, since the sale to Plaintiff

1 concluded after the sale, there was no continuity. If there was any potential action for the alleged  
2 non-disclosure of known defects, then the action would fall under recognized torts specified in  
3 this brief, not RICO. As such, Summary Judgment is appropriate as (1) the other claims fail as a  
4 matter of law, (2) there was no criminal intent, (3) or a “racketeering activity”.

5 2. No Action for Fraudulent Conveyance

6 Fraudulent Conveyance is governed by NRS §§ 112.180(1), 112.190(1). This requires a  
7 transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the  
8 creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the  
9 debtor made the transfer or incurred the obligation (a) with actual intent to hinder, delay or  
10 defraud any creditor of the debtor; or (b) without receiving a reasonably equivalent value in  
11 exchange for the transfer or obligation, and the debtor. NEV. REV. STAT. § 112.180(1)(a-b).  
12 Alternatively, NRS § 112.190(1) specifies that a transfer made, or obligation incurred, by a  
13 debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the  
14 obligation was incurred if the debtor made the transfer or incurred the obligation without  
15 receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor  
16 was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

17 Here, Plaintiff failed to identify what the alleged transfer was and who the alleged  
18 creditor was that was defrauded. First, this claim lacks any merit as Summary Judgment is  
19 already appropriate as to the supporting claim for alleged liability by Defendants to Plaintiff.  
20 Second, this claim is premature since Plaintiff is not a creditor. Third, there has not been a  
21 showing that Defendants transferred anything. As Plaintiff will not be able to show any transfer  
22 was made “with actual intent to hinder, delay or defraud any creditor of the debtor”, *Id.* at  
23 §112.180(1)(a), and Plaintiff does not have any basis for the claims in this matter, Summary  
24 Judgment is appropriate as a matter of law.

25 3. Civil Conspiracy

26 Under Nevada law, to establish a civil conspiracy claim, a plaintiff must show (1) the  
27 commission of an underlying tort; and (2) an agreement between the defendants to commit that  
28 tort. *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 110 P.3d 30, 51



(2005) (per curiam) (stating that “an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud”), abrogated on other grounds *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 n. 6 (2008); *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001). “[I]t suffices under Nevada law to allege that Defendants . . . owed a duty to Plaintiffs not to conspire with those who do owe fiduciary duties to Plaintiffs to breach those duties.” *Boorman v. Nev. Mem’l Cremation Soc’y, Inc.*, 772 F. Supp. 2d 1309, 1315 (D. Nev. 2011).

Here, incorporating the preceding arguments illustrating that Summary Judgment is appropriate as a matter of law, Plaintiff cannot demonstrate (1) the commission of an underlying tort or (2) an agreement amongst the defendants to commit that tort. This illustrates that Summary Judgment is appropriate as a matter of law.

#### 4. Abuse of Process

The elements of an abuse of process claim are: “(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). Abuse of process can arise from both civil and criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice, want of probable cause, and termination in favor of the person initiating or instituting proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

Here, Plaintiff illustrated the overall lack of merit related to the abuse of process claim in its limited opposition to Defendants’ motion to file amended answer, counterclaim, and third-party claim

If Defendants are allowed to file the proposed Counterclaim, Plaintiff will likely file it’s (sic) own motion to file a Second Amended Complaint and allege an additional cause of action for abuse of process based on the Defendants’ cause of action for abuse of process.

Opposition (brief only) at 6:10-13 attached as **Exhibit K**. Notably, this Honorable Court found the totality of the Opposition meritless. Order at 2:20-21 attached as **Exhibit L**.

Clearly, the totality of the legal and factual arguments in this Motion illustrate the bad faith nature of Plaintiff's claim. First, it is clear that Plaintiff's action is merely an attempt to extort Defendants with a meritless claim in abuse of the legal process. Second, the Property was a then-63 year old home that Plaintiff purchased in 2018. Third, the purchase price was \$200,000. Fourth, illustrating the abuse of process, Plaintiff are claiming \$16.25 Million in damages:

Damage No.	Amount
1	1,950,000
2	2,600,000
3	2,600,000
4	2,600,000
5	650,000
6	650,000
7	650,000
8	650,000
9	650,000
10	2,600,000
11	Omitted
12	Omitted
13	650,000
	16,250,000

Plaintiff's First Supplemental Disclosure (excerpt) attached as **Exhibit M**. Fourth, Plaintiff also made bad faith claims under RICO and other baseless claims as part of this action. Fifth, Plaintiff's counsel has charged Plaintiff approximately \$64,000 in attorneys' fees to prosecute these worthless claims. Ex. N. Sixth, the original settlement demand from Plaintiff was \$10,000. Ex. I.

As Plaintiff admitted the only purpose in filing the claim for abuse of process was retaliatory, and the overwhelming facts and law illustrate the abuse of process by Plaintiff in bringing this action, Summary Judgment is appropriate as a matter of law.

#### **E. Partial Summary Judgment**

Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment or partial summary judgment. "If the court does not grant all the relief requested by the motion,

1 it may enter an order stating any material fact — including an item of damages or other relief —  
2 that is not genuinely in dispute and treating the fact as established in the case.” *Id.* at 56(g).  
3 “[A]n admitting party is barred from denying that which it has already admitted. *La-Tex Partn.*  
4 *v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93  
5 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro.  
6 36).

7 Here, if this Honorable Court does not grant Summary Judgment on all claims, then  
8 Defendants respectfully request that It grant partial Summary Judgment as to the following  
9 undisputed facts:

- 10 1. The Property was originally constructed in 1954.
- 11 2. On or about August 11, 2017, Ms. Zhu executed the RPA for the Property.
- 12 3. The purchase price for the property was \$200,000.
- 13 4. Through the RPA, Ms. Zhu waived her due diligence, although she had a right to  
14 conduct inspections.
- 15 5. Ms. Zhu did not cancel the contract related to any issues with the Property.
- 16 6. Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition.
- 17 7. Under Paragraph 7(D) of the RPA, it provided:  
18 *It is strongly recommended that Buyer retain*  
19 *licensed Nevada professionals to conduct*  
20 *inspections.* If any inspection is not completed and  
21 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.- 22 8. Ms. Zhu waived any liability of Defendants for the cost of all repairs that  
23 inspection would have reasonably identified had it been conducted.
- 24 9. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid  
25 removal inspection, mechanical inspection, soil inspection, and structural  
26 inspection.
- 27 10. Under Paragraph 7(F), it was Ms. Zhu’s responsibility to inspect the Property  
28 sufficiently as to satisfy her use.
- 11. The Brokers had “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.”

12. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. In fact, TKNR disclosed that “3 units has (sic) brand new AC installed within 3 months,” and further that the “owner never resided in the property and never visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. Seller also disclosed that it had construction, modification, alterations, or repairs done without permits. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquires.
13. On or before December 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. As such, Ms. Chen confirmed that Ms. Zhu would do a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections.
14. On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, and entered into the 2<sup>nd</sup> RPA. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the COE.
15. Although Ms. Zhu had not initialed the “Failure to Cancel or Resolve Objections” provision in the RPA, she initialed the corresponding provision in the 2<sup>nd</sup> RPA. This was consistent with Ms. Zhu’s instructions to Ms. Chen. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2<sup>nd</sup> RPA that strongly advised to get an inspection done.
16. Ms. Zhu waived any inspections related to the purchase of the Property in the 2<sup>nd</sup> RPA. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one the units, and to also pay the property manager \$800 for the tenant placement fee.
17. Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to Plaintiff.
18. As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker’s agent.
19. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties.
20. Ms. Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow.
21. Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu’s failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

22. Information related to permits is publicly available. The City of Las Vegas has a website that permits anyone in the public to search for permits.
23. NRS § 645.259(2) precludes any liability for misrepresentation or under Chapter 113 if the information is a public record.
24. Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.
25. Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase.
26. It is the fault of the Plaintiffs for not conducting requisite inspections of the Property prior to its purchase. Since this issue is apparently open and obvious as per the Sani Report, it would have been open and obvious as well during a pre-purchase inspection.
27. The photographs from 2017 showed extensive cracking to the stucco and slab to the Property prior to any work by Defendants and/or the licensed contractor it hired to install the HVAC.
28. The alleged attic issues could have been inspected at the time of the purchase.
29. Any deficient electrical work related to this 220-volt service situation could have been readily ascertained by an inspection at the time of purchase by the Plaintiff".
30. The alleged HVAC issues were open and obvious.
31. The conditions complained about as to venting and ducting were present at the Property prior to Defendants owning the Property.
32. Plaintiff could have conducted an online search related to the permits or lack of permits for the Property.
33. The basis of the Sani Estimate is nonsensical in the first place and there is nothing seen from this Sani Report that was not present at the time of sale of the Triplex Property. There were cracks in the stucco system and concrete slab system existing in 2017. Roof venting/duct venting had not been changed by Defendants and was existing in 2017 and could have been inspected by Plaintiff.
34. Any deficiencies with this electrical installation were open, obvious and could have been inspected prior to purchase as with all other items with this Triplex Property. Any cracks such as wall or floor cracks subsequent to the purchase would obviously be new but again this occurs even on new homes across the Las Vegas Valley and elsewhere.
35. It was well known at the time of the purchase that the Property was a 63 year old rental property that was subject to potential renter abuse.
36. At all times relevant, no Defendant was aware of any issues related to any of the alleged complaints raised by Plaintiff and/or Plaintiff's alleged expert. The only issues that Defendants were aware of were properly disclosed with an

1 explanation. No Defendant was aware of any issues with any structural,  
2 electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or  
3 foundation issues with the Property before the time of the sale to Ms. Zhu. Nor  
4 was any Defendant aware of any issues with any structural, electrical, plumbing,  
5 sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the  
6 Property at the time of the sale to Ms. Zhu. As to the issue HVAC issue,  
7 Defendants were aware that tenants of the Property complained about the cooling  
8 of the Property, which is why TKNR paid to have the system upgraded by a  
9 licensed contractor.

10 37. At all times relevant, during the Due Diligence Period, Plaintiff had access to  
11 inspect: the mechanical systems, the structure of the Property, the windows, for  
12 mold / fungus, the electrical systems, the plumbing systems, the gas lines, the  
13 attic, the bathroom exhaust vent / washer /dryer exhaust vent, the ceiling  
14 insulation, the roof decking, the roof trusses, the roof support structures, the duct  
15 system, and the flooring and tiles.

16 38. NRS 645.252(4) clearly specifies that agents do not owe a duty to “(a)  
17 [i]ndependently verify the accuracy of a statement made by an inspector certified  
18 pursuant to chapter 645D of NRS or another appropriate licensed or certified  
19 expert” or “(c) [c]onduct an investigation of the condition of the property which  
20 is the subject of the real estate transaction.”

#### 21 **F. Attorneys’ Fees and Costs**

22 Pursuant to Nevada Rule of Civil Procedure 11(c), the court may order a party to show  
23 cause why it has not violated the mandates of Rule 11. Rule 11 prevents a party from bringing a  
24 lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or  
25 needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO.  
26 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District*  
27 *Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

28 A frivolous claim is one that is “both baseless and made without a reasonable and  
competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting  
*Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*  
*Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of  
whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine  
whether the pleading is “well grounded in fact and is warranted by existing law or a good faith  
argument for the extension, modification or reversal of existing law”; and (2) whether the  
attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.  
A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter

1 repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

2 Furthermore, a court may award attorneys’ fees to a prevailing party when it finds that  
3 the claim was brought or maintained without reasonable ground or to harass the prevailing party.  
4 NEV. REV. STAT. § 18.010(2)(b). In other cases, a court may award attorneys’ fees “when it  
5 finds that the opposing party brought or maintained a claim without reasonable grounds.”  
6 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). “The court shall liberally  
7 construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate  
8 situations.” *Id.* The Nevada Legislature explained that:

9 [i]t is the intent of the Legislature that the court award attorney’s  
10 fees pursuant to this paragraph and impose sanctions pursuant to  
11 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
12 situations to punish for and deter frivolous or vexatious claims and  
13 defenses because such claims and defenses overburden limited  
judicial resources, hinder the timely resolution of meritorious  
claims and increase the costs of engaging in business and  
providing professional services to the public.

14 *Id.* “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any  
15 credible evidence at trial.’” *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)  
16 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

17 As noted in Section II(D)(4), the overwhelming facts and law illustrate that Plaintiff’s  
18 claim is frivolous. Not only did Plaintiff intentionally omit the waiver of inspections from the  
19 pleadings, they also egregiously claimed damages in excess of \$16.25 Million related to the  
20 Property. Plaintiff’s claim is clearly frivolous: (1) where the pleading was not “well grounded in  
21 fact and is warranted by existing law or a good faith argument for the extension, modification or  
22 reversal of existing law”, and (2) Plaintiff’s attorney continued to make frivolous claims.  
23 *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff and its  
24 counsel, which should include an award attorneys’ fees to Defendants. Plaintiff brought or  
25 maintained this action without reasonable ground and only to harass Defendants. NEV. REV.  
26 STAT. § 18.010(2)(b). The overwhelming facts and law also show that Plaintiff brought or  
27 maintained this claim without reasonable grounds, which justifies an award of attorneys’ fees.  
28 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

1     **III.     CONCLUSION**

2             For the aforementioned reasons, this Honorable Court should grant the Motion.

3             DATED this 15 day of December, 2020.

4                             MICHAEL B. LEE, P.C.

5                                     /s/ Michael Lee  
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**CERTIFICATE OF MAILING**

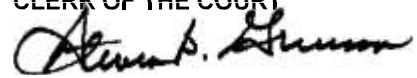
I HEREBY CERTIFY that on this 15 day of December, 2020, I placed a copy of the **DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court’s electronic filing system to the e-mail address listed below:

BENJAMIN B. CHILDS, ESQ.  
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Attorneys for *Plaintiff*

/s/Mindy Pallares  
An employee of MICHAEL B. LEE, P.C.

DOCUMENT 3

DOCUMENT 3



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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC

Plaintiff

vs.

TKNR, INC, a California Corporation, and  
CHI ON WONG, an individual, and  
KENNY ZHONG LIN, an individual, and  
INVESTPRO LLC dba INVESTPRO REALTY and  
JOYCE A. NICKRANDT, an individual and  
Does 1 through 5 and Roe Corporations I - X

Defendants

Case # A-18-785917-C  
Dept # 14

Hearing : January 28, 2021  
09:30

=====

OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) and  
COUNTERMOTION FOR IMPOSITION OF MONETARY SANCTIONS

PROCEDURAL ISSUES

Defendants' Motion must be denied as it is untimely. The filing of the motion is obviously just for Defendants' attorney to bill up the file, and consequently unnecessarily increase the costs of Plaintiff. Defendants' tactic is to simply rely on the opinion of their hired expert, as if this created a stipulated fact.

It's a waste of attorney and judicial time which should not be tolerated.

Without the Court's permission, the Motion exceeds the 30 page limit of EDCR 2.20(a).

1 The Motion is confusingly circular and without a specific request for relief,  
2 other than granting summary judgment to all defendants on all causes of action.

3 NRC 56( c) requires “a concise statement setting forth each fact material  
4 to the disposition of the motion which the party claims is or is not genuinely in  
5 issue, citing the particular portions of any pleading, affidavit, deposition,  
6 interrogatory, answer, admission, or other evidence upon which the party relies.”  
7 This is absent in Defendants’ motion. The only statement of fact in the Motion is  
8 essentially stating what Plaintiff’s allegations are. Plaintiff is disputing those facts,  
9 so there are obviously disputes of material fact which preclude summary  
10 judgment.  
11

12 The Motion contains purported a settlement demand in Kenny Lin’s  
13 declaration. Interestingly, although it’s specific as to amount, it completely lacks  
14 context of date, time, where, method of transmittal, who extended or received the  
15 offer, etc. Mr. Miao’s declaration is emphatic that no communication with any  
16 defendant occurred after August, 2018, and no settlement discussions occurred  
17 ever.  
18

19 EDCR 2.21 limits affidavits to “only factual, evidentiary matter.”  
20

21 Rule 2.21. Affidavits on motions.

22 (a) Factual contentions involved in any pretrial or post-trial  
23 motion must be initially presented and heard upon affidavits,  
24 unsworn declarations under penalty of perjury, depositions, answers  
25 to interrogatories, and admissions on file. Oral testimony will not be  
26 received at the hearing, except upon the stipulation of parties and  
27 with the approval of the court, but the court may set the matter for a  
28 hearing at a time in the future and require or allow oral examination  
29 of the affiants/declarants to resolve factual issues shown by the  
30 affidavits/declarations to be in dispute. This provision does not apply  
31 to an application for a preliminary injunction pursuant to N.R.C.P.  
32 65(a).

1 ...

2 (c) **AFFIDAVITS/DECLARATIONS MUST CONTAIN ONLY**  
3 **FACTUAL, EVIDENTIARY MATTER**, conform with the requirements  
4 of N.R.C.P. 56(e), and avoid mere general conclusions or argument.  
5 Affidavits/declarations substantially defective in these respects may  
6 be stricken, wholly or in part.

7 Further, NRS 48.105 expressly makes settlement discussions  
8 inadmissible.

9  
10 NRS 48.105 - Compromise; offers to compromise.

11 1. Evidence of:

12 (a) Furnishing or offering or promising to furnish; or

13 (b) Accepting or offering or promising to accept,  
14 a valuable consideration in compromising or attempting to  
15 compromise a claim which was disputed as to either validity  
16 or amount, **is not admissible to prove liability for or**  
17 **invalidity of the claim or its amount. Evidence of**  
18 **conduct or statements made in compromise**  
19 **negotiations is likewise not admissible.**

20 2. This section does not require exclusion when the evidence is  
21 offered for another purpose, such as proving bias or prejudice of a  
22 witness, negating a contention of undue delay, or proving an  
23 effort to obstruct a criminal investigation or prosecution.

24 Plaintiffs has documented its damages as required by NRCP 16.1 [Exhibit  
25 4]. Defendants adding up all the damages to get the \$16,000,000 figure is  
26 ridiculous, different causes of action against different defendants does not mean  
27 that Plaintiff will recover twice, or thrice; it just sets forth those damages. The  
28 damages are based on Mr. Sani's opinion. [Exhibit 4]

29 Plaintiff files this Opposition sets forth its Countermotions to avoid  
30 judgment being entered for failure to respond.

31 ///

1 ARGUMENT OF COUNSEL IS NOT EVIDENCE

2  
3 The Court has to make decisions based on evidence, not argument of  
4 counsel. The Motion is riddled with inaccurate statements by counsel, which are  
5 NOT supported by evidence. Such as stating that Plaintiff have demanded  
6 \$16,000,000, that Plaintiff did not inspect the Subject Property, and that there are  
7 no factual issues. These statements are made in violation of SCR 172(1)(a) (“[a]  
8 lawyer shall not knowingly . . . [m]ake a false statement of material fact or law to a  
9 tribunal”).  
10

11  
12 HISTORICAL SUMMARY

13  
14 October , 2015

15 TKNR bought property on September 25, 2015 at a foreclosure auction for  
16 \$95,100. Investpro Realty is the entity that recorded the Trustee’s Deed  
17 and the address on the Trustee’s Deed is Investpro’s address at 3553 S.  
18 Valley View Blvd Las Vegas, NV 89018; this is not TKNR’s address. The  
19 unpaid debt was \$291,608.90. [Exhibit 2, attachment Exhibit 2B]  
20 Defendant INVESTPRO REALTY was TKNR Inc’s (hereinafter” TKNR”)  
21 property managment company and Zhong Lin aka Kenny  
22 Lin(hereinafter”Lin”) renovated Subject Property, put tenants in the Subject  
23 Property, and put it on market for profit.. [Exhibit 6, 7-8 (Response to  
24 Interrogatory # 3]  
25

26 August 11, 2017

27 Plaintiff enters into Purchase Agreement to buy the Subject Property.  
28 [Exhibit B]

29 December, 2017

30 Purchase of Subject Property completed. Plaintiff continued to use  
31  
32

1 Investpro as property manager. [Exhibit 2, Mr. Miao's declaration]  
2 December, 2017  
3 Lin approached Frank Miao at Christmas party and solicited him to invest in  
4 Investpro's Flipping Fund. [Exhibit 2, Mr. Miao's declaration]  
5 July, 2018  
6 Tenant in Unit A complained about fuses burning, which shut down  
7 electrical service to his apartment. Plaintiff found the electrical problems  
8 which had been created by Investpro, Lin and/or TKNR and corrected the  
9 problems and terminated Investpro as property manager. .[Exhibit 2, Mr.  
10 Miao's declaration]  
11 December 11, 2018  
12 Complaint filed  
13 January 7 2019  
14 Defendants file Motion to Dismiss, Alternative Motion for Summary  
15 Judgment or More Definite Statement  
16 March 4, 2019  
17 First Amended Complaint filed  
18 December 16, 2019  
19 Discovery Scheduling Order filed after Mandatory Rule 16.1 conference on  
20 August 7, 2019  
21 May 28, 2020  
22 Stipulation and Order to Extend Discovery  
23 August 14, 2020  
24 Plaintiff timely discloses expert witness [Exhibit 4]  
25 September 25, 2020  
26 Deadline for rebuttal expert witnesses. Defendants do not disclose rebuttal  
27 expert  
28  
29  
30  
31  
32

1 October 16, 2020

2 Defendants file motion to extend discovery deadlines

3 November 23, 2020

4 Stipulated Order for Plaintiff to file 2<sup>nd</sup> Amended Complaint [Exhibit 5]

5 December 28, 2020

6 Defendants file for summary judgment knowing that there are clear factual  
7 issues which preclude the Court from granting summary judgment  
8

9  
10 ARGUMENT IN DEFENDANTS' MOTION THAT DEFECTS WERE OPEN AND  
11 OBVIOUS IS SELF-DEFEATING  
12

13 Given the argument in Defendants' Motion, if defects are open and  
14 obvious, why didn't Defendants correct the issues? Or, more importantly to the  
15 instant case, why didn't Defendants DISCLOSE the defects in the Seller Real  
16 Property Disclosure Form [SRPDF herein]? If the defects were open and  
17 obvious, the Defendants involved in the sale to Plaintiff should have disclosed  
18 them.  
19

20 DEFENDANTS' MOTION IS UNTIMELY AS DISCOVERY HAS NOT BEEN  
21 COMPLETED  
22

23 COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) IF THE  
24 COURT CONSIDERS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
25

26 NRCP 56(f) states as follows :

27 (f) When Affidavits Are Unavailable. Should it appear from the affidavits of  
28 a party opposing the motion that the party cannot for reasons stated  
29 present by affidavit facts essential to justify the party's opposition, the court  
30 may refuse the application for judgment or may order a continuance to  
31 permit affidavits to be obtained or depositions to be taken or discovery to  
32 be had or may make such other order as is just.



1  
2       Discovery is not completed. The declaration of Plaintiff's attorney is  
3 attached supporting its Countermotion pursuant to NRCP 56(f). After missing  
4 the expert witness deadline, Defendants file motion to extend discovery  
5 deadlines, which motion was granted. The current discovery deadline is March 2,  
6 2021, which is the deadline Defendants themselves requested.  
7

8  
9 NO WAIVER OF INSPECTION  
10

11       The Purchase Agreement prepared by Helen Chen creates a fiduciary duty  
12 as Investpro was in a dual agency, representing the seller and the buyer. [Exhibit  
13 F] Section 7D of the Purchase Agreement expressly states that Plaintiff didn't  
14 waive the home inspection. Frank Miao did an inspection, as set forth in his  
15 declaration [Exhibit 2]. His affidavit is supported by email communications with  
16 Helen Chen of Investpro Realty. [Exhibit 2C] This, in and of itself, creates a  
17 factual issue.  
18

19       Further, waiving inspection (which Plaintiff expressly denies happened  
20 since Mr. Miao inspected on August 10, 2017) does NOT relieve Defendant  
21 seller, and its agents, of an obligation to disclose accurate information on the  
22 SRPDF. This is required by Nevada statute, which disclosure cannot be waived.  
23 [Exhibit C, Page 1 is the SRPDF which expressly states that it cannot be waived,  
24 citing NRS 113.130(3)]  
25

26       In normal transactions involving residential rental building, the buyer only  
27 inspects the common spaces because units occupied. The burden is on seller  
28 because of warranty of habitability and safety issues for tenants, which are  
29 ongoing. This is obviously for consumer protection of both the tenants and the  
30 general public. This is also why owners/managers of rental properties have to  
31 use licensed contractors ALL the time to do work and to pull permits to do the  
32

1 extensive renovation such as was done to the Subject Property. [Exhibit 2E and  
2 Exhibit 3]  
3

4 AGAINST PUBLIC POLICY FOR FIDUCIARY TO PRESENT CONTRACT  
5 WHICH WAIVES DAMAGES  
6

7  
8 In this case the real estate broker is the flipper. Defendants Investpro,  
9 Nickrant and Chen represented Plaintiff in the purchase. [Exhibit F] They have  
10 a statutory duty to disclose all material facts. Since Investpro did the renovation  
11 [Exhibit 6], and is also the broker, it both had knowledge of the material facts  
12 complained about in the 2<sup>nd</sup> Amended Complaint, and had an obligation to  
13 disclose those material facts. That duty cannot be waived.  
14

15 NRS 645.254 - Additional duties of licensee entering into  
16 brokerage agreement to represent client in real estate  
17 transaction.  
18

19 ...  
20 5. Shall disclose to the client material facts of which the  
21 licensee has knowledge concerning the transaction;  
22

23 NRS 645.255 - Waiver of duties of licensee prohibited.  
24 Except as otherwise provided in subsection 4 of NRS 645.254,  
25 no duty of a licensee set forth in NRS 645.252 or 645.254 may  
26 be waived.  
27

28 The detailed narrative declaration of Frank Miao, and the attached Exhibits  
29 2A through 2F are incorporated herein by reference. Defendants Lin and  
30 INVESTPRO, LLC are property flippers who owned and/or controlled the Subject  
31  
32

1 Property for about 2 years, [Exhibit 6] during which time they performed multiple  
2 major alterations and renovations to the property, none of which were permitted,  
3 inspected, or done by licensed contractors as required by law. See Exhibit 3,  
4 Declaration of Amir Sani. TKNR, INC is the corporate entity that Lin and  
5 Investpro used for this particular investment, which is owned and managed by  
6 Defendant CHI ON WONG [Wong]. They altered the property to hide the many  
7 defects detailed in Miao's declaration, then sold the property without disclosing  
8 the defects.  
9

#### 10 11 NO WAIVER OF REQUIRED DISCLOSURES 12

13 Plaintiff did not waive its right to receive required disclosures. Plaintiff  
14 cannot waive the Seller's obligation to complete the disclosures. As noted on the  
15 first page of Exhibit C, NRS 113.130(3) does not allow a purchaser to waive the  
16 disclosures.  
17

18 Defendants desperately want the Court to ignore their collective and  
19 concerted fraudulent actions. There was no waiver of the required disclosures.  
20 Further, only the remedies for failure to disclose of known defects can be waived,  
21 and only if the waiver is "signed by the purchaser **and notarized**." See NRS  
22 113.130(3) and 115.150(6). This did not happen.

23 Further, the "waiver" of the inspection upon which Defendants essentially  
24 rests their entire motion, Exhibit 3, means nothing because Plaintiff had already  
25 inspected the property on August 10, 2019. Plaintiff DID inspect the property,  
26 Defendants had just gone to extensive effort, apparently as part of their  
27 renovation, to hide the problems.  
28

29 ///  
30  
31  
32

1 PLAIN MEANING OF STATUTE

2  
3 "It is well established that when the language of a statute is plain and  
4 unambiguous, a court should give that language its ordinary meaning and not go  
5 beyond it." Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225, 19 P.3d 245,  
6 247 (2001). The plain meaning of a statute is generally "ascertained by examining  
7 the context and language of the statute as a whole." Karcher Firestopping v.  
8 Meadow Valley Contractors, Inc., 125 Nev. 111, 113, 204 P.3d 1262, 1263  
9 (2009).  
10

11 NRS 113.130 and 113.150, set forth below, are clear and unambiguous.  
12

13 DISCLOSURES REQUIRED BY STATUTE

14  
15 NRS 113.130 requires disclosure of know defects by seller of a residential  
16 real estate. The relevant portions of that statute are set forth below.  
17

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

21 1. Except as otherwise provided in subsections 2 and 3:

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

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

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

29 (b) If, after service of the completed disclosure form but before  
30 conveyance of the property to the purchaser, a seller or the  
31 seller's agent discovers a new defect in the residential property  
32 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

1 after the discovery of that fact but in no event later than the  
2 conveyance of the property to the purchaser. If the seller does  
3 not agree to repair or replace the defect, the purchaser may:

- 4 (1) Rescind the agreement to purchase the property; or  
5 (2) Close escrow and accept the property with the defect  
6 as revealed by the seller or the seller's agent without  
7 further recourse.

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

- 10 (a) By foreclosure pursuant to chapter 107 of NRS.  
11 (b) Between any co-owners of the property, spouses or persons  
12 related within the third degree of consanguinity.  
13 (c) Which is the first sale of a residence that was constructed by  
14 a licensed contractor.  
15 (d) By a person who takes temporary possession or control of or  
16 title to the property solely to facilitate the sale of the property on  
17 behalf of a person who relocates to another county, state or  
18 country before title to the property is transferred to a purchaser.

19 3. A purchaser of residential property may waive any of the  
20 requirements of subsection 1. Any such waiver is effective only if it is  
21 made in a written document that is signed by the purchaser and  
22 notarized.

23 4. If a sale or intended sale of residential property is exempted from the  
24 requirements of subsection 1 pursuant to paragraph (a) of subsection 2,  
25 the trustee and the beneficiary of the deed of trust shall, not later than  
26 at the time of the conveyance of the property to the purchaser of the  
27 residential property, provide written notice to the purchaser of any  
28 defects in the property of which the trustee or beneficiary, respectively,  
29 is aware.

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

32 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

1 than 1 year after the purchaser discovers or reasonably should have  
2 discovered the defect or 2 years after the conveyance of the property  
3 to the purchaser, whichever occurs later.

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

8 WEBB v. SHULL 128 Nev. Ad Op 8, 270 P.3d 1266 (2012) holds that  
9 mental state is not required to impose treble damages pursuant to NRS 113.150  
10 (4). There is no requirement of a “finding of willfulness or mental culpability”.

## 11 12 DEFENDANTS KNEW THE CONDITION OF THE PROPERTY

13  
14 As outlined in Plaintiff’s narrative affidavit [Exhibit 2] and the express  
15 statement in response to Interrogatory 3 [Exhibit 6], Lin and Investpro were  
16 more than just real estate agents selling property. Lin and Investpro were the  
17 manager for the flipping fund which had recruited investor TKNR. They  
18 arranged the purchase of this property in September, 2015 at a foreclosure  
19 auction; purchasing at a foreclosure sale has no warranties or inspection; they  
20 then identified the scope of the alternation, renovation and rehabilitation,  
21 managed the renovation project from soliciting bids, to awarding bids to paying  
22 contractors, and then sold the Subject Property. They were also managing the  
23 property involving obtaining tenants. Every condition described in the 2<sup>nd</sup>  
24 Amended Complaint was **KNOWN** to Lin and Investpro. Contrary to their  
25 argument, the renovations undertaken during TKNR’s ownership were major,  
26 including major electrical upgrades, remove three swamp coolers, remove  
27 natural gas furnace, installation of three separate HVAC systems, two window  
28 air conditioning unites, renovating all three kitchens and three bathrooms,  
29 altering the natural gas lines, plugging the water lines to swamp cooler when  
30  
31  
32

1 they were removed from the roof, and plumbing issues.

2 All Defendants clearly knew about substantial work which they chose not  
3 to disclose to Plaintiff. TKNR and Wong had the work performed during their  
4 ownership, by their agents Lin, Investpro and JOYCE A. NICKRANDT.<sup>1</sup>

5 Further, Plaintiff did inspect the property on August 10, 2017, so that the  
6 representation in Defendants' motion that Plaintiff never inspected the property  
7 is simply false.  
8

#### 9 10 INVESTPRO REPRESENTED BUYER IN THE PURCHASE

11  
12 Exhibit F is the Offer and Acceptance for the purchase of the Subject  
13 Property. Pages 9 and 10 evidence that Investpro represented both the Plaintiff  
14 and TKNR in the purchase transaction. Thus, Investpro not only had a fiduciary  
15 duty to represent Plaintiff's interests, , NRS 645.259(1) expressly creates liability  
16 for misrepresentations that are made by a seller that the broker knows is false.  
17

18 NRS 645.259 - Liability of licensee for misrepresentation made by  
19 client; failure of seller to make required disclosures is public record.  
20

21 A licensee may not be held liable for:

22 1. A misrepresentation made by his or her client unless the  
23 licensee:

24 (a) Knew the client made the misrepresentation; and

25 (b) Failed to inform the person to whom the client made the  
26 misrepresentation that the statement was false.

27 2. Except as otherwise provided in this subsection, the failure of the  
28 seller to make the disclosures required by NRS 113.130 and  
29 113.135 if the information that would have been disclosed pursuant  
30 to NRS 113.130 and 113.135 is a public record which is readily  
31 available to the client. Notwithstanding the provisions of this

---

32 <sup>1</sup> JOYCE A. NICKRANDT is the licensee of Investpro.

1 subsection, a licensee is not relieved of the duties imposed by  
2 paragraph (a) of subsection 1 of NRS 645.252.

3  
4 Miao's declaration [Exhibit 2] identifies in detail the construction work  
5 which was done by Investpro and Lin on behalf of TKNR, which construction was  
6 not disclosed.

7  
8 ALTERNATIVE RELIEF REQUESTED IN MOTION IS NOT SUMMARY  
9 JUDGMENT

10  
11 Starting on page 27 of the Motion, Defendants ask the Court to "grant  
12 Summary Judgment as to the following undisputed facts", and lists 38 separate  
13 factual statements and statements of law. Plaintiff disputes of these factual  
14 allegations. These are all trial issues, and the legal statements are subject to  
15 motion practice when settling jury instructions.

16  
17  
18 PLAINTIFF SHOULD BE AWARDED ATTORNEY FEES FOR HAVING TO  
19 OPPOSE DEFENDANTS FRIVOLOUS AND UNTIMELY MOTION

20  
21 Citing to EDCR 7.60(b)(1), Defendants' Motion is "obviously frivolous,  
22 unnecessary or unwarranted." It is untimely, as set forth above. It is circuitous  
23 and confusing, simply arguing that Defendants' expert's opinion justifies granting  
24 summary judgment on the entire case, as if there are NO issues of material fact.  
25 Discovery hasn't even been completed, so there is no justification for Defendant  
26 to file the Motion. In addition to which, there are glaring factual issues SOLELY  
27 BASED ON DEFENDANT'S OWN DISCOVERY RESPONSES.

28  
29  
30 ///



EDCR 7.60

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

(1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.

Attorney Childs' attorney fee itemization is attached evidencing that, just associated with this Motion, Plaintiff has incurred \$5,500.00 of attorney fees based on 13.75 hours at \$400/hour, which is counsel's normal billing rate and the billing rate for representing Dattala in this lawsuit. Additionally, \$7.00 filing fees will have been incurred. The Declaration of attorney Childs is attached hereto.

CONCLUSION

As set forth above, Defendants' motion serves no purpose other than to unreasonably and vexatiously harass Plaintiff, increase its costs, and waste the Court's time.

Plaintiff is the purchaser, and was entitled to honest and complete disclosures. In this case. Investpro and Lin were the agents of the owner of the residential investment property which Plaintiff purchased from TKNR. [Exhibit 6] During the time that TKNR owned the property, significant structural, mechanical, electrical and plumbing alterations were made to the property without permits, inspections or having work performed by licensed contractors as required by law..

Plaintiff has set forth the facts as accurately as possible based on the knowledge that it has at this time.

1 The Court cannot grant summary judgment without allowing discovery to be  
2 completed.

3  
4 /s/ Benjamin B. Childs, Sr.

5  
6 

---

BENJAMIN B. CHILDS, Sr.  
7 Nevada Bar # 3946  
8 Attorney for Plaintiff

9 CERTIFICATE OF ELECTRONIC SERVICE

10  
11 This OPPOSITION and COUNTERMOTION, with attachments, was served  
12 through the Odyssey File and Serve system. Electronic service is in place of  
13 service by mailing.

14  
15 /s/ Benjamin B. Childs, Sr.

16  
17 

---

BENJAMIN B. CHILDS, Sr. ESQ.  
18 NEVADA BAR # 3946

19 Exhibits

- 20 1 Order Granting Defendants' Motion to Enlarge Discovery  
21 2 Clt Afft with Exhibits A - D  
22 3 Sani affidavit  
23 4 16.1 Disclosure 8/14/20 [includes damages calculation as required by NRCP  
24 16.1 and the expert report of Amin Sani  
25 5 Stipulation and Order to file 2<sup>nd</sup> Amended Complaint filed November 23,  
26 2020 [the 2<sup>nd</sup> Amended Complaint was efiled and eserved the same day]  
27 6 TKNR's Answers to Interrogatories [Response to #3 affirmatively states that  
28 "INVESTPRO REALTY was TKNR Inc's (hereinafter" TKNR") property  
29 managment company and Zhong Lin ( (hereinafter"Lin") was his realto. Both  
30  
31  
32

1 INVESTPRO REALTY and LIN had the authority to act related to the Subject  
2 Property.”]

3  
4 DECLARATION OF COUNSEL REGARDING LACK OF DISCOVERY AND  
5 ITEMIZATION OF ATTORNEY FEES  
6

7  
8 I am the attorney for Plaintiff W L A B INVESTMENT, LLC

9 Discovery has not been completed and the discovery cutoff, as requested by  
10 Defendants in their Motion to Extend Discovery Deadlines which was addressed at  
11 a hearing on October 22, 2020 and followed by a written order filed November 4,  
12 2020. A complete response to the instant motion is not possible because  
13 testimony, affidavits and other admissible evidence such as responses to written  
14 discovery, documents, and inspection of physical items are not possible to be  
15 produced by Plaintiff until discovery has been completed. Defendants have much  
16 more significant additional documentation and knowledge than they disclosed in  
17 their Motion, which information and knowledge will only be obtained through  
18 discovery and related discovery motions to compel, since to date the responses to  
19 written by Defendants have been excessively evasive. This includes inquires  
20 about the alterations to the subject property, which are at issue in the case. Thus,  
21 this declaration is made pursuant to NRCP 56(f) in response to Defendants’ Motion  
22 for Summary Judgment.  
23

24 From my contemporaneously maintained attorney work record, I have had to  
25 spend the following time addressing this matter, and reasonably anticipate an  
26 additional hour a half preparing for and attending the hearing, plus additional time  
27 for order drafting and submission, notice of entry of order, etc. My normal billing  
28 rate, and the rate I am charging Plaintiff WLAB for representation in this is  
29 \$400/hour. Total time itemized below is 13.75 hours times \$400 = \$5,500.  
30  
31  
32

TASK	TIME [hrs]
December 15, 2020	
Receive and review Motion for Summary Judgment	.75
December 23, 2020	
Office conference with client to draft Opposition	1.00
December 26, 2020	
Review and revise Opposition. Office conference with client. Telcom with Sani, email Sani.	3.50
December 27, 2020	
Review and revise Opposition and Countermotion	1.50
December 29, 2020	
Office conference with client to complete his narrative declaration.	
Revise, finalize, efile and eserve Opposition and Countermotion. \$3.50	4.00
Estimated future time :	
Receive and review Reply	1.00
Draft, revise, finalize, efile and eserve reply to opposition to countermotions	
Prepare for and attend hearing	1.50
Order submission [draft order submitted with motion]	.30
Prepare, efile, eserve Notice of Entry of Order [\$3.50]	.20

## ANALYSIS OF BRUNZELL FACTORS

(1) The qualities of the advocate: his ability, his training, education, experience, professional standing and skill.

I have been a Nevada attorney for 30 years, being a solo, self employed attorney the entire time. This is generally accepted as the most challenging practice for attorneys. The ability and skill has been required, and will be required, in this case to address DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1 filed December 15, 2020, which is obviously frivolous, unnecessary or  
2 unwarranted.

3 (2) The character of the work to be done: its difficulty, its intricacy, its importance,  
4 time and skill required, the responsibility imposed and the prominence and  
5 character of the parties where they affect the importance of the litigation.  
6

7 This affidavit is solely for motion practice set forth above. It is very time  
8 consuming to deal with these issues and made more time consuming by the  
9 imprecise and vague nature of the Motion, and the multiple procedural violations  
10 noted in the Opposition..

11 (3) The work actually performed by the lawyer: the skill, time and attention given to  
12 the work.

13 The amount of work I've already done has been itemized above taken  
14 directly from my contemporaneous work record.

15 (4) The result: whether the attorney was successful and what benefits were  
16 derived.

17 The motion is to be decided, but it obviously had to be filed to protect  
18 Plaintiff's rights, both procedurally in the case and its property rights.

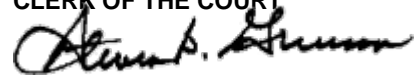
19 These statements are made based on my personal knowledge. I declare  
20 under penalty of perjury that the foregoing is true and correct.  
21

22  
23 Executed on December 28, 2020  
24 (date)

/s/ Benjamin B. Childs, Sr.  
(signature)

DOCUMENT 4

DOCUMENT 4



MICHAEL B. LEE, ESQ. (NSB 10122)  
MICHAEL MATTHIS, ESQ. (NSB 14582)  
MICHAEL B. LEE, P.C.  
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[mike@mblnv.com](mailto:mike@mblnv.com)  
Attorneys for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

TKNR INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an  
individual, and KENNY ZHONG LIN, aka  
KEN ZHONG LIN aka KENNETH ZHONG  
LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, an individual,  
and LIWE HELEN CHEN aka HELEN  
CHEN, an individual and YAN QIU ZHANG,  
an individual, and INVESTPRO LLC dba  
INVESTPRO REALTY, a Nevada Limited  
Liability Company, and MAN CHAU  
CHENG, an individual, and JOYCE A.  
NICKRANDT, an individual, and  
INVESTPRO INVESTMENTS LLC, a  
Nevada Limited Liability Company, and  
INVESTPRO MANAGER LLC, a Nevada  
Limited Liability Company and JOYCE A.  
NICKRANDT, an individual and Does 1  
through 15 and Roe Corporation I - XXX,

Defendants.

CASE NO.: A-18-785917-C  
DEPT. NO.: XIV

**DEFENDANTS' REPLY TO PLAINTIFF'S**  
**OPPOSITION TO DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT**  
**AND OPPOSITION TO**  
**COUNTERMOTION FOR**  
**CONTINUANCE BASED ON NRCP 56(f)**  
**AND COUNTERMOTION FOR**  
**IMPOSITION OF MONETARY**  
**SANCTIONS**

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT ("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO MANAGER LLC ("Manager") (hereinafter collectively referred to as the "Defendants"), by and

through their counsel of record, Michael B. Lee, P.C., hereby files this Reply (“Reply”) to Plaintiff’s Opposition (“Opposition”) to Defendants’ Motion for Summary Judgment (“Motion”) and Opposition to Plaintiff’s Countermotions for Continuance based on NRCP 56(f) and for Imposition of Sanctions (“Opposition to Countermotions”). This Reply is made on the following Memorandum of Points and Authorities, any affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to as “Plaintiff” or “WLAB”.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. INTRODUCTION**

##### **A. Overview**

The Motion should be granted despite the Opposition considering the lack of any reliable or admissible evidence to challenge the arguments made in the Motion. On January 12, 2021, Frank Miao (“Miao”), the designated person most knowledgeable (“PMK”) for Plaintiff, provided testimony that illustrates the undisputed facts supporting Summary Judgment. The transcript is not available yet, but once it is, Defendants will provide a supplement. In large part, he admitted that Plaintiff elected to proceed forward with the purchase after he conducted a visual inspection and identified issues that he wanted repaired, determining that Plaintiff would waive any additional inspections despite Miao not being a licensed, bonded professional inspector. He also admitted that: Defense expert’s finding that the alleged conditions were open and obvious was true; he could have obtained the permit information about the Property prior to the purchase; the RPA clearly specified that there were issues with the permits, HVAC, and that work was done by a handyman, which Plaintiff was aware of prior to the purchase of the Property; he did not have any evidence that Defendants knew about the alleged issues and/or caused them; and that he had the ability to inspect all the areas inspected by Defense expert at the time of defense’s inspection. Notably, he also admitted that he did make a demand to settle the case for \$10,000 despite the sworn statement in his declaration that this never happened. Under the authority cited in the Motion, Summary Judgment is clearly mandated as a matter of law.

////



Furthermore, the Opposition flat out ignores the evidence attached to the Motion. Plaintiff failed to address the arguments made related to Plaintiff's claims against the Broker Defendants or Plaintiff's claims for: (7) RICO; (10) Fraudulent Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process, which the court should construe as consent to granting summary judgment as to those matters. EDCR 2.20(c). The half-hearted attempt for continuance related to Rule 56(f) should be denied as Plaintiff fails to articulate what anticipated discovery is pending that would warrant such relief. The Countermotion for Imposition of Monetary Sanctions is similarly deficient as it is just a bare bones recitation of EDCR 7.60 without any application to the current issue. For these reasons, the Motion should be granted in its entirety.

**B. Summary of Arguments**

1. Motion

The Motion requests summary judgment based on the overwhelming case law in Nevada that applies the doctrine of caveat emptor on buyers of real property. Notably, the Property was 63 years old at the time of purchase and being used as a rental property. Nevertheless, Plaintiff waived her inspections twice after relying upon the inspection done by Miao as it relates to the Property, defined below, as she cancelled her original purchase agreement and entered into a new one. Despite the clear statements that she needed to get a professional inspection done, and clear disclosures related to the conditions of the Property, Plaintiff still waived her inspection and forged ahead with the purchase. The entire crux of Plaintiff's action is premised that that there was alleged work done without permits, but TKNR disclosed that it the Seller's Disclosures. Additionally, permit work is publicly available on the City of Las Vegas' website, which illustrates that Plaintiff should have known about this issue at the time of purchase, absolving Defendants of any liability.

Moreover, Miao admitted that alleged conditions identified by Plaintiff's alleged expert were all open and obvious and would have been uncovered by an inspection. Plaintiff's alleged expert never did any destructive testing, so an inspector would have had the same opportunity to observe everything that he did. Importantly, Plaintiff is a sophisticated commercial buyer who

has purchased and renovated several similar properties. As Miao did not know of the alleged issues, and he admitted that there was no proof that Defendants knew about them either, no genuine issue of material fact exists supporting Plaintiff's theory of liability. As Defendants disclosed all conditions known to them at the time of the sale, Nevada law does not permit this action to continue. This justifies Summary Judgment on all of Plaintiff's claims, including the frivolous claims for RICO, fraudulent conveyance, and abuse of process.

Finally, sanctions are also justified against Plaintiff. Astonishingly, Plaintiff is claiming \$16.25 Million in damages related to the purchase of the Property (original purchase price - \$200,000). Incredibly, the original demand by Plaintiff for settlement was \$10,000, despite the perjured declaration of Miao denying this in the support of the Opposition. Regardless of whether Plaintiff or Plaintiff's counsel, who have charged Plaintiff approximately \$64,000 for this matter so far, are responsible for the violation of Rule 11 in prosecuting this frivolous claim, Rule 11 permits sanctions against both, which should include an award of attorneys' fees and costs to Defendants.

## 2. Opposition and Countermotions

The Opposition argues that the Motion should be denied as untimely because discovery is still open but does not reference any anticipated discovery needed to respond to the Motion. The Opposition argues that the Motion is over 30 pages and no leave was sought prior to filing. Also, Plaintiff asserts that the Motion fails to address the specific relief sought. The Opposition further provides that the Motion is without factual basis and is nothing more than argument of Defendants' counsel. The Opposition argues that inspection was not waived, and that Miao conducted an inspection when he conducted a walkthrough of the Property with Defendant Lin. Further, Plaintiff asserts that it never waived its right to required disclosures and argue that Defendants knew of the alleged defects but purposefully hide them. The Opposition contains a countermotion reiterating its request for continuance pursuant to Rule 56(f) but again fails to provide the discovery needed. Also, Plaintiff brought a countermotion for the imposition of sanctions, arguing the Motion is frivolous.

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## II. DISCUSSION

The following Discussion is organized into five Parts. Part A provides that the Motion was supported by substantial, undisputed evidence. Part B explains that the Opposition failed to address Nevada law that places the burden on a buyer to do an inspection. Part C sets forth that Plaintiff cannot use Rule 56(f) as a shield and must articulate the anticipated discovery necessary. Part D illustrates that different realtors from the same agency may represent buyer and seller. Part E indicates that all issues raised in the Motion but not addressed by the Opposition should be granted as unopposed. Lastly, Part F includes opposition to the countermotion for monetary sanctions as lacking good faith basis, and as further evidence of attorney-driven litigation by Plaintiff.

### A. Substantial Undisputed Evidence Supports the Motion

The Opposition's argument that the Motion lacks factual support is belied by the exhibits attached to the Motion. The undisputed evidence attached to the Motion support the factual references made in the Motion and do not constitute "arguments" by counsel as stated in the Opposition. Unfortunately, Plaintiff would rather ignore the evidence provided and rely on the self-serving testimony of Frank Miao that lacks foundation and contradicts the alleged factual assertions in the Opposition.

Defendants attached the following exhibits in support of the Motion:

#### **Exhibit A** – Listing Agreement.

The Listing Agreement included facts relevant to the dispute that were known by Plaintiff prior to purchase of the Property. First, it included that the Property was originally constructed in 1954. The Listing Agreement also included the listing and broker agents' names and affiliations, putting Plaintiff on notice of seller's representatives. See Motion at Ex. A.

#### **Exhibit B** – First Residential Purchase Agreement ("RPA") (August 11, 2017)

The First RPA illustrates that: Ms. Zhu had a right to conduct inspections; was strongly recommended to retain licensed professionals to conduct the inspections; had the responsibility to inspect the Property; waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection; waived any

liability of Defendants for costs of repairs the inspection would have identified; waived the Due Diligence; and, that Ms. Zhu did not cancel the RPA related to any issues with the Property. See *Id.* at Ex. B., in whole and at ¶¶ 7(A), 7(C), 7(D), and 7(F).

**Exhibit C – Seller’s Property Disclosures (Plaintiff’s disclosure)**

The Seller’s Property Disclosures timely set forth all known conditions of the Property. Specifically, the disclosures indicated that:

- (1) “3 units has (sic) brand new AC installed within 3 months,”
- (2) the “owner never resided in the property and never visited the property.”
- (3) minor renovations, such as painting, was conducted by the Seller’s “handyman”
- (4) Seller had done construction, modification, alterations, or repairs without permits.

*Id.* at Ex. C.

Despite these disclosures, Plaintiff chose not to inspect the Property, request additional information and/or conduct any reasonable inquiries.

**Exhibit D – Plaintiff’s Realtor confirmation to waive inspections (September 5, 2017)**

Exhibit D confirms that Ms. Zhu would enter into a new purchase agreement, would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections. *Id.* at Ex. D.

**Exhibit E – Cancellation Addendum for RPA #1**

On the same day that Exhibit D was sent, Ms. Zhu signed the Cancellation Addendum (Ex. E) and then executed the Second RPA (Ex. F).

**Exhibit F – Second RPA (dated September 5, 2017)**

Exhibit F sets forth that Ms. Zhu initialed next to paragraph 7(C) “Failure to Cancel or Resolve Objections” indicating that Ms. Zhu was aware of the waiver of Due Diligence Condition by failing to cancel the RPA or resolve any objections in writing. *Id.* at Ex. F, p. 4. Exhibit F also illustrates that this is the second time Ms. Zhu waived inspection for the Property, despite being specifically advised to have inspections conducted. *Id.* It is also consistent with Exhibit D that Ms. Zhu always intended on waiving inspections. *Id.* Exhibit F at Addendum 1 further shows that the close of escrow was extended to January 5, 2018, giving Ms. Zhu plenty of

time to have inspection conducted following receipt of Seller's Disclosures [Ex. C] on August 11, 2017. *Id.* Also, Exhibit F at Addendum 2 substitutes Plaintiff for Ms. Zhu. *Id.*

**Exhibit G – Opfer Expert Report**

Exhibit G provides expert testimony from Neil D. Opfer, an Associate Professor of Construction Management at UNLV and overqualified expert, who conducted a visual inspection of all areas of the Property specified in Plaintiff's Expert Report. *Id.* at Ex. G. Exhibit G also discusses pictures of the Property from 2017 that depicted the condition of the Property prior to August 11, 2017. *Id.* Professor Opfer illustrated Plaintiff's expert's actual misstatements of the building code requirements as it related to permits, while also noting that the Seller Disclosures advised Plaintiff of the work done without permits. *Id.* Professor Opfer noted that the alleged conditions identified by Plaintiff's alleged expert were open and obvious. *Id.* Professor Opfer also noted that Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase. *Id.*

**Exhibit H – public record search for permits**

Exhibit H illustrates that information related to permits is publicly available, precluding any liability for any alleged misrepresentation under NRS Chapter 113 of the information that is public record. See Nev. Rev. Stat. § 645.259(2); see also Ex. H. As such, Exhibit H provides further contradicts Plaintiff's central argument that TKNR is liable for not disclosing that work was done without permits.

**Exhibit I – Lin Declaration**

Exhibit I sets forth that no Defendant was aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property before the time of the sale to Ms. Zhu. *Id.* at Ex. I. Nor was any Defendant aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property at the time of the sale to Ms. Zhu. *Id.* Also, that any known defects were disclosed in seller's disclosures, including TKNR upgrading the cooling system through a licensed contractor. *Id.*

**Exhibit J – Air Team Invoice**

Exhibit J provides that the cooling system was upgraded by a licensed contractor, and any issues stemming from that work would be Air Team's responsibility and not Defendants.

**Exhibit K – Plaintiff's Opposition to Motion for Leave to Amend**

Exhibit K illustrates that Plaintiff's cause of action for abuse of process was retaliatory based on Defendants' counterclaim for the same and is without legal or factual basis.

**Exhibit L – Order Granting Defendants' Motion for Leave to Amend**

Exhibit L confirms that Plaintiff's arguments made in the Opposition to Motion for Leave to Amend, including the alleged basis for its abuse of process claim is without merit.

**Exhibit M – Plaintiff's Calculation of Damages**

The calculation of damages illustrates the overall bad faith nature of this case and potential for attorney driven litigation. The Property was sold for only \$200,000, yet Plaintiff claim \$16.25 Million in cumulative damages, requests a specific award of over \$2 Million, and that Plaintiff's counsel has already charged exorbitant fees in this matter. Exhibit M supports Defendants' request for fees and costs.

**Exhibit N – Plaintiff's ROG's**

Exhibit N illustrates that Ms. Zhu and Miao, the managing member of Plaintiff, were sophisticated buyers related to "property management, property acquisition, and property maintenance." *Id.* at Ex. N. This indicates that Plaintiff knew of its duty to inspect, the importance of inspection, the waiver of rights when inspection is not conducted.

The Opposition argues that the Motion contains "inaccurate statements of counsel, which are not supported by evidence." *See Opp.* at p. 4:1-10. However, as set forth above, that argument simply is not true. In reviewing the Opposition, Defendants believe Plaintiff is projecting its own inadequacies onto Defendants. Rather than address the arguments made and the evidence provided with competing evidence, the Opposition relies heavily on conjecture of counsel and self-supporting testimony that is contradictory to the undisputed evidence.

The Opposition alleges that Defendants altered the Property to hide defects and sold the Property without disclosing those defects. *Id.* at p. 9:7-9. However, Miao admitted in his

deposition that Plaintiff did not have any evidence that Defendants knew of the alleged conditions and/or caused them. Thus, no evidence supports this argument, rendering it nothing more than the inadmissible conjecture of counsel. Moreover, Miao also admitted that all of the alleged defects complained of by Plaintiff were open and obvious and could have been discovered by a professional inspection. Instead of admissible evidence, the Opposition relies on Plaintiff's self-serving discovery responses and declaration, which still failed to show that there is a factual dispute.

First, the alleged arguments by Miao lack foundation and go outside the scope of his alleged knowledge to proffer opinions that were addressed by Defendants' expert. See *Id.* at Exhibit 2. Miao is a party to this action, not an expert. Appropriate rebuttal evidence should come from Plaintiff's designated expert; however, none has been disclosed by Plaintiff, and the deadline to provide such information has passed. See *Id.* at Ex. 1. Plaintiff's expert merely opined that the work had to be performed by a licensed contractor with permits, although Miao admitted in his deposition that this did not apply to installing cabinets and kitchen/bathroom fixtures. He also admitted that he was aware that TKNR had used a handyman, and only a licensed contractor for the HVAC. Additionally, he also admitted that he was aware of the issues related to permits and the HVAC prior to purchasing the Property.

Second, the alleged "factual" support related to Defendants' knowledge comes from inadmissible, speculative information (without citation) from Miao, without any other support other than his subjective believes. The following statements are examples of unsupported, self-serving testimony that is ultimately inadmissible:

"These problems would not pass a city code enforcement inspection." *Id.* at Ex. 2, p. 3.

"In normal transactions involving residential rental building, the buyer only inspects common spaces because units occupied." *Id.*

"I told Defendant Lin that if tenant called code enforcement at this, the rental unit could be shut down by City code Enforcement until repaired and corrected." *Id.*

"The burden is on seller because of warranty of habitability and safety issues which are ongoing." *Id.*

“This is also why rental properties have to use licensed contractors for all work and pull permits and get inspections to do work like was done to the Subject Property.” *Id.*

“As to the waiver of inspection dated September 5, 2017, inspection was waived at that time because I had just inspected it on August 10, 2017.” *Id.*

“The complaints outlined in the 2<sup>nd</sup> Amended Complaint were hidden behind drywall.” *Id.*

Those statements are not exhaustive of the unsupported, self-serving statements made by Miao in his declaration. The declaration is littered with unsupported conjecture that Miao has no basis to make outside his own speculation and subjective beliefs. Incredibly, Miao specified that Plaintiff continues to lease the Property to prospective tenants although it had not repaired any of the alleged conditions. He also specified that he requested the change of outlets that would have required permits, so he was the actual cause of that alleged condition. His admissions illustrate the lack of any alleged genuine issue of fact. This is not valid evidence and cannot be used as a basis to deny the Motion.

Incredibly, Miao’s Declaration illustrated that he could, prior to the purchase, have got and done diligence related to the alleged permit issue, which was disclosed by TKNR in its disclosures related to the Property. *Id.* Miao directly states that instead of using a licensed inspection company, he inspected the Property himself and allegedly noticed several code violations. *Id.*, see also *Opp.* at Exhibit 2C. The Declaration also admits that Defendants repaired the issues identified. *Id.* Notably, Exhibit 2C was not previously disclosed in this litigation, despite discovery having closed prior to reopening at Defendants request, which illustrates Plaintiff intentionally withheld the document. So, despite knowing of the lack of permitted work and other issues noticed during Miao’s walkthrough of the Property, Plaintiff still made the informed decision not to conduct an actual inspection of the Property. *Id.*

**B. The Opposition does not Address Nevada Law related to Buyer duty to Conduct an Inspection**

Defendants are absolved of liability for any conditions that could have been discovered by the buyer had an inspection been done. Generally, “[n]ondisclosure by the seller of adverse



information concerning real property. . . will not provide the basis for an action by the buyer to rescind or for damages when property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552(1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). A buyer waives its common law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).

Plaintiff did not proffer any evidence that Defendants allegedly knew about any of the conditions, which would have been impossible given the disclosures made by TKNR at the time of the sale. Moreover, TKNR disclosed that it had never been to the property and was just an investor. Also, it is undisputed that Defendants, on numerous occasions, advised Plaintiff to get a professional inspection done. Simply put, Plaintiff tries to avoid its burden of proof by arguing that Defendants should have to prove a negative, i.e., that it did not know about the conditions. This is despite the substantial evidence provided in the Motion concluding that Defendants did not know of the issues, but those issues could have been discovered had Plaintiff inspected the Property as advised by Defendants.

Ultimately, Defendants have sufficiently established that they did not know of the defects alleged by Plaintiff. The Opposition fails to provide any evidence to the contrary and relies solely on self-serving testimony to try and shift Plaintiff’s burden of proof onto Defendant. Plaintiff had a duty to exercise reasonable care to protect itself and failed to do so. See Nev. Rev. Stat. § 113.140(3). Plaintiff’s failures do not create liability for Defendants in this matter and summary judgment should issue accordingly.

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**C. Rule 56(f) is not a Shield**

The Countermotion for continuance pursuant to Rule 56(f) should be denied on the basis that the request is not supported by specific reference to the outstanding discovery Plaintiff anticipates is necessary to respond.

“Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.”

See *Bakerink v. Orthopaedic Associates, Ltd.*, 581 P.2d 9, 11 (Nev. 1978) (quoting *Willmar Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975)).

Here, Plaintiff failed to articulate the alleged discovery that it would likely have. Defendants have made five disclosures in this case, so the alleged documentation identified by Plaintiff's counsel will not be subject to production by Defendants. See Defendant's Fifth Disclosure attached as **Exhibit A** (disclosure only). Additionally, Plaintiff already opposed enlarging discovery by specifying that any extension of discovery would prejudice it, indicating that it had no need for additional discovery and that Plaintiff would largely rest upon the findings of its expert. See Plaintiff's Opposition to Motion to Enlarge Discovery attached as **Exhibit B**. Also, Plaintiff's counsel's declaration illustrated that he had additional discussions with Plaintiff's expert related to the MSJ, but Plaintiff's expert did not proffer any additional opinions to counter the Motion. See *Opp.* at p. 18:7-9.

**D. It is not a Violation for Different Relators from the Same Agency to Represent Buyer and Seller**

The Opposition's argument related to buyer and seller being represented by agents from the same brokerage firm is a red herring and is not relevant to the Motion's request for summary judgment. See Nev. Rev. Stat. § 645.253:

“If a real estate broker assigns different licensees affiliated with his or her brokerage to separate parties to a real estate transaction, the licensees are not required to obtain the written consent required pursuant to paragraph (d) of subsection 1 of NRS 645.252. Each licensee shall not disclose, except to the real estate broker, confidential information relating to a client in violation of NRS 645.254.”

Considering different realtors represented buyer and seller in the transaction at issue, the Opposition’s reliance on NRS 645.259 is misplaced and ultimately not relevant. Notably, Miao was aware that the agents were from the same agency at all times during the transaction as he always tries to hire the listing agent to represent him. At all times, Plaintiff knew that an agent affiliated with Investpro represented the seller. See Mot. at Exs. A, F. With that knowledge, Plaintiff still chose to engage an Investpro affiliate to represent it related to the purchase.

None of the foregoing changes the overarching facts that the RPA contained wavier of the inspection language, and the Second RPA contained the initials of Ms. Zhu related to waiver of inspection. See Id. Exs. B, F. The waiver occurred after Plaintiff had knowledge that the Property was 64 years old and subject to potential renter abuse, after Defendants had disclosed that the Property was previously subject to unlicensed/unpermitted work, and after Defendants expressly advised Plaintiff to conduct a professional inspection. As such, Plaintiff made its own informed, yet ill-advised, decision to forgo inspections, which is of no fault of Defendants.

**E. Summary Judgment should be Granted on Issues Raised but Not Opposed**

Eighth Judicial District Court Rule 2.20(e) provides that, “[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.” *Id.* Simply filing an opposition does not relieve a party of its duty to actually oppose the issues raised in the motion. See Benjamin v. Frias Transportation Mgt. Sys., Inc., 433 P.3d 1257 (Nev. 2019) (unpublished disposition). In *Benjamin*, the opposing party filed an Opposition but did not present any argument to actually address the issues raised. *Id.* Although the opposing party did raise such arguments in a subsequent opposition, that opposition was untimely filed, and the court properly decided not to consider those untimely arguments. *Id.*

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Here, the Opposition utterly fails to address the Motion's arguments related to summary judgment in favor of Defendants on Plaintiff's claims for: (7) RICO; (10) Fraudulent Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process. Additionally, Plaintiff fails to provide any meaningful or competent opposition to the Motion's argument for summary judgment as to Plaintiff's claims against the Broker Defendants. As there is no Opposition provided to those arguments made in the Motion, this court should find that those arguments are meritorious and grant the request as to those unopposed issues.

**F. Opposition to Countermotion for Monetary Sanctions**

Countermotion is just additional evidence related to the attorney-driven litigation that illustrates any lack of good faith in prosecuting this claim and should be denied with prejudice. Summary judgment is a tool afforded to all litigants in the course of litigation should they have ample evidence to support the Motion. Summary judgment can be used to fully resolve a dispute or simplify the claims and/or defenses at issue for the time of trial. Defendants have disclosed over 500 documents in this litigation [Ex. A] and are confident that the Motion will be successful, whether in whole or in part, which illustrates the good faith basis for bringing the Motion. This is supported by the fact that Plaintiff was unable to provide opposition to certain issues raised in the Motion, i.e., Plaintiff's claims for: (7) RICO; (10) Fraudulent Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process.

Additionally, the argument that Plaintiff is engaged in attorney-driven litigation is supported by the facts and circumstances of this litigation. The Property at issue was sold for \$200,000, yet it is undisputed that Plaintiff has proffered \$16.25 Million in cumulative damages and requests a judgment over \$2 Million. Incredibly, Plaintiff's counsel has apparently already racked up \$64,000 in attorneys' fees, and that is before trial. Defendants mention this, and referenced previous alleged settlement amounts, not to illustrate a lack of liability but to illustrate the attorney-driven litigation.

Ultimately, the Countermotion for Imposition of Monetary Sanctions is nothing more than a regurgitation of EDCR 7.60 without meaningful argument as to how it is applicable in this matter. Plaintiff vaguely asserts that the Motion is premature because discovery is still open but

fails to provide any anticipated discovery outstanding or to be conducted. Therefore, the countermotion is completely meritless and must be denied.

### **III. CONCLUSION**

Based on the foregoing, Defendants respectfully request that the Motion be granted in its entirety.

Dated this 21 day of January, 2021.

MICHAEL B. LEE, P.C.

/s/ Michael Lee  
MICHAEL B. LEE, ESQ. (NSB 10122)  
MICHAEL MATTHIS, ESQ. (NSB 14582)  
1820 E. Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104  
Telephone: (702) 477.7030  
Facsimile: (702) 477.0096  
[mike@mblnv.com](mailto:mike@mblnv.com)  
Attorney for Defendants

### **CERTIFICATE OF MAILING**

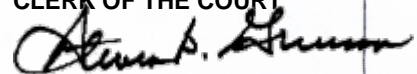
Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of MICHAEL B. LEE, and that on the 21 day of January, 2021, the foregoing **DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) AND COUNTERMOTION FOR IMPOSITION OF MONETARY SANCTIONS** was served via the Court's electronic filing and/or service system and/or via facsimile and/or U.S. Mail first class postage pre-paid to all parties addressed as follows:

BENJAMIN B. CHILDS, ESQ.  
Nevada State Bar No. 3946  
318 S. Maryland Parkway  
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Telephone: (702) 251-0000  
Email: [ben@benchilds.com](mailto:ben@benchilds.com)  
Attorneys for *Plaintiff*

/s/ Mindy Pallares  
An employee of Michael B. Lee PC

# DOCUMENT 5

# DOCUMENT 5



1 **SUBT**  
2 Steven L. Day, Esq.  
3 Nevada Bar No. 3708  
4 **DAY & NANCE**  
5 1060 Wigwam Parkway  
6 Henderson, NV 89074  
7 Tel. (702) 309-3333  
8 Fax (702) 309-1085  
9 sday@daynance.com  
10 *Attorneys for Plaintiff*

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

10 W L A B INVESTMENT, LLC,  
11  
12 Plaintiff,  
13 v.

Case No: A-18-785917-C  
Dept No: 14

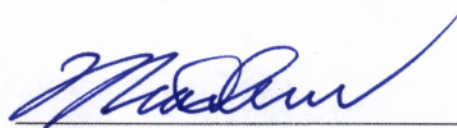
13 TKNR, INC., a California Corporation, and  
14 CHI ON WONG, an individual, and  
15 KENNY ZHONG LIN, an individual, and  
16 INVESTPRO LLC dba INVESTPRO REALTY  
and JOYCE A. NICKRANDT, an individual and  
does 1 through 5 and Roe Corporations I-X,

17 Defendants.  
18

19 **SUBSTITUTION OF ATTORNEYS**

20 Plaintiff W L A B INVESTMENTS, LLC, hereby substitutes STEVEN L. DAY, ESQ.,  
21 and the law firm of DAY & NANCE, as attorney of record for the above-entitled action in the  
22 place and stead of BENJAMIN B. CHILDS, ESQ.  
23

24 DATED this 10 day of March, 2021.



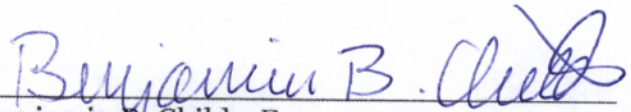
26 FRANK MIAO  
27  
28

BBC



1 BENJAMIN B. CHILDS, ESQ., hereby agrees and consents to the substitution of  
2 STEVEN L. DAY, ESQ and the law firm of DAY & NANCE as attorney of record for Plaintiff  
3 W L A B INVESTMENTS, LLC. in the above-entitled action.

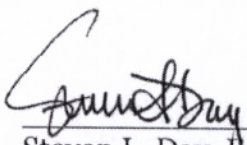
4 DATED this 10 day of March, 2021.

7  
8   
9 Benjamin B. Childs, Esq.  
10 318 S. Maryland Parkway  
11 Las Vegas, NV 89101  
12 (702) 251-0000

13 STEVEN L. DAY, ESQ., of the law firm of DAY & NANCE, accepts substitution as the  
14 attorney of record for Plaintiff W L A B INVESTMENTS, LLC. in the above-entitled action.

15 DATED this 10<sup>th</sup> day of March, 2021.

16 DAY & NANCE

17   
18 Steven L. Day, Esq.  
19 Nevada Bar No. 3708  
20 1060 Wigwam Parkway  
21 Henderson, NV 89074  
22 (702) 309-3333

23  
24  
25  
26  
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28  
BBC

## CERTIFICATE OF SERVICE

This Substitution of Attorneys, was served through the Odyssey File and Serve system to defense counsel and to Mr. Miao at filing. Electronic service is in lieu of mailing.

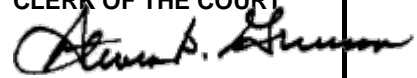
/s/ Benjamin B. Childs, Sr.

---

BENJAMIN B. CHILDS, Sr.ESQ.  
NEVADA BAR # 3946

DOCUMENT 6

DOCUMENT 6



TRAN

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

WLAB INVESTMENT LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TKNR INC., )  
 )  
 )  
Defendant. )  
 )  
AND RELATED PARTIES )

CASE NO. A-18-785917-C  
DEPT NO. XIV

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

THURSDAY, MARCH 11, 2021

**OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) AND  
COUNTERMOTION FOR IMPOSITION OF MONETARY SANCTIONS**

**DEFENDANTS MOTION FOR SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

**SETTLEMENT**

**APPEARANCES:**

FOR THE PLAINTIFF: STEVEN L. DAY, ESQ.

FOR THE DEFENDANTS: MICHAEL B. LEE, ESQ.

TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 11, 2021, 9:19 A.M.**

2 \* \* \* \* \*

3 UNIDENTIFIED SPEAKER: Department 14 is now in  
4 session. We're at page 1-2, Your Honor.

5 THE COURT: Okay. Very good. I'd like your  
6 appearances for the record, please.

7 MR. LEE: This is Michael Lee on behalf of the  
8 defendants.

9 MR. DAY: This is Steven Day on behalf of the  
10 plaintiff.

11 THE COURT: Okay. Good morning, Mr. Day and Mr. Lee.  
12 All right. I have before me the motion for summary  
13 judgment or in the alternative partial summary judgment by the  
14 defendant and the opposition and counter motion for continuance  
15 pursuant to NRCP 56(f) and by -- Forgive me. The motion for  
16 summary judgment is by the defendants. The plaintiff's  
17 opposition and also we have -- so let's get going.

18 Why don't you, Mr. Lee, please start.

19 MR. LEE: Thank you, Your Honor.

20 We also filed a supplement to our motion for summary  
21 judgment that includes the deposition of plaintiff's person  
22 most knowledgeable Frank Miao who is also on the line today.

23 In terms of the supplement, it illustrated several  
24 undisputed facts that illustrates why summary judgment is  
25 appropriate related to all of plaintiff's claims and our claim

1 for abuse of process. In particular, when we start looking at  
2 the background of plaintiff, Mr. Miao, admitted that plaintiff  
3 is a sophisticated buyer who has purchased at least 20  
4 properties, 8 in Las Vegas.

5 He also specified that the underlining terms of the  
6 residential purchase agreement were conspicuous and  
7 understandable. He specified it was a similar agreement to the  
8 other agreements that he had used purchasing other properties  
9 in Clark County. The terms were clear related to the duties --

10 THE COURT: Mr. Lee.

11 MR. LEE: Yes?

12 THE COURT: I'd like you to speak slower, please.

13 MR. LEE: Oh, I apologize.

14 THE COURT: That's okay. Thank you.

15 MR. LEE: He specified that the terms were clear  
16 related to the duty to inspect, and he also specified that  
17 plaintiff was acutely aware of the requirement under Nevada law  
18 to protect itself by getting an inspection.

19 As to the underlying issue of the inspection, what  
20 Mr. Miao also testified was that prior to the purchase he was  
21 aware that the seller had, quote, "He only recommended that I  
22 retain licensed Nevada professionals to conduct inspections,"  
23 end quote.

24 He also specified that he had access to inspect the  
25 entire property and conduct noninvasive, nondestructive

1 inspections, which he did.

2           During that time, he inspected the structure, the  
3 roof, the mechanical systems, the electrical systems, the  
4 plumbing, the HVAC and the dryer vent.

5           He noted at that time that there were some issues  
6 that were not up to code -- and this was prior to the  
7 purchase -- that there were finishing issues; that there were  
8 issues with the outlets not being GFCI outlets; electrical  
9 issues, including exposed electrical; potential asbestos;  
10 cracks on the ceramic floor tiles; visible cracks in the  
11 concrete foundation. And he specified that all of these were  
12 open and obvious prior to his purchase.

13           He also specified that he received the seller's real  
14 property disclosure forms prior to the purchase of the  
15 property. As to the disclosure form, prior to the purchase,  
16 plaintiff was aware that the seller TKNR was an investor who  
17 had never resided in the property; that there were issues with  
18 the heating systems, the cooling systems; and that there was  
19 work done without permits.

20           He also knew that the property was 63 years old at  
21 the time of the purchase and that most of the work done on the  
22 property was done by a handyman other than the HVAC  
23 installation.

24           Despite these disclosures, Mr. Miao never followed up  
25 with the seller at all. He also specified that he could have

1 followed up with these identified issues that included the HVAC  
2 and the permits, and he was aware that he should have contacted  
3 the local building department and also obtain the permits as  
4 part of his due diligence prior to the purchase.

5 He was also aware of the potential for mold and the  
6 requirement to get a mold inspection and understood it was his  
7 risk that he elected not to get a professional inspection.

8 When we look at the residential purchase agreement,  
9 plaintiff was also aware that there were limited damages in  
10 this case and that the damages under paragraph 7D limited the  
11 potential damages that could have been discovered by an  
12 inspection.

13 Now, Mr. Miao had also indicated that he doesn't  
14 believe in professional inspections. He does not have a  
15 professional license related to being a general contractor, an  
16 inspector, an appraiser or a project manager. He has never  
17 hired a professional inspector in Clark County, and he doesn't  
18 use them because he believes the underlining costs is too  
19 expensive, and he just relies upon himself to do the  
20 inspections.

21 If we look at the issue of the professional  
22 inspection, what Mr. Miao admitted is that he had access to the  
23 entire building. He had access to the attic when he looked at  
24 it.

25 He also retained an expert in this case. His expert



1 didn't do any destructive or invasive testing. It would've  
2 been exactly the same type of inspection that he could have  
3 done in 2017. He admitted that the plaintiff examined -- the  
4 plaintiff's expert examined exactly the same areas that he had  
5 done, that the plaintiff's access was exactly the same as his  
6 original inspection in 2017 and that the inspections --

7 THE COURT: Mr. Lee, will you please -- you may be  
8 reading, and it's okay. I just need you to speak slower. I've  
9 reviewed everything. This is in your motion. But I would like  
10 you to speak slower, please.

11 MR. LEE: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. LEE: And these references that I'm giving you  
14 right now are all from our supplement which is Mr. Miao's  
15 deposition which includes citation to everything that I'm  
16 referencing. So I appreciate that you've had an opportunity to  
17 read the briefing and also to review the supplement as well  
18 because it's the underlining basis that illustrates that --

19 THE COURT: Right. I have Mr. Miao's deposition.  
20 I've reviewed it.

21 MR. LEE: Okay. Great.

22 THE COURT: But I (video interference) make a record,  
23 please.

24 MR. LEE: Okay. I'll continue to make a record.

25 THE COURT: Just not so quickly. Just not so fast.

1 MR. LEE: Yeah. I'm sorry, Your Honor.

2 THE COURT: That's okay.

3 MR. LEE: Okay. During the -- he also specified that  
4 as to plaintiff's expert the report illustrated all the areas  
5 that he could have inspected in 2017 and that the pictures that  
6 were also attached to the expert report were areas that he  
7 could have inspected in 2017.

8 He also accompanied the defendants' expert during our  
9 inspection of the property. As before, Mr. Miao had the same  
10 access to the property in 2017 that our expert did during our  
11 inspection.

12 He agreed with our expert that the alleged conditions  
13 identified by plaintiff's expert were, quote, unquote, "open  
14 and obvious."

15 He also agreed with our expert's finding that there  
16 were no sagging issues in the roof.

17 And he also recognized the deficiencies in  
18 plaintiff's expert report that failed to differentiate when  
19 conditions prior to when TKNR owned the property while it owned  
20 it and that it was afterwards.

21 When we also look at the underlining issues related  
22 to permits, Mr. Miao agreed that the finishing work done by the  
23 seller did not need permits.

24 He also specified that although there are these  
25 alleged conditions with the property currently, he does not

1 place any notice to tenants, although they have not done any  
2 repairs to the property, which illustrates the lack of merit to  
3 this action.

4 He also specified that there were potential third  
5 parties that could have damaged the property, such as (video  
6 interference) or tenants.

7 He also specified that there's no evidence defendants  
8 knew about the alleged conditions, that the Flipping Fund,  
9 which is a party to this case related to the RICO action, had  
10 nothing to do with the sale.

11 And for the abuse of process claim, he indicated that  
12 his initial estimate of the cost of repair would've  
13 been \$102,000, but their -- plaintiff's expert inflated the  
14 cost of the repair to \$600,000.

15 We also noted the perjury in his declaration where he  
16 originally did try to settle this case for \$10,000, but he  
17 denied making that offer in his declaration.

18 When we turn back and we look at the Second Amended  
19 Complaint, the Second Amended Complaint illustrates that based  
20 on the undisputed facts from Mr. Miao, there's a lack of merit  
21 to this action.

22 Looking at paragraph 25, it reads,

23 TKNR failed to disclose one or more  
24 known conditions that materially affects the  
25 value or the use of the subject property in

1 an adverse manner.

2 This is not true based on his undisputed facts.

3 We looked at paragraph 27, seller's disclosure form  
4 was either inadequate or false.

5 Paragraph 29, construction work must be done by  
6 licensed contractors with permits and inspections.

7 Then at paragraph 31 outlines the alleged conditions  
8 that they're claiming that were a nondisclosure that they did  
9 not know about.

10 Paragraph 31A, the electrical systems, including the  
11 GFCI outlets. What's also notable about the GFCI outlets is  
12 that Mr. Miao is the one who requested that the sellers install  
13 the GFCI outlets at the time when he was purchasing the  
14 property.

15 31B relates to the alleged issues with plumbing  
16 systems.

17 C, sewer line.

18 D, heating systems.

19 E, cooling systems.

20 F, smoke detectors.

21 G, moisture conditions or water damage venting into  
22 the attic.

23 H, structural issues.

24 Notably, Item I admits that plaintiff knew that the  
25 construction was done without permits.

1 J, roof and HVAC.

2 K, mold, slash, fungus.

3 And then L.

4 THE COURT: A little bit slower, Mr. Lee, please.

5 I'm following you. So a little bit -- just a teeny bit slower,  
6 please.

7 MR. LEE: Yes. I'm sorry, Your Honor.

8 THE COURT: It happens all -- don't worry.

9 MR. LEE: Yeah.

10 THE COURT: Okay.

11 MR. LEE: Yeah.

12 Flooring, land, slash, foundation.

13 Now, the reason I started my presentation talking  
14 about the undisputed facts and then went into the underlining  
15 Second Amended Complaint was to illustrate that summary  
16 judgment is appropriate as to all these issues because there's  
17 no dispute that plaintiff was aware of any of these issues  
18 prior to plaintiff's purchase of the property or that they were  
19 open and obvious or that a reasonable professional inspection  
20 could've uncovered them.

21 In terms of the countermotion for additional  
22 discovery, Mr. Miao wrote to me directly specifying that he did  
23 not want there to be any additional discovery. So there is no  
24 basis for the 56(f) request. He wrote to me directly also  
25 copying in his counsel, and I asked him not to contact me

1 directly without his attorney's approval.

2 In terms of the law in the case, which is cited  
3 throughout the motion, Nevada Revised Statute 113.140 provides  
4 that a seller does not have a duty to disclose any defects that  
5 he is not aware of.

6 The case law under the *Bonnie Springs* case specifies  
7 that liability for nondisclosure is generally not imposed where  
8 the buyer either knew or could have discovered the defects  
9 prior to the purchase.

10 NRS 113.140 clearly provides that the seller's  
11 disclosure does not constitute a warranty and that the buyer  
12 still has a duty to exercise reasonable care to protect  
13 themselves.

14 A buyer waives their common-law claims for  
15 negligent -- negligent misrepresentation, fraudulent or  
16 intentional misrepresentation and/or unjust enrichment when  
17 they expressly agree that it would carry the duty to inspect  
18 the property and ensure that all aspects of it were suitable  
19 prior to the close of escrow and that the information was  
20 reasonably accessible to the buyer. That's the *McDonald*  
21 *Highlands* case.

22 The general rule for foreclosing liability for  
23 nondisclosure when a property is purchased as is applies when  
24 such facts are within the reach of the diligent attention and  
25 observation of the buyer. This is the *Macintosh* (phonetic)

1 case.

2           Importantly, the Nevada Supreme Court included an  
3 agreement to purchase property as is foreclosed each of the  
4 buyer's common-law claims justifying the granting of summary  
5 judgment on all common-law claims.

6           Now, when we look at the underlining complaint and we  
7 look at the motion, we are entitled to summary judgment on all  
8 the plaintiff's claims for Cause of Action 1, recovery under  
9 NRS Chapter 113;

10           For Cause of Action 2, constructive fraud;  
11           3, common-law fraud;  
12           4, fraudulent inducement;  
13           5, fraudulent concealment;  
14           6, breach of fiduciary duty;  
15           8, damages under NRS 645;  
16           9, failure to supervise, inadequate training or  
17 education;  
18           12, civil conspiracy;  
19           13, breach of contract; and  
20           14, breach of the covenant of good faith and fair  
21 dealing.

22           As to the other causes of action, plaintiff never  
23 filed an opposition to those requests. These were included in  
24 the Causes of Action 7, RICO;

25           10, fraudulent conveyance;

11, fraudulent conveyance; and  
15, their claim for abuse of process.

There's also no dispute that summary judgment is warranted as to all the broker defendants.

On our counterclaim for abuse of process, we are entitled to summary judgment on that claim as the undisputed facts illustrate that plaintiff's action was merely an attempt to extort all the defendants with a meritless claim and abuse of process.

It's undisputed that the property was a 63-year-old home at the time that plaintiff purchased it in 2018, that the purchase price was \$200,000, that plaintiffs now are claiming \$16.25 million in damages, that there's no basis for the claim for RICO or the fraudulent conveyance or any of those other claims where plaintiff didn't even oppose our request for summary judgment; that the original settlement demand by plaintiff was \$10,000.

Now, the only purpose of filing this claim and the related discovery was retaliatory. In that context, summary judgment is appropriate in favor of us related to abuse of process.

In the event that you find that there is somewhat of an disputed fact or there's a material damage issue of material fact, partial summary judgment is appropriate related to the undisputed facts and the unopposed claims.



1 And then we would also ask for attorneys' fees and  
2 costs.

3 Unless the Court has any questions, I'll go ahead and  
4 turn it over to Mr. Day.

5 THE COURT: Okay. I have no questions at this time.  
6 I have so many documents here.

7 Go on, Counsel. Mr. Day.

8 MR. DAY: Your Honor, this is Steven Day for the  
9 plaintiff.

10 THE COURT: Okay. And, Mr. Day, before you start,  
11 I'd like you to speak a little bit louder, please. For some  
12 reason I can't really hear you as well. So will you bring your  
13 microphone closer.

14 MR. DAY: Judge, I certainly will.

15 THE COURT: Okay. Thank you.

16 MR. DAY: Is that better?

17 THE COURT: Yeah, a little bit. Yes.

18 MR. DAY: Okay. Well, Judge, I made an appearance in  
19 the case yesterday. I looked at the motions for summary  
20 judgment, the opposition and the reply yesterday. And whenever  
21 I have a case where I have an opposing party that files a  
22 motion for summary judgment and that motion includes 33 pages  
23 of briefs and over a hundred pages of documents, hearsay  
24 documents, none of which were supported by testimony or have  
25 any foundation whatsoever, I immediately assumed that there are

1 factual issues in the case.

2 And Mr. Childs filed an opposition to defendants'  
3 motion which also included in excess of 30 pages of brief and  
4 well over a hundred pages of supporting documents, which would  
5 all further suggest that there are not only factual issues, but  
6 many factual issues --

7 THE COURT: Mr. Day, please speak louder. Mr. Day,  
8 excuse me. You must speak louder, please.

9 MR. DAY: How about this? Is this better?

10 THE COURT: That's better.

11 MR. DAY: Okay. Sorry about that, Judge.

12 THE COURT: No, it's okay. You know, it happens. I  
13 have one person speaking too quickly and the other one I can't  
14 hear. What you're doing now is better.

15 MR. DAY: Okay. There are -- there are numerous  
16 factual issues in this case. The plaintiff's contention is  
17 that -- I mean, defendants. Defendants argue that had an  
18 inspection of the property been done, the various issues with  
19 this triplex would've been discovered. The plaintiffs (sic)  
20 are claiming that; however, it's plaintiff's position that when  
21 defendants purchased this property, the defendants and their  
22 many investors purchased this property, the intent was to  
23 immediately flip the property. And when they could not flip  
24 the property, they attempted to cover up the numerous problems  
25 with the triplex with floor covering, wallcoverings, plaster.

1 And as can be seen in the expert reports, many of the issues  
2 are within the walls of the building itself and were not  
3 discovered until after the property was purchased.

4 For example, the issues with the foundation were  
5 discovered when tile started coming up from the floor after  
6 purchase. And when floor covering, which was all placed by the  
7 defendants, was removed to reveal what the primary issue with  
8 the foundation was.

9 This is a structure that, frankly, just should have  
10 been condemned. And instead of it being condemned and knocked  
11 down, defendants attempted to cover up the many problems with  
12 the triplex which precluded the plaintiff from observing these  
13 many problems upon his inspection of the premises.

14 So there are -- the argument that was made by  
15 defense, great argument, but that's an argument that should be  
16 made to the jury. The jury should be allowed to determine what  
17 the plaintiff knew or should have known prior to purchase, what  
18 efforts the defendants made to attempt to cover up the many  
19 problems with this triplex prior to purchase. And those are  
20 all factual issues that should be left to a jury.

21 With respect to the deposition that was included in  
22 the reply, you know, that's a little late. The initial motion  
23 that was filed included no testimony, no admissible evidence.  
24 The defense relied primarily or exclusively upon hearsay  
25 documents, documents that had no foundation in plaintiff's --

1 or defendants' presentation with the motion for summary  
2 judgment.

3 So plaintiff's contention is that there are numerous  
4 factual issues in this case which would preclude summary  
5 judgment with respect to all causes of action.

6 And with that, unless the Court has questions, we'll  
7 stand submitted.

8 THE COURT: Okay. Thank you, Mr. Day.

9 Mr. Lee, please.

10 MR. LEE: Yes, Your Honor. Thank you. And please  
11 slow me down if I start speaking too quickly.

12 THE COURT: All right. You've got to try to control  
13 yourself as well. But, yes, I hate to -- I really dislike  
14 having to -- to interrupt people, but so please try to speak  
15 slower.

16 MR. LEE: Yes.

17 THE COURT: And we're not in a crazy hurry. I'd  
18 rather hear everything thoroughly even though I have very  
19 thorough pleadings.

20 Go on.

21 MR. LEE: In terms of the very thorough pleadings,  
22 just because we have thoroughly briefed the issue doesn't mean  
23 that there's a genuine issue of material fact. It's a somewhat  
24 novel argument from Mr. Day that we did our job too good. So  
25 there has to be a genuine issue of material fact.

1           It's also somewhat of a novel argument that you  
2 should discount the deposition of Mr. Miao that illustrates  
3 that there were no genuine issues of material fact so that we  
4 can avoid summary judgment.

5           The general argument that Mr. Day, and while I  
6 appreciate he is new to the case, about the alleged discovery  
7 issues is without merit. Miao admitted that there's no  
8 evidence that defendant knew about the alleged conditions. And  
9 what we have to keep in mind is that the defendants owned the  
10 property for a short period of time prior to buying it,  
11 improving it, and then selling it to the plaintiff. Then  
12 plaintiff operated it for a long period of time utilizing the  
13 defendant realtors as a management property.

14           What we'll also note here is that Mr. Day  
15 conveniently omitted the fact that there's a long-term tenant  
16 who lived in the property prior to the defendants purchasing  
17 it, during the time of the improvement and currently resides  
18 there to this day and that Mr. Miao also specified in his  
19 deposition that that person is very unhappy with the property  
20 and still with the conditions living there.

21           We also have the undisputed fact that Mr. Miao  
22 admitted that plaintiff's expert failed to differentiate  
23 between what happened when the defendants owned the property  
24 and what happened thereafter.

25           So plaintiff here has not met any burden to show that

1 the defendants knew about the alleged conditions or what's  
2 actually more troubling in terms of the underlining case law is  
3 that a reasonable inspection at the time of purchase would have  
4 shown any alleged open and obvious conditions that Mr. Miao  
5 admitted was on the property.

6 We also have the issue related to the unopposed  
7 causes of action that we sought summary judgment on, but also  
8 with the underlining claims that Mr. Miao specified related to  
9 the GFCI outlets which was an actual condition caused by the  
10 plaintiff related to the property that illustrates that this  
11 was only -- this lawsuit was brought for a bad-faith purpose  
12 with underlying conditions that Mr. Miao knew about.

13 If we look at the deposition alone, it illustrates  
14 the undisputed facts that should grant summary judgment to  
15 defendants entirely or at least establish these are the  
16 undisputed facts in this case. Even if we have the partial  
17 finding that these are the undisputed facts within the case,  
18 plaintiff can never present any case as a matter of law because  
19 the case law is very clear that there is no basis for this case  
20 to continue.

21 Unless you have any questions, I'll go ahead and  
22 rest.

23 THE COURT: I have a couple of questions.

24 Mr. Day, when you were speaking, you mentioned that  
25 the deposition of Mr. Miao or Miao was late, and I'd like to

1 understand what you mean by that.

2 MR. DAY: Well, Your Honor, any evidence that the  
3 defendants have in support of their motion for summary judgment  
4 should have been included in the original motion.

5 The defendants in their reply included frankly the  
6 only admissible evidence that's included in any of their briefs  
7 in their reply. The reply should be nothing more than a  
8 response to plaintiff's opposition. So if they intended to use  
9 Mr. Miao's deposition, it actually should have been included in  
10 the original motion for summary judgment.

11 The original motion for summary judgment has no  
12 admissible evidence. There is no testimony in the original  
13 motion for summary judgment. Defendant simply relied upon  
14 documents which essentially are hearsay documents --

15 THE COURT: But, Mr. Day.

16 MR. DAY: -- so there is no foundation for those  
17 documents.

18 THE COURT: Let me interrupt you for a moment. When  
19 you're talking about the deposition and it's in the reply, can  
20 you cite law to this Court that says that, you know -- because  
21 I usually look at everything before. In other words, there's  
22 been a motion. There's been an opposition. There are exhibits  
23 that came first. Then there was a deposition that came in the  
24 reply.

25 Is there legally a basis for not allowing something

1 like that to be reviewed, a legal basis that this Court is  
2 prohibited from reading something that's included in a reply?

3 MR. DAY: Well, there's nothing preventing the Court  
4 from reviewing whatever the Court wants to review.

5 THE COURT: Right.

6 MR. DAY: I am not prepared to cite cases for the  
7 Court suggesting the proposition that -- I mean, I was not able  
8 to provide or Mr. Childs was not able to respond to their reply  
9 to the opposition. So, no, I'm not prepared to give you case  
10 law or suggesting that the Court cannot consider evidence that  
11 was not originally brought in plaintiff's -- or defendants'  
12 initial motion for summary judgment. I'd have to do some  
13 research and submit a supplemental brief on that.

14 I just -- Judge, I just find it interesting that  
15 their initial motion for summary judgment, as I'm reading the  
16 motion for summary judgment that there's no evidence. You  
17 know, the defense is arguing that there are no factual issues.  
18 They're arguing that there are no factual issues in the case,  
19 but they present no admissible evidence, no testimony, no  
20 nothing in their original motion for summary judgment other  
21 than documents, and they discuss those documents, but they have  
22 no testimony in their original motion for summary judgment  
23 laying any kind of foundation for any of those documents.

24 Those documents, their presentation would not be  
25 admissible at the time of trial in their original motion for



1 summary judgment. And yet they're asking the Court to render  
2 summary judgment on factual issues that were -- you know, on  
3 their motion for summary judgment, they present no fact -- no  
4 admissible facts. They presented no admissible factual issues.  
5 And that was my -- that was my point is that not until we get a  
6 reply do we even see any testimony, you know.

7           So, you know, we -- the plaintiff did not have an  
8 opportunity to respond to the testimony, the actual testimony  
9 that was presented by defendants in their motion because it was  
10 only included in their reply. Their original motion has no  
11 admissible evidence in it.

12           THE COURT: Mr. Lee.

13           MR. LEE: Yeah. While I appreciate that Mr. Day is  
14 late to the case, none of that is accurate.

15           Exhibit I to the motion for summary judgment is  
16 testimony that he's allegedly saying wasn't in there. It's a  
17 declaration from a defendant related to the documents.

18           Exhibit A is the document that was actually produced  
19 by -- well, a large portion of the documents in support of the  
20 motion for summary judgment were produced by the plaintiff. So  
21 they'd be self-authenticating anyway.

22           As it pertains to the supplement that we have with  
23 the deposition, it was filed as a supplement, not as a reply  
24 brief. Our reply brief did allude to Mr. Miao's deposition,  
25 which we took after filing the motion for summary judgment.

1 And then we supplemented on January 29th, 2021.

2 Today is March 11th, 2021. To say that the  
3 plaintiff never had an opportunity to respond to the  
4 supplemental brief that we provided that included the testimony  
5 of Mr. Miao is without merit and has no factual basis. We  
6 hadn't filed a motion when we filed a motion for summary  
7 judgment based on the deadlines set forth in the case. And on  
8 top of that, we were trying to keep this case moving forward.

9 We didn't try to do any ambush litigation tactics  
10 here. We didn't do anything that the plaintiff wasn't aware  
11 of. While I appreciate that Mr. Day was not the attorney at  
12 that time, he inherited the case as it was, and he doesn't get  
13 to re-examine the procedural history of the case or try to  
14 invent facts that just simply aren't true just because he's new  
15 to the case.

16 The underlining supplement that plaintiff had  
17 substantial (video interference) to go ahead and try to respond  
18 to this. They had substantial opportunity to allegedly do the  
19 discovery that they claimed that they needed to do to oppose  
20 the summary judgment motion, which they did not do and that  
21 Mr. Miao now indicates that he doesn't want there to be.

22 So if I'm Mr. Day, I appreciate that he is trying to  
23 avoid the deposition that illustrates the undisputed facts and  
24 the relevant testimony that is a hundred percent admissible  
25 that relates to the underlying documents that authenticate all

1 the documents that we're discussing here. Even without the  
2 documents, we have the undisputed admissible testimony of  
3 Mr. Miao, the person most knowledgeable, that illustrates the  
4 overwhelming undisputed facts that there is a lack of merit for  
5 this underlying action and that summary judgment should be  
6 appropriate as a matter of law.

7 Nevada case law is very clear related to a buyer's  
8 diligence that they have to do related to buying a piece of  
9 property. Mr. Miao admitted that the plaintiff was aware of  
10 those laws and those statutes related to the duty to inspect  
11 and that had he done a reasonable inspection at the time, they  
12 could have been -- they could've been discovered.

13 Even when you look at the opposition and the  
14 plaintiff's expert providing a declaration, he doesn't dispute  
15 any of the findings related to defense expert's findings that  
16 they were open and obvious or could have been discovered at the  
17 time of the purchase.

18 Under the plain language of the cases that I cited  
19 and the statutes, nothing there would relieve this Honorable  
20 Court of granting summary judgment as a matter of law based on  
21 those undisputed evidence. Well, whereas Mr. Day continually  
22 tries to expound upon the alleged defects in the motion,  
23 opposition and reply, omitting the supplement and the  
24 opportunity that the plaintiff had to respond to the  
25 supplement, the undisputed facts arise from the undisputed

1 testimony of the plaintiff in this case.

2           So while he tries to go out there and raise some  
3 generalities about what the alleged discovery would be,  
4 discovery is now closed. The plaintiff hasn't done any  
5 discovery on those issues. And even if they did do discovery,  
6 it would still be no genuine issue of material fact that  
7 summary judgment is appropriate as a matter of law.

8           Thank you.

9           MR. DAY: Your Honor.

10           THE COURT: I'll let you have a moment, but Mr. Lee  
11 will have the last word. So if you just want to speak to say  
12 something quickly, then I'm going to move on, Mr. Day. Okay.

13           MR. DAY: Judge, just one point. And my  
14 understanding is that plaintiff attempted to take the  
15 deposition of the defendant who failed to appear for a  
16 deposition, and that issue still has not been brought before  
17 the Court.

18           My understanding as well is there is written  
19 discovery that still has not been responded to by the  
20 defendant. There was a hearing before the Discovery  
21 Commissioner who has ordered defendants to respond to certain  
22 outstanding written discovery, which has still not been  
23 responded to.

24           So, you know, while we have a discovery cut off,  
25 there are -- there's discovery that's been ordered produced.

1 And frankly, the plaintiff still has -- intends to file a  
2 motion with the Court to compel defendants' appearance at a  
3 deposition.

4 THE COURT: Mr. Lee.

5 MR. LEE: While I appreciate Mr. Day is late in the  
6 case, again, it's simply not accurate. The prior attorney did  
7 not properly notice the underlying deposition allegedly for my  
8 client. But for one of my clients -- noticed two depositions,  
9 one that he called off because of a translator issue and  
10 inability to get that scheduled properly.

11 As to the second deposition that I wasn't aware of, I  
12 agreed to allow plaintiff to go ahead and take the deposition  
13 prior to this hearing, but Mr. Miao sent an email saying that  
14 no more depositions.

15 What Mr. Miao -- Day is also omitting is that on  
16 Monday I had the deposition set for plaintiff's expert.  
17 Plaintiff at that time had acknowledged that the plaintiff  
18 would appear for the deposition. He knew of the time, knew of  
19 the subpoena. And then I told him that his subpoena was  
20 available for pickup. He didn't show, and he did a  
21 nonappearance.

22 As to the alleged discovery dispute, it's simply not  
23 accurate again. The plaintiff -- the defendants in this case  
24 have disclosed almost 600 documents. What the Discovery  
25 Commissioner ordered is that of those 600 documents he would

1 just like us to put into our responses or this information is  
2 not available.

3 As to the underlining issue related to the corporate  
4 formalities, the articles of incorporation or those type of  
5 documents or business licenses, those will have no impact on  
6 this underlining case.

7 So while I appreciate that Mr. Day is late to the  
8 case, you know, the information that he presented related to  
9 alleged discovery is simply not accurate.

10 THE COURT: All right. I'm ready to give you my  
11 decision.

12 All right. So I've reviewed all of the  
13 documentation, all of the pleadings. And first, I'd like to  
14 start off with respect to while it wasn't the binding purchase  
15 agreement, it's the first one. The residential agreement dated  
16 September 5th of 2017, clearly shows that the buyer did not  
17 condition -- it was not conditioned on the buyer's due  
18 diligence as defined in Section 7(a). This condition referred  
19 to due diligence condition checked in the affirmative.

20 In other words, the bottom line is in the first  
21 residential, and I'm only saying that because one came right  
22 after another -- the buyer waived and purchased as is and had  
23 no interest apparently in moving forward and having an  
24 inspection done. While that residential agreement dated  
25 September 5th of '17, is not the binding agreement, it's

1 important because it shows how the -- the behavior of the  
2 plaintiff throughout this entire case.

3 Secondly, I have sellers real property disclosure  
4 form, August 2nd. It looks like the disclosures are there.  
5 And still after that the plaintiffs refused. They were  
6 actually encouraged to have -- to have someone review and --  
7 excuse me one moment -- inspect this property, and they did not  
8 want to do that. And, you know, this is a 63-year-old  
9 property. They're purchasing it as is. I'm not going to go  
10 into the details, but there are -- there are specific  
11 disclosures that were made by the seller, and the buyer was  
12 encouraged, strongly encouraged to make sure that they  
13 conducted an inspection, and they did not. They did not want  
14 to. Okay.

15 So in addition we have Mr. Miao's deposition. But  
16 even without the deposition, the deposition obviously  
17 references everything in more detail. But this was a waiver.  
18 And when it comes -- the discovery here closed October 30th  
19 of 2020. Okay. And -- and I -- this is not going -- I'm not  
20 going to allow more discovery on this. There's been plenty of  
21 time for this because this started, you know, long before  
22 COVID. And these cases have to move. You know, they have to  
23 be done properly. So let's see.

24 So with respect to this case, I am granting -- this  
25 Court grants the motion for summary judgment as to all claims

1 and will also entertain the Rule 11 sanctions.

2 Because, honestly, I don't see in good faith how this  
3 can be brought by -- this can be brought by the plaintiffs in  
4 good faith when they've waived everything. And in addition,  
5 they refused to conduct an inspection knowing that they were  
6 purchasing a 63-year-old property. I mean, it's just absurd.

7 Also, I find that in my review that this is not the  
8 plaintiff's first purchase of a property. There apparently  
9 is -- you know, they've purchased quite a few properties before  
10 this one. So they should understand, you know, just like  
11 purchasing one home, you understand how important generally an  
12 inspection is. And here they are sophisticated in a sense that  
13 they should, you know, they knew what the repercussions may be  
14 of not holding an inspection.

15 And now, you know, we have a lot of law that has been  
16 cited by counsel for defense, Mr. Lee, that I actually think  
17 that -- you know, I'm not going to go into it here, but  
18 essentially the defendants, in my view, demonstrated that  
19 there's no genuine issue of material fact with respect to  
20 plaintiff's claims under Chapter 113. Defendants disclosed all  
21 of the known defects.

22 Plaintiffs have failed to create a genuine issue of  
23 material fact by introducing any evidence that the defendants  
24 were aware of the nondisclosed defects. And all of the defects  
25 were thoroughly explained by defendants' expert. They show



1 that those defects were discoverable with due diligence, which  
2 plaintiffs failed to do. So that is the reason why I'm  
3 granting it.

4 I don't take motions for summary judgment lightly at  
5 all. But this is one of the clearest cut cases I've seen.  
6 There's no evidence from the plaintiff that refutes material  
7 facts and introduces material facts. And that's really the key  
8 here. And then --

9 MR. MIAO: Excuse me.

10 THE COURT: Just a moment. I'm speaking.

11 Then when you're looking at the residential purchase  
12 agreement and signed disclosure, it's clear in my view that  
13 this is a baseless lawsuit, and I will grant defendants  
14 attorneys' fees under NRCP 11.

15 This Court denies plaintiff's request for Rule 56(f)  
16 continuance for more discovery. It's a 2018 case. Discovery  
17 closed on October 30th of 2020, and I'm not going to continue  
18 to move forward with this because I don't think there's a basis  
19 for it. So that's it. That's my decision. That's this  
20 Court's decision.

21 And I'd like Mr. Lee to prepare a very detailed order  
22 that adopts the information that you included in your motion,  
23 in the defendants' motion.

24 Make sure that Mr. Day has a chance to take a look at  
25 it as to form and content.

1           And I'd like to mention that, not from you or anyone  
2 in particular, but in many cases I've been -- I've been  
3 receiving orders, proposed orders really late. And pursuant to  
4 EDCR 1.90, they need to be filed with this Court no later than  
5 14 days after this decision. Okay. So please make sure that I  
6 have -- that everybody starts --

7           And, Mr. Lee, I'm not speaking to you. I have other  
8 counsel on the phone. So I'm speaking to everyone. I need my  
9 orders sooner. And, frankly, I prefer them within 10 days, but  
10 the rule says 14. If you're able to submit them in 10 days,  
11 then that's great. And, okay. That's it. That's it for this  
12 case.

13           MR. MIAO: Excuse me.

14           THE COURT: Yes? Who's --

15           MR. MIAO: Excuse me. I would (indiscernible).

16           THE COURT: No. No. I'm sorry. No, you may not  
17 speak. You're represented by your attorney, and we are done.

18           MR. MIAO: But I really just (indiscernible) the  
19 attorney just took over the case.

20           THE COURT: Excuse me.

21           MR. MIAO: A few days ago. I'm sorry.

22           THE COURT: Sir. Sir. This is -- this has been  
23 on -- this is not a surprise case. And this is the decision of  
24 this Court. Okay. It's a 2018 case. Discovery was closed in  
25 October of -- I've already indicated it, and I don't know where

1 I have that note. I believe it was 2020. And --

2 MR. MIAO: Twenty-second.

3 THE COURT: We're done. We're done here. We're  
4 done. Please don't speak anymore. I don't want to be  
5 disrespectful with you, but you must respect the Court as well.  
6 We're done.

7 Counsel, I hope you're being safe out there and your  
8 families are well, and --

9 MR. MIAO: But --

10 THE COURT: No. I'd like you to please mute the  
11 person who is speaking that is not Mr. Day or Mr. Lee.

12 THE MARSHAL: Mr. Frank has been muted, Your Honor,  
13 by the Court.

14 THE COURT: Okay. In any case, we're done now.

15 And I'd like you to call the next case, please,  
16 Marshal Ragsdale.

17 THE CLERK: Judge, there's a status check for  
18 settlement on this case. Do you want to hear --

19 THE COURT: Oh, wait. Before we go on, before we go  
20 on, if you're still on the line, if not, I'd like an email sent  
21 to all parties, Ms. Reid (phonetic), that makes sure you tell  
22 them to submit the order in PDF format and in Word format, and  
23 make sure both parties are -- all of the parties are in the  
24 email.

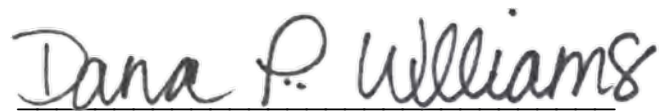
25 And ask them to not submit it twice. Because if they

1 send two copies, we don't get either one of anything. So only  
2 one PDF and only one Word document.

3 (Proceedings concluded at 10:26 a.m.)

4 -oOo-

5 ATTEST: I do hereby certify that I have truly and correctly  
6 transcribed the audio/video proceedings in the above-entitled  
7 case.

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10 Dana L. Williams  
11 Transcriber  
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	<b>31 [1]</b> 9/7 <b>31A [1]</b> 9/10 <b>31B [1]</b> 9/15 <b>33 [1]</b> 14/22	<b>afterwards [1]</b> 7/20 <b>again [2]</b> 26/6 26/23 <b>ago [1]</b> 31/21 <b>agree [1]</b> 11/17 <b>agreed [4]</b> 7/12 7/15 7/22 26/12 <b>agreement [9]</b> 3/6 3/7 5/8 12/3 27/15 27/15 27/24 27/25 30/12 <b>agreements [1]</b> 3/8 <b>ahead [4]</b> 14/3 19/21 23/17 26/12 <b>all [29]</b> 2/12 2/25 4/11 4/25 6/14 7/4 10/8 10/16 11/18 12/5 12/7 13/4 13/8 15/5 16/6 16/20 17/5 17/12 23/25 27/10 27/12 27/12 27/13 28/25 29/20 29/24 30/5 32/21 32/23 <b>alleged [13]</b> 7/12 7/25 8/8 9/7 9/15 18/6 18/8 19/1 19/4 24/22 25/3 26/22 27/9 <b>allegedly [3]</b> 22/16 23/18 26/7 <b>allow [2]</b> 26/12 28/20 <b>allowed [1]</b> 16/16 <b>allowing [1]</b> 20/25 <b>allude [1]</b> 22/24 <b>almost [1]</b> 26/24 <b>alone [1]</b> 19/13 <b>already [1]</b> 31/25 <b>also [40]</b> <b>alternative [2]</b> 1/16 2/13 <b>although [2]</b> 7/24 8/1 <b>am [2]</b> 21/6 28/24 <b>ambush [1]</b> 23/9 <b>Amended [3]</b> 8/18 8/19 10/15 <b>another [1]</b> 27/22 <b>any [23]</b> 6/1 8/1 8/1 10/17 10/23 11/4 13/14 14/3 14/25 18/25 19/4 19/18 19/21 20/2 20/6 21/23 21/23 22/6 23/9 24/15 25/4 29/23 32/14 <b>anymore [1]</b> 32/4 <b>anyone [1]</b> 31/1 <b>anything [2]</b> 23/10 33/1 <b>anyway [1]</b> 22/21 <b>apologize [1]</b> 3/13 <b>apparently [2]</b> 27/23 29/8 <b>appear [2]</b> 25/15 26/18 <b>appearance [2]</b> 14/18 26/2 <b>appearances [2]</b> 1/19 2/6 <b>applies [1]</b> 11/23 <b>appraiser [1]</b> 5/16 <b>appreciate [7]</b> 6/16 18/6 22/13 23/11 23/22 26/5 27/7 <b>appropriate [6]</b> 2/25 10/16 13/20 13/24 24/6 25/7	<b>approval [1]</b> 11/1 <b>are [30]</b> 6/14 7/24 11/24 12/7 13/5 13/12 14/25 15/5 15/15 15/15 15/20 16/2 16/14 16/19 17/3 19/15 19/17 20/14 20/22 21/17 21/18 25/25 28/4 28/10 28/10 29/12 31/17 32/8 32/23 32/23 <b>areas [3]</b> 6/4 7/4 7/6 <b>aren't [1]</b> 23/14 <b>argue [1]</b> 15/17 <b>arguing [2]</b> 21/17 21/18 <b>argument [6]</b> 16/14 16/15 16/15 17/24 18/1 18/5 <b>arise [1]</b> 24/25 <b>articles [1]</b> 27/4 <b>as [37]</b> <b>asbestos [1]</b> 4/9 <b>ask [2]</b> 14/1 32/25 <b>asked [1]</b> 10/25 <b>asking [1]</b> 22/1 <b>aspects [1]</b> 11/18 <b>assumed [1]</b> 14/25 <b>at [35]</b> <b>attached [1]</b> 7/6 <b>attempt [2]</b> 13/7 16/18 <b>attempted [3]</b> 15/24 16/11 25/14 <b>attention [1]</b> 11/24 <b>ATTEST [1]</b> 33/5 <b>attic [2]</b> 5/23 9/22 <b>attorney [4]</b> 23/11 26/6 31/17 31/19 <b>attorney's [1]</b> 11/1 <b>attorneys' [2]</b> 14/1 30/14 <b>audio [1]</b> 33/6 <b>audio/video [1]</b> 33/6 <b>August [1]</b> 28/4 <b>authenticate [1]</b> 23/25 <b>authenticating [1]</b> 22/21 <b>available [2]</b> 26/20 27/2 <b>avoid [2]</b> 18/4 23/23 <b>aware [12]</b> 3/17 3/21 4/16 5/2 5/5 5/9 10/17 11/5 23/10 24/9 26/11 29/24	<b>25/6 28/23 29/3 29/3 29/13 31/4 32/4</b> <b>because [15]</b> 5/18 6/18 10/16 17/22 19/18 20/20 22/9 23/14 26/9 27/21 28/1 28/21 29/2 30/18 32/25 <b>been [23]</b> 5/11 6/2 8/13 15/18 15/19 16/10 20/4 20/9 20/22 20/22 24/12 24/12 24/16 25/16 25/19 25/22 25/25 28/20 29/15 31/2 31/2 31/22 32/12 <b>been \$102,000 [1]</b> 8/13 <b>before [11]</b> 1/11 2/12 7/9 14/10 20/21 25/16 25/20 28/21 29/9 32/19 32/19 <b>behalf [2]</b> 2/7 2/9 <b>behavior [1]</b> 28/1 <b>being [4]</b> 4/8 5/15 16/10 32/7 <b>believe [2]</b> 5/14 32/1 <b>believes [1]</b> 5/18 <b>better [4]</b> 14/16 15/9 15/10 15/14 <b>between [1]</b> 18/23 <b>binding [2]</b> 27/14 27/25 <b>bit [5]</b> 10/4 10/5 10/5 14/11 14/17 <b>Bonnie [1]</b> 11/6 <b>both [1]</b> 32/23 <b>bottom [1]</b> 27/20 <b>breach [3]</b> 12/14 12/19 12/20 <b>brief [5]</b> 15/3 21/13 22/24 22/24 23/4 <b>briefed [1]</b> 17/22 <b>briefing [1]</b> 6/17 <b>briefs [2]</b> 14/23 20/6 <b>bring [1]</b> 14/12 <b>broker [1]</b> 13/4 <b>brought [5]</b> 19/11 21/11 25/16 29/3 29/3 <b>building [3]</b> 5/3 5/23 16/2 <b>burden [1]</b> 18/25 <b>business [1]</b> 27/5 <b>but [25]</b> 6/9 6/22 8/13 8/16 15/5 16/15 17/13 17/14 19/7 20/15 21/19 21/21 25/10 26/8 26/13 28/10 28/15 28/17 29/17 30/5 31/2 31/9 31/18 32/5 32/9 <b>buyer [9]</b> 3/3 11/8 11/11 11/14 11/20 11/25 27/16 27/22 28/11 <b>buyer's [3]</b> 12/4 24/7 27/17 <b>buying [2]</b> 18/10 24/8
<b>MR. DAY: [14]</b> 2/9 14/8 14/14 14/16 14/18 15/9 15/11 15/15 20/2 20/16 21/3 21/6 25/9 25/13 <b>MR. LEE: [19]</b> 2/7 2/19 3/11 3/13 3/15 6/11 6/13 6/21 6/24 7/1 7/3 10/7 10/9 10/11 17/10 17/16 17/21 22/13 26/5 <b>MR. MIAO: [7]</b> 30/9 31/13 31/15 31/18 31/21 32/2 32/9 <b>THE CLERK: [1]</b> 32/17 <b>THE COURT: [41]</b> <b>THE MARSHAL: [1]</b> 32/12 <b>UNIDENTIFIED SPEAKER: [1]</b> 2/3	<b>5</b> <b>56 [4]</b> 1/14 2/15 10/24 30/15 <b>5th [2]</b> 27/16 27/25	<b>6</b> <b>600 [2]</b> 26/24 26/25 <b>63 [1]</b> 4/20 <b>63-year-old [3]</b> 13/10 28/8 29/6 <b>645 [1]</b> 12/15	<b>areas [3]</b> 6/4 7/4 7/6 <b>aren't [1]</b> 23/14 <b>argue [1]</b> 15/17 <b>arguing [2]</b> 21/17 21/18 <b>argument [6]</b> 16/14 16/15 16/15 17/24 18/1 18/5 <b>arise [1]</b> 24/25 <b>articles [1]</b> 27/4 <b>as [37]</b> <b>asbestos [1]</b> 4/9 <b>ask [2]</b> 14/1 32/25 <b>asked [1]</b> 10/25 <b>asking [1]</b> 22/1 <b>aspects [1]</b> 11/18 <b>assumed [1]</b> 14/25 <b>at [35]</b> <b>attached [1]</b> 7/6 <b>attempt [2]</b> 13/7 16/18 <b>attempted [3]</b> 15/24 16/11 25/14 <b>attention [1]</b> 11/24 <b>ATTEST [1]</b> 33/5 <b>attic [2]</b> 5/23 9/22 <b>attorney [4]</b> 23/11 26/6 31/17 31/19 <b>attorney's [1]</b> 11/1 <b>attorneys' [2]</b> 14/1 30/14 <b>audio [1]</b> 33/6 <b>audio/video [1]</b> 33/6 <b>August [1]</b> 28/4 <b>authenticate [1]</b> 23/25 <b>authenticating [1]</b> 22/21 <b>available [2]</b> 26/20 27/2 <b>avoid [2]</b> 18/4 23/23 <b>aware [12]</b> 3/17 3/21 4/16 5/2 5/5 5/9 10/17 11/5 23/10 24/9 26/11 29/24	<b>25/6 28/23 29/3 29/3 29/13 31/4 32/4</b> <b>because [15]</b> 5/18 6/18 10/16 17/22 19/18 20/20 22/9 23/14 26/9 27/21 28/1 28/21 29/2 30/18 32/25 <b>been [23]</b> 5/11 6/2 8/13 15/18 15/19 16/10 20/4 20/9 20/22 20/22 24/12 24/12 24/16 25/16 25/19 25/22 25/25 28/20 29/15 31/2 31/2 31/22 32/12 <b>been \$102,000 [1]</b> 8/13 <b>before [11]</b> 1/11 2/12 7/9 14/10 20/21 25/16 25/20 28/21 29/9 32/19 32/19 <b>behalf [2]</b> 2/7 2/9 <b>behavior [1]</b> 28/1 <b>being [4]</b> 4/8 5/15 16/10 32/7 <b>believe [2]</b> 5/14 32/1 <b>believes [1]</b> 5/18 <b>better [4]</b> 14/16 15/9 15/10 15/14 <b>between [1]</b> 18/23 <b>binding [2]</b> 27/14 27/25 <b>bit [5]</b> 10/4 10/5 10/5 14/11 14/17 <b>Bonnie [1]</b> 11/6 <b>both [1]</b> 32/23 <b>bottom [1]</b> 27/20 <b>breach [3]</b> 12/14 12/19 12/20 <b>brief [5]</b> 15/3 21/13 22/24 22/24 23/4 <b>briefed [1]</b> 17/22 <b>briefing [1]</b> 6/17 <b>briefs [2]</b> 14/23 20/6 <b>bring [1]</b> 14/12 <b>broker [1]</b> 13/4 <b>brought [5]</b> 19/11 21/11 25/16 29/3 29/3 <b>building [3]</b> 5/3 5/23 16/2 <b>burden [1]</b> 18/25 <b>business [1]</b> 27/5 <b>but [25]</b> 6/9 6/22 8/13 8/16 15/5 16/15 17/13 17/14 19/7 20/15 21/19 21/21 25/10 26/8 26/13 28/10 28/15 28/17 29/17 30/5 31/2 31/9 31/18 32/5 32/9 <b>buyer [9]</b> 3/3 11/8 11/11 11/14 11/20 11/25 27/16 27/22 28/11 <b>buyer's [3]</b> 12/4 24/7 27/17 <b>buying [2]</b> 18/10 24/8
<b>\$</b> <b>\$10,000 [2]</b> 8/16 13/17 <b>\$102,000 [1]</b> 8/13 <b>\$16.25 [1]</b> 13/13 <b>\$16.25 million [1]</b> 13/13 <b>\$200,000 [1]</b> 13/12 <b>\$600,000 [1]</b> 8/14	<b>7</b> <b>7D [1]</b> 5/10	<b>7</b> <b>7D [1]</b> 5/10	<b>at [35]</b> <b>attached [1]</b> 7/6 <b>attempt [2]</b> 13/7 16/18 <b>attempted [3]</b> 15/24 16/11 25/14 <b>attention [1]</b> 11/24 <b>ATTEST [1]</b> 33/5 <b>attic [2]</b> 5/23 9/22 <b>attorney [4]</b> 23/11 26/6 31/17 31/19 <b>attorney's [1]</b> 11/1 <b>attorneys' [2]</b> 14/1 30/14 <b>audio [1]</b> 33/6 <b>audio/video [1]</b> 33/6 <b>August [1]</b> 28/4 <b>authenticate [1]</b> 23/25 <b>authenticating [1]</b> 22/21 <b>available [2]</b> 26/20 27/2 <b>avoid [2]</b> 18/4 23/23 <b>aware [12]</b> 3/17 3/21 4/16 5/2 5/5 5/9 10/17 11/5 23/10 24/9 26/11 29/24	<b>B</b> <b>back [1]</b> 8/18 <b>background [1]</b> 3/2 <b>bad [1]</b> 19/11 <b>bad-faith [1]</b> 19/11 <b>based [5]</b> 1/14 8/19 9/2 23/7 24/20 <b>baseless [1]</b> 30/13 <b>basis [8]</b> 6/18 10/24 13/13 19/19 20/25 21/1 23/5 30/18 <b>be [22]</b> 6/7 9/5 10/23 16/1 16/15 16/16 16/20 17/25 20/7 21/1 21/24 22/21 23/21 24/5 25/3
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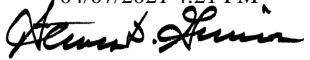


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<p><b>transcribed [2]</b> 1/25 33/6</p> <p><b>Transcriber [1]</b> 33/10</p> <p><b>TRANSCRIPT [1]</b> 1/8</p> <p><b>translator [1]</b> 26/9</p> <p><b>trial [1]</b> 21/25</p> <p><b>tries [2]</b> 24/22 25/2</p> <p><b>triplex [4]</b> 15/19 15/25 16/12 16/19</p> <p><b>troubling [1]</b> 19/2</p> <p><b>true [2]</b> 9/2 23/14</p> <p><b>truly [1]</b> 33/5</p> <p><b>try [6]</b> 8/16 17/12 17/14 23/9 23/13 23/17</p> <p><b>trying [2]</b> 23/8 23/22</p> <p><b>turn [2]</b> 8/18 14/4</p> <p><b>Twenty [1]</b> 32/2</p> <p><b>Twenty-second [1]</b> 32/2</p> <p><b>twice [1]</b> 32/25</p> <p><b>two [2]</b> 26/8 33/1</p> <p><b>type [2]</b> 6/2 27/4</p> <p><b>U</b></p> <p><b>uncovered [1]</b> 10/20</p> <p><b>under [8]</b> 3/17 5/10 11/6 12/8 12/15 24/18 29/20 30/14</p> <p><b>underlining [11]</b> 3/5 5/18 6/18 7/21 10/14 12/6 19/2 19/8 23/16 27/3 27/6</p> <p><b>underlying [5]</b> 3/19 19/12 23/25 24/5 26/7</p> <p><b>understand [3]</b> 20/1 29/10 29/11</p> <p><b>understandable [1]</b> 3/7</p> <p><b>understanding [2]</b> 25/14 25/18</p> <p><b>understood [1]</b> 5/6</p> <p><b>undisputed [17]</b> 2/24 8/20 9/2 10/14 13/6 13/10 13/25 18/21 19/14 19/16 19/17 23/23 24/2 24/4 24/21 24/25 24/25</p> <p><b>unhappy [1]</b> 18/19</p> <p><b>unjust [1]</b> 11/16</p> <p><b>unless [3]</b> 14/3 17/6 19/21</p> <p><b>unopposed [2]</b> 13/25 19/6</p> <p><b>unquote [1]</b> 7/13</p> <p><b>until [2]</b> 16/3 22/5</p>	<p><b>up [7]</b> 4/6 4/24 5/1 15/24 16/5 16/11 16/18</p> <p><b>upon [5]</b> 5/19 16/13 16/24 20/13 24/22</p> <p><b>us [2]</b> 13/20 27/1</p> <p><b>use [3]</b> 5/18 8/25 20/8</p> <p><b>used [1]</b> 3/8</p> <p><b>usually [1]</b> 20/21</p> <p><b>utilizing [1]</b> 18/12</p> <p><b>V</b></p> <p><b>value [1]</b> 8/25</p> <p><b>various [1]</b> 15/18</p> <p><b>VEGAS [2]</b> 2/1 3/4</p> <p><b>vent [1]</b> 4/4</p> <p><b>venting [1]</b> 9/21</p> <p><b>very [7]</b> 2/5 17/18 17/21 18/19 19/19 24/7 30/21</p> <p><b>video [4]</b> 6/22 8/5 23/17 33/6</p> <p><b>view [2]</b> 29/18 30/12</p> <p><b>visible [1]</b> 4/10</p> <p><b>W</b></p> <p><b>wait [1]</b> 32/19</p> <p><b>waived [2]</b> 27/22 29/4</p> <p><b>waiver [1]</b> 28/17</p> <p><b>waives [1]</b> 11/14</p> <p><b>wallcoverings [1]</b> 15/25</p> <p><b>walls [1]</b> 16/2</p> <p><b>want [7]</b> 10/23 23/21 25/11 28/8 28/13 32/4 32/18</p> <p><b>wants [1]</b> 21/4</p> <p><b>warranted [1]</b> 13/4</p> <p><b>warranty [1]</b> 11/11</p> <p><b>was [60]</b></p> <p><b>wasn't [4]</b> 22/16 23/10 26/11 27/14</p> <p><b>water [1]</b> 9/21</p> <p><b>we [44]</b></p> <p><b>we'll [2]</b> 17/6 18/14</p> <p><b>we're [8]</b> 2/4 17/17 24/1 32/3 32/3 32/3 32/6 32/14</p> <p><b>well [12]</b> 6/17 14/12 14/18 15/4 17/13 20/2 21/3 22/19 24/21 25/18 32/5 32/8</p> <p><b>went [1]</b> 10/14</p> <p><b>were [34]</b></p> <p><b>what [15]</b> 3/19 5/22 15/14 16/7 16/16 16/17 18/9 18/14 18/23 18/24 20/1 25/3 26/15 26/24 29/13</p> <p><b>what's [2]</b> 9/11 19/1</p> <p><b>whatever [1]</b> 21/4</p> <p><b>whatsoever [1]</b> 14/25</p> <p><b>when [24]</b> 3/1 5/8 5/23 7/18 7/19 7/21 8/18 9/13 11/16 11/23 11/23 12/6 15/20 15/23 16/5 16/6 18/23 19/24 20/18 23/6 24/13 28/18 29/4 30/11</p> <p><b>whenever [1]</b> 14/20</p>	<p><b>where [5]</b> 8/15 11/7 13/15 14/21 31/25</p> <p><b>whereas [1]</b> 24/21</p> <p><b>which [18]</b> 4/1 6/14 6/15 8/2 8/9 11/2 14/24 15/3 15/4 16/6 16/12 17/4 19/9 20/14 22/25 23/20 25/22 30/1</p> <p><b>while [10]</b> 7/19 18/5 22/13 23/11 25/2 25/24 26/5 27/7 27/14 27/24</p> <p><b>who [8]</b> 2/22 3/3 4/16 9/12 18/16 25/15 25/21 32/11</p> <p><b>Who's [1]</b> 31/14</p> <p><b>why [3]</b> 2/18 2/24 30/2</p> <p><b>will [7]</b> 6/7 14/12 14/14 25/11 27/5 29/1 30/13</p> <p><b>Williams [1]</b> 33/10</p> <p><b>within [4]</b> 11/24 16/2 19/17 31/9</p> <p><b>without [7]</b> 4/19 9/25 11/1 18/7 23/5 24/1 28/16</p> <p><b>WLAB [1]</b> 1/4</p> <p><b>word [3]</b> 25/11 32/22 33/2</p> <p><b>words [2]</b> 20/21 27/20</p> <p><b>work [4]</b> 4/19 4/21 7/22 9/5</p> <p><b>worry [1]</b> 10/8</p> <p><b>would [13]</b> 6/9 11/17 14/1 15/4 17/4 19/3 21/24 24/19 25/3 25/6 26/18 26/25 31/15</p> <p><b>would've [3]</b> 6/1 8/12 15/19</p> <p><b>written [2]</b> 25/18 25/22</p> <p><b>wrote [2]</b> 10/22 10/24</p> <p><b>X</b></p> <p><b>XIV [1]</b> 1/6</p> <p><b>Y</b></p> <p><b>Yeah [5]</b> 7/1 10/9 10/11 14/17 22/13</p> <p><b>year [3]</b> 13/10 28/8 29/6</p> <p><b>years [1]</b> 4/20</p> <p><b>yes [8]</b> 3/11 6/11 10/7 14/17 17/10 17/13 17/16 31/14</p> <p><b>yesterday [2]</b> 14/19 14/20</p> <p><b>yet [1]</b> 22/1</p> <p><b>you [61]</b></p> <p><b>you're [7]</b> 15/14 20/19 30/11 31/10 31/17 32/7 32/20</p> <p><b>you've [2]</b> 6/16 17/12</p> <p><b>your [16]</b> 2/4 2/5 2/19 6/9 6/11 7/1 10/7 14/8 14/12 17/10 20/2 25/9 30/22 31/17 32/7 32/12</p> <p><b>yourself [1]</b> 17/13</p>
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DOCUMENT 7

DOCUMENT 7

  
CLERK OF THE COURT

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Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

TKNR INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an  
individual, and KENNY ZHONG LIN, aka  
KEN ZHONG LIN aka KENNETH ZHONG  
LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, an  
individual, and LIWE HELEN CHEN aka  
HELEN CHEN, an individual and YAN QIU  
ZHANG, an individual, and INVESTPRO  
LLC dba INVESTPRO REALTY, a Nevada  
Limited Liability Company, and MAN  
CHAU CHENG, an individual, and JOYCE  
A. NICKRANDT, an individual, and  
INVESTPRO INVESTMENTS LLC, a  
Nevada Limited Liability Company, and  
INVESTPRO MANAGER LLC, a Nevada  
Limited Liability Company and JOYCE A.  
NICKRANDT, an individual and Does 1  
through 15 and Roe Corporation I - XXX,

Defendants.

AND RELATED CLAIMS.

CASE NO.: A-18-785917-C  
DEPT. NO.: XIV

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

Date of Hearing: March 11, 2021  
Time of Hearing: 9:30 a.m.

This matter being set for hearing before the Honorable Court on March 11, 2021 at 9:30  
a.m., on Defendants' TKNR INC., CHI ON WONG aka CHI KUEN WONG, KENNY ZHONG  
LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, LIWE HELEN CHEN aka HELEN CHEN, YAN QIU  
ZHANG, INVESTPRO LLC dba INVESTPRO REALTY, MAN CHAU CHENG, JOYCE A.  
NICKRANDT, INVESTPRO INVESTMENTS LLC, and INVESTPRO MANAGER LLC,

(collectively, the “Defendants”), Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (“Motion”), by and through their attorney of record, MICHAEL B. LEE, P.C. Plaintiff W L A B INVESTMENT, LLC appeared on and through its counsel of record, DAY & NANCE. Defendants filed the Motion on December 15, 2020. Plaintiff filed an Opposition to the Motion (“Opposition”), Countermotion for Continuance Based on NRCP 56(f) (“56(f) Countermotion”), and Countermotion for Imposition of Monetary Sanctions (collectively, “Countermotion”) on December 29, 2020. On January 20, 2021, Defendants filed a Reply brief. On January 29, 2021, Defendants filed a Supplement (“Supplement”) to Defendants’ Motion for Summary Judgment. The Supplement included the deposition of Frank Miao (“Miao”), the designated person most knowledgeable for Plaintiff, from January 12, 2021. Plaintiff did not file a response to the Supplement. Mr. Miao attended the hearing.

After considering the pleadings of counsel, the Court enters the following order **GRANTING** the Motion, **DENYING** the 56(f) Countermotion, and Countermotion, and **GRANTING** attorneys’ fees and costs to Defendants pursuant to Nevada Rule of Civil Procedure 11:

**Findings of Facts**

**First Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations**

1. 2132 Houston Drive, Las Vegas, NV 89104 (“Property”) was originally constructed in 1954. On or about August 11, 2017, Marie Zhu (“Zhu”), the original purchaser, executed a residential purchase agreement (“RPA”) for the Property. At all times relevant, Ms. Zhu and Mr. Miao, the managing member of Plaintiff, were sophisticated buyers related to “property management, property acquisition, and property maintenance.” The purchase price for the property was \$200,000.

2. Through the RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

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.

3. Ms. Zhu did not cancel the contract related to any issues with the Property.

4. Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition.

*Id.* Under Paragraph 7(D) of the RPA, it provided:

*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.*

5. Ms. Zhu waived any liability of Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection.

6. Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to satisfy her use. Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Brokers" or "Broker Defendants") had "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."

7. On August 2, 2017, TKNR submitted Seller's Real Property Disclosure Form ("SRPDF" or "Seller's Disclosures") timely indicating all known conditions of the Subject Property. In fact, TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." It also disclosed that the minor renovations, such as painting, were conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. Seller also disclosed that it had done construction, modification, alterations, or repairs without permits. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries.

////

Second Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations

8. On or before September 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal, so Ms. Zhu executed a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections:

Please note that seller agree the rest of terms and request to add the below term on the contract:

"Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of \$200k"  
I just send you the docs, please review and sign if you are agree.  
Thank you!

**(Per buyer's request will waive licensed home inspector to do the home inspection)**

9. On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017 and entered into a new Residential Purchase Agreement dated September 5, 2017 ("2<sup>nd</sup> RPA"). As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the close of escrow ("COE" or "Closing"). The COE was set for September 22, 2017.

10. Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve Objections" provision in the RPA, she initialed the corresponding provision in the 2<sup>nd</sup> RPA. This was consistent with Ms. Zhu's instructions to Ms. Chen. Ex. D. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2<sup>nd</sup> RPA that strongly advised to get an inspection done.

11. As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the 2<sup>nd</sup> RPA. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu did not conduct professional inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TKNR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. Through

Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to Plaintiff.

Deposition of Plaintiff's Person Most Knowledgeable – Mr. Miao

12. Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of approximately twenty residential properties. In Clark County alone, Ms. Zhu and Mr. Miao were involved with the purchase of at least eight rental properties starting in 2014.

13. Plaintiff understands the importance of reading contracts.

14. Mr. Miao specified that he understands that he needs to check public records when conducting his due diligence.

15. Plaintiff was a sophisticated buyer who understood the necessity of getting properties inspected.

Requirement to Inspect was Known

16. The terms of the RPA were clear to Plaintiff.

17. As to Paragraph 7(A), Mr. Miao specified that he believed that his inspection and conversations with the tenant constituted the actions necessary to deem the Property as satisfactory for Plaintiff's purchase.

19 · · · A. · Yes. · Based on -- we bought this -- we go  
20 to the inspection, then we also talk to the tenant,  
21 so we thinking this is investment property; right?  
22 So financial it's looking at the rent, it's  
23 reasonable, it's not very high compared with the  
24 surrounding area. · Then also financially, it's good.  
25 · · · · Then I take a look at the -- everything  
Page 164  
· 1 outside. · Good. · So I said, Fine. · That's satisfied.  
· 2 That's the reason I command my wife to sign the  
· 3 purchase agreement.

18. At all times relevant prior to the purchase of the Property, Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections:

· 2 · · · Q. · So at the time when you did your  
· 3 diligence, you had a right to conduct noninvasive,  
· 4 nondestructive inspection; correct?  
· 5 · · · A. · Yes, I did.  
· 6 · · · Q. · And you had the opportunity to inspect all  
· 7 the structures?  
· 8 · · · A. · I check the other one -- on the walk, I  
· 9 don't see the new cracking, so the -- some older  
10 cracking. · I check the neighbor who also have that



1 11 one. I think it's okay; right? Then the –  
2 Supplement at 166:2-11.

3 8 . . . Q . . So you had the right to inspect the  
4 9 structure; correct?  
5 10 . . . A . . Yes, yes, I did that.  
6 11 . . . Q . . You had the right to inspect the roof; is  
7 12 that correct?  
8 13 . . . A . . Yes.  
9 14 . . . Q . . Okay. Did you do that?  
10 15 . . . A . . I forgot. I maybe did that because  
11 16 usually I go to the roof.

12 \* \* \*

13 22 . . . Q . . You had the right to inspect the  
14 23 mechanical system; correct?  
15 24 . . . A . . Right. Yes, yes.  
16 25 . . . Q . . You had the right to inspect the  
17 Page 167  
18 1 electrical systems; correct?  
19 2 . . . A . . I check the electrical system, yes.  
20 3 . . . Q . . You had a right to inspect the plumbing  
21 4 systems; correct?  
22 5 . . . A . . Yes.  
23 6 . . . Q . . You had the right to inspect the  
24 7 heating/air conditioning system; correct?  
25 8 . . . A . . Yes.

26 \* \* \*

27 3 . . . Q . . And then you could have inspected any  
28 4 other property or system within the property itself;  
5 correct?  
6 . . . A . . Yes, yes.

18 *Id.* at 167:8-16, 167:22-25-168:1-11, 168:25-169:1-6.

19 19. Prior to the purchase, Mr. Miao was always aware that the Seller “strongly  
20 recommended that buyer retain licensed Nevada professionals to conduct inspections”:

21 13 . . . Q . . "It is strongly recommended that buyer  
22 14 retain licensed Nevada professionals to conduct  
23 15 inspections."  
24 16 . . . A . . Yes.  
25 17 . . . Q . . Yeah. So you were aware of this  
26 18 recommendation at the time --  
27 19 . . . A . . Yeah, I know.

28 *Id.* at 176:13-19.

26 20. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that  
27 limited potential damages that could have been discovered by an inspection:

28 ////

18 · · · Q · · Okay · So going back to paragraph 7D --

19 · · · A · · Yeah.

20 · · · Q · · -- right, after the language that's in  
21 italics, would you admit that because it's in the  
22 italics, it's conspicuous, you can see this  
23 language?

24 · · · A · · Yeah · Yeah.

25 · · · Q · · Okay · Then it goes on to say, "If any  
Page 179

· 1 inspection is not completed and requested repairs  
· 2 are not delivered to seller within the due diligence  
· 3 period, buyer is deemed to have waived the right to  
· 4 that inspection and seller's liability for the cost  
· 5 of all repairs that inspection would have reasonably  
· 6 identified had it been conducted."

· 7 · · · · · Did I read that correctly?

· 8 · · · A · · Yes, yes.

· 9 · · · Q · · Okay · So we'll eventually get to the  
10 issues that, you know, Ms. Chen identified that you  
11 wanted corrected in the emails or text messages.

12 · · · · · Is that fair to say that those are the  
13 only issues that you deemed needed to be resolved to  
14 go forward with the purchase?

15 · · · A · · Yeah · After that time, yes.

16 *Id.* at 179:18-25-180:1-15.

17 21. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were conspicuous  
18 and understandable, and it was a standard agreement similar to the other agreements he had used  
19 in purchasing the other properties in Clark County, Nevada. *Id.* at 198:19-25-199:1-2, 200:3-15.

20 *Mr. Miao Does Inspections for Plaintiff Although he is not a Licensed, Bonded Professional*  
21 *Inspector*

22 22. As to all the properties purchased by Plaintiff, Mr. Miao always does the  
23 inspections and does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25,  
24 140:5-10. Based on his own belief, he does not believe that a professional inspection is  
25 necessary for multi-tenant residential properties. *Id.* at 120:6-9 (his own understanding), 120:16-  
26 25 (second-hand information he received).

27 23. Notably, he does not have any professional license related to being a general  
28 contractor, inspector, appraiser, or project manager. *Id.* at 123:5-16 (no professional licenses),  
123:23-24 (no property management license), 169:7-14 (no licensed or bonded inspector),  
171:23-25 (have not read the 1952 Uninformed Building Code), 172:17-19 (not an electrician),

1 172:23-25-1-16 (no general contractor license or qualified under the intentional building code),  
2 174:13-23 (not familiar with the international residential code).

3 24. Mr. Miao has never hired a professional inspector in Clark County, *Id.* at 140:19-  
4 21, so he does not actually know what a professional inspection would encompass here. *Id.* at  
5 143:9-13, 144:8-19.

6 25. The main reason Plaintiff does not use a professional inspector is because of the  
7 cost. *Id.* at 147:2-7.

8 26. On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at  
9 158:1-25-159:1-12. During that time, he admitted that he noticed some issues with the Property  
10 that were not up to code, finishing issues, GFCI outlets, and electrical issues:

11 16. . . . A. . . I looked at a lot of things. . For example,  
12 17 like, the -- I point out some drywall is not  
13 18 finished; right? . And the -- some of smoke alarm is  
14 19 not -- is missing and -- which is law required to  
15 20 put in for smoke alarm. . Then no carbon monoxide  
16 21 alarm, so I ask them to put in.  
17 22. . . . . Then in the kitchen, lot of electrical,  
18 23 the outlet is not a GFCI outlet, so I tell them, I  
19 24 said, You need to change this GFCI. . Right now this  
20 25 outlet is not meet code. . You probably have problem.

21 *Id.*

22 27. Similarly, he also specified that there was an issue with exposed electrical in Unit  
23 C. *Id.* at 175:10-24. He also noted that there could have been a potential asbestos issue as well.  
24 *Id.* at 160:7-12.

25 28. Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, *Id.*  
26 at 249:22-25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269:13-22  
27 (aware of slab cracks), which were open and obvious. *Id.* at 270:14-24.

28 29. Mr. Miao admitted that he could also have seen the dryer vent during his  
inspection. *Id.* at 269:23-25.

30. As to those issues, Mr. Miao determined that the aforementioned issues were the  
only issues that TKNR needed to fix after his inspection. *Id.* at 171:2-9 (was only concerned  
about the appraisal), *Id.* at 219:13-25-221:1-2.

1           31.     Moreover, Mr. Miao received the SRPDF prior to the purchase of the Property.  
2     Id. at 201:22-25. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not  
3     resided in the Property, and there were issues with the heating systems, cooling systems, and that  
4     there was work done without permits. *Id.* at 201:1-25-202:1-12. Similarly, it was aware that the  
5     Property was 63 years old at that time, *Id.* at 204:4-7, and all the work was done by a handyman  
6     other than the HVAC installation. *Id.* at 205:14-25, *Id.* at 134:14-25 (understands the difference  
7     between a handyman and a licensed contractor), 243:2 ("Yes. They did by the handyman, yes.").

8           32.     Despite these disclosures, Mr. Miao never followed up:

9                   23 · · · Q. · Okay. · So when they disclosed that there  
10                   24 was construction and modification, alterations,  
11                   25 and/or repairs made without State, City, County  
                    Page 205  
12                   · 1 building permits, which was also work that was done  
13                   · 2 by owner's handyman, did you ever do any follow-up  
14                   · 3 inquiries to the seller about this issue?  
15                   · 4 · · · A. · No, I didn't follow up. ·

16     *Id.* at 204:23-25-205:1-4.

17           33.     However, Mr. Miao also admitted that he could have followed up on the issues  
18     identified in the SRPDF that included the HVAC and the permits:

19                   10 · · · Q. · Under the disclosure form --  
20                   11 · · · A. · Yeah.  
21                   12 · · · Q. · -- like, where it specified that there  
22                   13 were heating system/cooling system issues that  
23                   14 they're aware of, that you could have elected to  
24                   15 have an inspection done at that time; correct?  
25                   16 · · · A. · Yes.

26     *Id.* at 206:10-16.

27                   15 · · · Q. · Okay. · So as your attorney said, you could  
28                   16 have obtained a copy of the permits at any time?  
29                   17 Yes?  
30                   18 · · · A. · Yes.  
31                   19 · · · Q. · Okay. · And then it's fair to say that just  
32                   20 put you on notice of the potential permit issue;  
33                   21 correct?  
34                   22 · · · A. · Yes.  
35                   23 · · · Q. · It also put you on notice of the issues of  
36                   24 everything that's basically specified on page 38;  
37                   25 correct?  
38                   Page 209  
39                   1 · · · A. · Yes.

*Id.* at 209:15-25-210:1, 245:22-25 (could have obtained permit information in 2018).

34. Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence:

22 . . . Q. . Okay. So you understand that for more  
23 information during the diligence process, you should  
24 contact the local building department?

25 . . . A. . Yes.

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\* \* \*

5 . . . Q. . -- it provides you with the address of the  
6 building and safety department; is that correct?

7 . . . A. . Yes.

8 . . . Q. . And the office hours; is that correct?

9 . . . A. . Yes.

10 . . . Q. . And it also provides you with a phone  
11 number; correct?

12 . . . A. . Yes.

13 . . . Q. . And this is information or resources that  
14 you could have used at any time related to finding  
15 information about the permits of the property;  
16 correct?

17 . . . A. . Yes.

18 . . . Q. . And this would have been true prior to the  
19 purchase of the building; correct?

20 . . . A. . Yes.

21 . . . Q. . And this would also have been true at the  
22 time you read the disclosure that specified that  
23 some of the improvements or some of the disclosures  
24 had been done without a permit; right?

25 . . . A. . Yes.

*Id.* at 260:22-25, 261:5-25.

35. Plaintiff was also on notice of the potential for mold and the requirement to get a mold inspection:

5 . . . Q. . Okay. And it says, "It's the buyer's duty  
6 to inspect. Buyer hereby assumes responsibility to  
7 conduct whatever inspections buyer deems necessary  
8 to inspect the property for mold contamination.

9 . . . . . "Companies able to perform such  
10 inspections can be found in the yellow pages under  
11 environmental and ecological services."

12 . . . . . I read that correctly? Yes?

13 . . . A. . Yes.

14 . . . Q. . Okay. And then you elected not to get a  
15 mold inspection; correct?

16 . . . A. . Yeah.

1 *Id.* at 213:5-16.

2 ·5· · · Q· ·So you relied upon your own determination  
3 ·6 related to the potential mold exposure of the  
4 ·7 property; correct?  
5 ·8· · · A· ·Yes.  
6 ·9· · · Q· ·Okay· And you elected to proceed with  
7 purchasing it without a professional mold  
8 inspection; correct?  
9 ·12· · · A· ·Yes.

10 *Id.* at 216:5-12.

11 36. Despite actual knowledge of these issues, Plaintiff did not elect to have a  
12 professional inspection done. 160:17-20.

13 37. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to  
14 protect itself by getting an inspection:

15 ·2· · · Q· ·If we go to page 40 --  
16 ·3· · · A· ·Mm-hmm.  
17 ·4· · · Q· --- there's a bunch of Nevada statutes  
18 ·5 here.  
19 ·6· · · A· ·Mm-hmm.  
20 ·7· · · Q· ·If you look at NRS 113.140 --  
21 ·8· · · A· ·Mm-hmm.  
22 ·9· · · Q· --- do you see that at the top of the page?  
23 10 "Disclosure of unknown defects not required· Form  
24 11 does not constitute warranty duty of buyer and  
25 12 prospective buyer to exercise reasonable care."  
26 13 · · · · · Do you see that?  
27 14 · · · A· ·Yes.  
28 15 · · · Q· ·Okay· So this disclosure form gave Marie  
16 Zhu, your wife, a copy of the Nevada law that was  
17 applicable to the sale of the property; correct?  
18 18 · · · A· ·Yeah.  
19 19 · · · Q· ·Okay· And under NRS 113.1403, it  
20 specifies, "Either this chapter or Chapter 645 of  
21 the NRS relieves a buyer or prospective buyer of the  
22 duty to exercise reasonable care to protect  
23 himself."  
24 24 · · · · · Did I read that correctly?  
25 25 · · · A· ·Yes.

26 *Id.* at 209:2-25.

27 38. Plaintiff assumed the risk of failing to exercise reasonable care to protect itself.

28 *There Is No Dispute a Professional Inspection Could Have Revealed the Alleged Issues*

39. The alleged defects identified by both parties' experts could have been discovered

1 at the time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had  
2 access to the entire building. *Id.* at 250:22-25. He had access to the attic and looked at it. *Id.* at  
3 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

4 ·6· · · Q· ·Okay· So you walked through the property  
5 ·7 with him at the time he did his inspection; correct?  
6 ·8· · · A· ·Right.  
7 ·9· · · Q· ·Okay· During that time, did he inspect  
8 10 any areas that -- that you did not have access to in  
9 11 2017?  
10 12· · · A· ·Yes· He didn't go to anything I didn't  
11 13 inspect during 2017 too.  
12 14· · · Q· ·So he inspected the same areas you  
13 15 inspected?  
14 16· · · A· ·Yes, yes.

15 *Id.* at 291:6-16.

16 40. Notably, Plaintiff's expert did not do any destructive testing, so the expert's  
17 access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5.

18 41. Mr. Miao admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-  
19 5, 293:18-23, and the plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as  
20 his in 2017.

21 42. Mr. Miao also admitted that the pictures attached to Plaintiff's expert report were  
22 areas that he could have inspected in 2017. *Id.* at 302:6-13.

23 43. Additionally, Mr. Miao accompanied Defendants' expert during his inspection.  
24 *Id.* at 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas  
25 inspected by Defendants' expert. *Id.* at 321:1-6.

26 44. Mr. Miao agreed with Defendants' expert that the alleged conditions identified by  
27 Plaintiff's expert were "open and obvious":

28 22· · · Q· ·And then the second line down, the first  
23 sentence begins, "Items complained about in the Sani  
24 report were open and obvious in the roof area, attic  
25 area, and on the exterior/interior of the property."  
26 Page 318  
27 \* \* \*  
28 ·3· · · Q· ·Do you agree with this statement?  
·4· · · A· ·Yes.

*Id.* at 318:22-25-319:3-4.

45. He also agreed with Defendants' expert's finding that there was no noticeable sagging in the roof. *Id.* at 333:20-24.

46. Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards:

17 . . . Q. . . -- midway down the first complete sentence  
18 says, "The Sani report does not recognize prior  
19 conditions in existence before any work took place  
20 by defendants."

21 . . . . . Do you agree with this statement?

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\* \* \*

3 . . . . . Yes, yes.

4 BY MR. LEE:

5 . . . Q. . . You agree with that? . . Okay.

6 . . . A. . . Agree.

*Id.* at 321:17-21 – 322:3-6. This would have also included any issues with the dryer vent and ducts, *Id.* at 325:3-20, as he recognized that most rentals do not include washer / dryer units. *Id.* at 326:7-25-327:1-9.

*No Permits Required for Cosmetic Work by TKNR*

47. No dispute exists that TKNR did not need permits for the interior work it had done to the Property. Mr. Miao admitted the following:

5 . . . Q. . . Number 5 says, "Painting, papering,  
6 tiling, carpeting, cabinets, countertops, interior  
7 wall, floor or ceiling covering, and similar finish  
8 work."

9 . . . . . Do you see that?

10 . . . A. . . Yes.

11 . . . Q. . . So you agree that no permits are required  
12 for any of these types of work; correct?

13 . . . A. . . Yes.

*Id.* at 262:5-13.

1 Window Replacements where no structural member -- no  
2 structural member is altered or changed," that does  
3 not need a permit either; right?

4 . . . A. . . Yes.

*Id.* at 265:1-4.

17 . . . Q. . . Okay. . . If you turn the page to 82,  
18 Plumbing Improvements, no permits required to repair



19 or replace the sink; correct?  
20 . . . A. . . Yes.  
21 . . . Q. . . To repair or replace a toilet?  
22 . . . A. . . Yes.  
23 . . . Q. . . To repair or replace a faucet?  
24 . . . A. . . Yes.  
25 . . . Q. . . Resurfacing or replacing countertops?  
Page 264  
26 . . . A. . . Yes.  
27 . . . Q. . . Resurfacing shower walls?  
28 . . . A. . . Yes.  
29 . . . Q. . . Repair or replace shower heads?  
30 . . . A. . . Yes.  
31 . . . Q. . . Repair or replace rain gutters and down  
32 spouts?  
33 . . . A. . . Yes.  
34 . . . Q. . . Regrouting tile?  
35 . . . A. . . Yes.  
36 . . . Q. . . And a hose bib, whatever that is.  
37 . . . A. . . Water freezer. . . It's, like, for the  
38 filtration of the water.  
39 . . . Q. . . Okay. . . And then for the mechanical, no  
40 permits required for portable heating appliances;  
41 correct.  
42 . . . A. . . Yes.  
43 . . . Q. . . For portable ventilation appliances?  
44 . . . A. . . Yes.  
45 . . . Q. . . Or portable cooling units; correct?  
46 . . . A. . . Yes.  
47 . . . Q. . . And for portable evaporative coolers  
48 installed in windows; correct?  
49 . . . A. . . Yes.

*Id.* at 264:17-25-265:1-24.

*Plaintiff Does not Disclose the Alleged Issues to Potential Tenants*

48. Since the date it purchased the Property, Plaintiff has always been trying to lease  
it. *Id.* at 330:19-25-331:1-2. According to Mr. Miao, the landlord must provide safe housing for  
the tenant:

19 . . . . . Then also in according to the law, and  
20 they said it very clearly, because this is  
21 residential income property, right, rental income  
22 property, multi-family, we need -- landlord need  
23 provide housing and well-being and -- for the  
24 tenant. . . The tenant is not going to do all this  
25 inspection. . . They can't. . . The burden is on the  
Page 120  
26 landlord to make sure all these building is safe and  
27 in good condition.  
28

1 *Id.* at 120:16-25-121:1-2, 140:10-14. However, they have not done any of the repairs listed by  
2 Plaintiff's expert. *Id.* at 331:3-12. This illustrates the lack of merit of Plaintiff that there are  
3 underlying conditions with the Property.

4 49. Moreover, Plaintiff does not provide any notice to the tenants about its expert's  
5 report or this litigation:

6 ··· Q. · All right. · In terms of tenants -- renting  
7 out the units to any tenants, do you ever provide  
8 them with a copy of the Sani report?

9 ··· A. · No.

10 ··· Q. · Do you ever provide them with any of the  
11 pleadings or the first amended complaint, second  
12 amended complaint, the complaint itself?

13 ··· A. · No.

14 \* \* \*

15 ··· Q. · Okay. · So basically, you just tell them,  
16 There's this. · You can inspect the unit if you want;  
17 is that it?

18 ··· A. · Yeah. · And also we need to tell is a lot  
19 Page 337

20 1 of things report that we don't need to go to the  
21 inside the building. · It's wall cracking. · It's  
22 outside. · You can see.

23 ··· Q. · Okay. · So it's open and obvious for them?

24 ··· A. · Yeah. · You can see always outside.

25 *Id.* at 337:6-13, 337:22-25-338:1-5.

26 50. This illustrates the lack of merit of Plaintiff's claims, proven that it has done  
27 nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does  
28 not tell prospective tenants about them.

*Squatters or Tenants Could Have Damaged the Property*

51. Mr. Miao admitted that multiple third parties could have potentially damaged the  
Property. The Property has a historic problem with squatters during the time that Plaintiff owned  
it:

12 ··· Q. · Do you generally have a squatter problem  
13 with the property?

14 ··· A. · Yes. · As a matter of fact, today I just  
15 saw the one text message that said one -- some  
16 people go to my apartment.

*Id.* at 110:12-16. He also admitted that tenants could have damaged the Property while they

1 were occupying it:

2 ·4· · · Q· ·Okay· So the tenant in this context would  
3 ·5 have damaged the unit at the time that you owned it;  
4 ·6 is that fair?

5 ·7· · · A· ·Maybe· Yes.

6 ·8· · · Q· ·Okay· So some of the -- so the damage  
7 ·9 that was to the water heater system, could the  
8 10 tenant have damaged that as well?

9 11· · · A· ·Yes.

10 12· · · Q· ·And then he could have damaged the cooler  
11 13 pump and the valve as well; is that correct?

12 14· · · A· ·Yes.

13 15· · · Q· ·Okay· Then on 122, these are all issues  
14 16 that the tenant could have damaged; is that correct?

15 17· · · A· ·Yes.

16 18· · · Q· ·And then the same through for 145; is that  
17 19 right?

18 20· · · A· ·Yes.

19 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.

20 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

21 *No Evidence That Defendants Knew of Alleged Conditions*

22 52. Plaintiff's case is based on assertions that Defendants knew about the alleged  
23 conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows  
24 Defendants knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes).

25 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at  
26 253:17-19.

27 54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged  
28 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no  
evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at  
301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues  
with the duct work when they owned the Property. *Id.* at 314:5-19. He also recognized the  
deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to  
when TKNR owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 –  
322:3-6.

55. Mr. Miao recognized that a 63-year-old property could have issues that were not  
caused by Defendants. *Id.* at 324:6-15. This would have also included any issues with the dryer

vent and ducts, *Id.* at 325:3-20, and when the duct became disconnected. *Id.* at 329:1-16.

56. Plaintiff did not identify any discovery illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the Property that they had not already disclosed on Seller's Disclosures.

57. Notably, during Mr. Miao's due diligence period, he spoke with the tenants of the Property. *Id.* at 163:12-25-164:1-6. This included a conversation with the long-term tenant of Unit A, who still resides in the Property to this day. *Id.* At that time, the tenant reported being very happy with the Property and had no complaints. *Id.* In fact, the tenant reported still being very happy with the Property. *Id.* at 170:7-9. This illustrates that there is no basis that Defendants should have been aware of any of the issues when Mr. Miao, a self-professed expert, did not even know about them following his inspection.

*No Basis for Claims for RICO and/or Related to Flipping Fund*

58. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property. *Id.* at 223:15-25.

20 · · · Q. · · Yeah. · So there's no way that you relied  
21 upon any flipping fund since it would have been  
22 closed at this time; right?  
23 · · · A. · · Yeah.

*Id.* at 274:20-23. He also admitted that he never received any pro forma, private placement information, calculations of profit and loss, capital contribution requirements, member share or units, or any such information about the Flipping Fund. *Id.* at 277:7-16.

*Cost of Repairs*

59. Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been \$102,873.00. *Id.* at 307:6-22. However, Plaintiff's expert opined that the cost of repair would have been \$600,000, although he did not provide an itemized cost of repair. *Id.* at 334:17-21.

*Allegations in the Second Amended Complaint*

60. On November 23, 2020, Plaintiff filed its Second Amended Complaint ("SAC").

Based on the admissions of Mr. Miao and the waivers related to the RPA and the 2<sup>nd</sup> RPA, these allegations illustrate the overall frivolous nature of this action and why Rule 11 sanctions are appropriate:

25. TKNR failed to disclose one or more known condition(s) that materially affect(s) the value or use of the Subject Property in an adverse manner, as required by NRS Chapter 113, in a particular NRS 113.130.

\* \* \*

27. Factual statements from the August 7, 2017 Seller Real Property Disclosure Form (SRPDF) are set forth in Paragraph 31 and the subsections thereof state whe (sic) the disclosures were either inadequate or false. The SRPDF states that it was prepared, presented and initialed by Kenny Lin.

\* \* \*

29. Since the Subject Property is a residential rental apartment, to protect tenants and consumers, the applicable local building code requires all renovation, demolition, and construction work must be done by licensed contractors with permits and inspections to ensure compliance with the Uniform Building Code [UBC].

\* \* \*

31. Defendants Lin, Investpro, as TKNR's agent, TKNR, Wong and INVESTPRO MANAGER LLC, as the true owner of the Subject Property, did not 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, as itemized below.

a. SRPDF stated that Electrical System had no problems or defects. The fact is that many new electric lines were added and many old electric lines were removed by Investpro Manager LLC . The swamp coolers that were removed were supplied by 110 volt power supply lines. Investpro Manager LLC first added one 220v power supply line for one new 5 ton heat pump package unit on one roof top area for the whole building for Unit A. Unit B and Unit C. Investro (sic) Manager, LLC then removed the one year old 5 ton heat pump packaged unit from the roof top with power supply lines and added two new 220v power supply lines for two new 2 ton heart pump package units, one each for Unit B and Unit C.

Inestpro (sic) Manager, LLC then added one new 110 volt power supply line for two window cooling units for Unit A. The electrical system load for Unit A was increased due to the installation of two new cooling units and required 100 amp service, but the electrical service was not upgraded to 100 amp service from the existing 50 amp service. Failure to upgrade the electrical service caused the fuses to be blown out multiple times during the cooling seasons of 2018. The tenants in Unit A could not use air conditioning units in cooling seasons of 2018, causing Unit A to be uninhabitable until the Unit A electrical supply panel was upgraded to 100 amp service.

All the electrical supply line addition and removal work

1 were performed without code required electrical load  
2 calculation, permits and inspections. To save money,  
3 minimize flipping cost, minimize flipping time, maximize  
4 flipping fund profits, Investpro Manager LLC used  
unlicensed and unskilled workers to do the electrical work  
and used low quality materials used inadequate electrical  
supply lines.

5 Further, to save money, minimize flipping cost, minimize  
6 flipping time, maximize flipping fund profits, Investpro  
7 Manager LLC used unskilled workers who did not know  
the UBC requirements to do the electrical work This  
substandard work may lead electrical lines to overheat and  
cause fires in the attic when tenant electrical load is high.

8 Further, to save money, minimize flipping cost, minimize  
9 flipping time, maximize flipping fund profits, Investpro  
10 Manager LLC used unskilled workers who did not know  
the UBC requirements to do the electrical work. The outlets  
near the water faucets in kitchens, bathrooms and laundry  
areas were not GFCI outlets as required by the UBC.

11 b. SRPDF stated that Plumbing System had no problems  
12 or defects

13 The fact is that that within two years prior to the sale to  
14 Plaintiff, Investpro Manager LLC removed and plugged  
swamp cooler water supply lines without UBC required  
permits and inspections. To save money, minimize flipping  
cost, minimize flipping time, and maximize flipping fund  
profits, Investpro Manager LLC used unlicensed and  
unskilled workers who just plugged high pressure water  
supply lines at rooftop instead of at ground level and who  
did not remove the water supply lines on top of the roof,  
inside the attic and behind the drywall. In cold winter, the  
high pressure water line which was left inside the building  
may freeze and break the copper line and lead flooding in  
the whole building.

18 Further, to save money, minimize flipping cost, minimize  
19 flipping time, and maximize flipping fund profits, Investpro  
20 Manager LLC used unlicensed and unskilled workers to  
remove and plug natural gas lines for the natural gas wall  
furnaces without UBC required permits and inspections.

21 Further, to save money, minimize flipping cost, minimize  
22 flipping time, and maximize flipping fund profits, Investpro  
23 Manager LLC used unlicensed and unskilled workers with  
little knowledge of natural gas pipe connection  
requirements. The unlicensed and unskilled workers used  
the wrong sealing materials and these sealing materials may  
degrade and lead to natural gas leaks and accumulation  
inside the drywall and the attic which may cause an  
explosion or fire.

24 Further, to save money, minimize flipping cost, minimize  
25 flipping time, and maximize flipping fund profits, Investpro  
26 Manager LLC used unlicensed and unskilled workers to  
27 completely renovate all three bathrooms in the Subject  
Property without UBC required permits and inspections.  
28 Some faucets and connections behind tile walls and drywall

1 leak and are causing moisture conditions behind tile walls  
2 and drywalls.

3 c. SRPDF stated that Sewer System and line had no  
4 problems or defects.

5 The subject property was built in 1954. Clay pipes were  
6 used at that time for sewer lines. Before the sale, within  
7 few days after tenants moved into apartment Unit B, they  
8 experienced clogged sewer line which caused the  
9 bathrooms to be flooded. The tenants called Investpro to  
10 ask them to fix the clogged pipes and address the flooding  
11 issues. After this report, Investpro asked tenants to pay to  
12 hire plumber to snake the sewer line. After tenants  
13 threatened to call the Las Vegas code enforcement office,  
14 to save money, minimize flipping cost, minimize flipping  
15 time, and maximize flipping fund profits, Investpro used  
16 unlicensed and unskilled workers to snake the clay sewer  
17 pipes. Licensed contractors must be hired to snake sewer  
18 pipes as code required. This approach to clearing the clog  
19 may break the clay sewer pipes and cause future tree root  
20 grown into sewer lines and clogs in sewer lines.

21 d. SRPDF stated that Heating System had problems or  
22 defects.

23 No full explanation was provided, as required. Investro  
24 (sic) Manager, LLC disabled natural gas heating system  
25 without UBC required permits and inspections. To save  
26 money, minimize flipping cost, minimize flipping time, and  
27 maximize flipping fund profits, Investpro Manager LLC  
28 used unlicensed and unskilled workers with little  
knowledge about natural gas pipe connection requirements.  
They used the wrong sealing materials and these sealing  
materials may degrade and lead to a natural gas leak inside  
the drywall and the attic and may cause an explosion or  
fire.

Further, Investpro Manager LLC installed two electrical  
heat pump heating systems without UBC required permits  
and inspections for Unit B and Unit C. The Unit A does not  
have an electrical heat pump heating system nor a natural  
gas wall furnace heating system now. Unit A has to use  
portable electrical heaters.

29 e. SRPDF stated that the Cooling System had problems or  
30 defects

31 No full explanation was provided, as required. Investro  
32 (sic) Manager, LLC removed old swamp cooler systems  
33 without UBC required permits and inspections. To save  
34 money, minimize flipping cost, minimize flipping time, and  
35 maximize flipping fund profits, Investpro used unlicensed  
36 and unskilled workers to disconnect water supply lines,  
37 cover swamp cooler ducting holes, and disconnect 110V  
38 electrical supply lines.

Further, as early as March of 2016, Investro Manager, LLC  
hired Air Supply Cooling to install one five ton new heat  
pump package unit with new rooftop ducting systems on

one roof area to supply cooling and heating air to the whole building consisting of Unit A, Unit B and Unit C without UBC required weight load and wind load calculations, permits and inspections. The five ton heat pumps package unit was too big, too heavy and had control problems. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC also used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with ducting system without UBC required permits and inspections. All of this work was done without UBC required structural calculation, permits and inspections.

Further, in early June, 2017, Investro Manager, LLC hired The AIRTEAM to install two new two ton heat pump package units, one each for Unit B and Unit C. Invespro (sic) Manager, LLC also used unlicensed and unskilled workers to install two window cooling units in Unit A's exterior walls. All of the above work was done without UBC required permits and inspections.

Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investro Manager, LLC did not replace the old, uninsulated swamp cooler ducts with new insulated HVAC ducts as the UBC required. This resulted in the heat pump package units being overloaded and damaged during cooling season because cool air was heated by uninsulated attic hot air before delivering the cooled air to the rooms. The old, uninsulated swamp cooler ducts were also rusted and leaked due to high moisture air from the bathroom vent fans and the clothes washer/dryer combination unit exhaust vents. The heat pumps would run all the time but still could not cool the rooms.

f. SRPDF stated that Smoker detector had no problems or defects  
During Plaintiff's inspection at August 10, 2017 afternoon, some smoke detectors were missing.

g. SRPDF stated that no Previous or current moisture conditions and or water damage.

To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investro Manager, LLC used unlicensed and unskilled workers to vent high moisture bathroom fan exhaust and washer/dryer combination unit exhaust into the ceiling attic area instead of venting outside the building roof without UBC required permits and inspections. The improper ventings caused high moisture conditions in ceiling attic and water damages in ceiling and attic. The high moisture conditions in the ceiling attic destroyed ceiling attic insulations, damaged the roof decking, damaged roof trusses and damaged roof structure supports.

To saving money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to



complete renovation to all three bathrooms without UBC required permits and inspections. Some faucets and connections behind tile walls and drywall leaks and caused moisture conditions behind tile walls and drywalls.

h. SRPDF stated that there was no structure defect. Investpro Manager LLC added one new five ton heat pump package unit with ducting systems on the one roof top area for the whole building in early March, 2016 without UBC required weight load and wind load calculation, permits and inspections. Due to the five ton heat pump package unit being too big, too heavy and having control problems to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investro (sic) Manager, LLC used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with part of the ducting system again without UBC required permits and inspections. Investpro Manager LLC added two new two ton heat pump package units on the two roof top areas for Unit B and Unit C with new ducting systems without UBC required weight load and wind loan calculation, permits and inspections.

Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to open two new window holes on exterior walls for two window cooling units in Unit A without UBC required structure calculation, permits and inspections. This work damaged the building structure. Further, the moisture condition behind tile walls and drywall due to faucets leaking damaged the building structure.

Further, Investpro Manager LLC's unlicensed and unskilled workers used the space between two building support columns as a duct to vent high moisture exhaust from the washer/dryer combination unit exhaust vent from Unit A without UBC required permits and inspections and this damaged the building structure.

The recent inspection of the exterior wall found multiple cracks which indicates structural problems caused by the heavy load on the roof.

i. SRPDF marked Yes and NO for construction, modification, alterations or repairs made without required state, city or county building permits.

Defendants Lin, Investpro, as TKNR's agent, TKNR, and Wong did not provide detailed explanations. All renovation, demolition, and construction work was done by Investpro Manager LLC using unlicensed, and unskilled workers without UBC required weight load and wind load calculations, permits and inspections.

j. SRPDF stated that there were not any problems with the roof.

The roof of the Subject Property was damaged by changing

1 roof top HVAC units and ducting systems multiple times  
2 from October, 2015 to June, 2017. Investpro Manager LLC  
3 removed the existing swamp coolers from roof top and  
4 covered the swamp coolers ducting holes. Investpro  
5 Manager LLC added a five ton heat pump package unit  
6 with a new ducting system on one roof top area in March,  
7 2016. Investpro the removed the one year old five ton heat  
8 pump package unit with part of the ducting system from the  
9 one roof top area in June, 2017. Then Investpro Manager  
10 LLC added two two ton heat pump package units on the  
11 two roof top areas in June, 2017. The work damaged the  
12 roof of the Subject Property to such an extent that when it  
13 rains the roof leaks. All of this renovation, demolition, and  
14 construction work was done without UBC required weight  
15 load and wind load calculations, permits and inspections  
16 and this damaged the building roof structure.

17 k. SRPDF stated that no there were not any fungus or  
18 mold problems.

19 To save money, minimize flipping cost, minimize flipping  
20 time, and maximize flipping fund profits, Investpro  
21 Manager LLC vented the bathroom high moisture fans and  
22 the washer/dryer combination unit exhaust vents into the  
23 ceiling and attic without venting outside of the roof. All of  
24 this renovation, demolition, and construction work was  
25 done without UBC required permits and inspections and  
26 this damaged the building structure. After the purchase of  
27 the Subject Property, Plaintiff discovered black color  
28 fungus mold was found inside ceiling and attic.

l. SRPDF stated that there were not any other conditions  
or aspects of the property which materially affect its value  
or use in an adverse manner.

i. Problems with flooring.

To save money, minimize flipping cost, minimize  
flipping time, and maximize flipping fund profits,  
Investpro Manager LLC used unlicensed and  
unskilled workers to lay low quality cheap ceramic  
tiles on the loose sandy ground rather than on a  
strong, smooth, concrete floor base. Within few  
months after tenants moving into the Subject  
Property, mass quantities of floor ceramic tiles  
cracked and the floor buckled. These cracked  
ceramic tiles may cut tenants' toes and create a trip  
and fall hazard. These are code violations had to be  
repaired before the units could be rented to tenants.  
The plaintiff has to spend lot money to replace all  
ceramic tile floor in Unit C with vinyl tile floor.

ii. Problems with the land/foundation.

Within few months after tenants moved into the  
Subject Property in 2017, large quantities of floor  
tiles cracked and the floor buckled. This indicated  
that there may have foundation problems likely due  
to heavy loads by the new HVAC systems and the  
venting of moisture into the ceiling and attic. Too  
much weight loads on the walls caused exterior wall

cracking.

iii. Problems with closet doors.

To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to install closet doors with poor quality for Unit C, all closet doors fell down in three months after tenant move into Unit C.

61. As to 31(a), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Incredibly, Mr. Miao admitted that he was the person who asked for TKNR to install the GFCI outlets, so he was clearly aware of this issue as well. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

62. As to 31(b), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the plumbing system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

63. As to 31(c), Mr. Miao admitted that the Seller's Disclosures disclosed the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff

1 could have inspected at or before the time it had originally purchased the Property. Notably, Mr.  
2 Miao admitted that no evidence showed that Defendants were aware of any of these issues.

3 64. As to 31(d), Mr. Miao admitted that the Seller’s Disclosures disclosed issues with  
4 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,  
5 he specified that he did his inspection and/or that any issues with the heating system were “open  
6 and obvious” that a reasonable, professional inspection could have discovered in 2017. Despite  
7 these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified  
8 that this was a condition that Plaintiff could have inspected at or before the time it had originally  
9 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants  
10 were aware of any of these issues.

11 65. As to 31(e), Mr. Miao admitted that the Seller’s Disclosures disclosed issues with  
12 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,  
13 he specified that he noted issues with the heating and cooling system and items not up to code at  
14 the time that he did his inspection and/or that any issues with the heating and cooling system  
15 were “open and obvious” that a reasonable, professional inspection could have discovered in  
16 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr.  
17 Miao specified that this was a condition that Plaintiff could have inspected at or before the time  
18 it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed  
19 that Defendants were aware of any of these issues.

20 66. As to 31(f), this allegation illustrates that Plaintiff had knowledge before  
21 purchasing the Property, and the overall emphasis on the failure to obtain a professional  
22 inspection of the Property prior to purchasing it.

23 67. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture  
24 waiver, and understood its affirmative duty to have an inspection done prior to the purchase of  
25 the Property. He also admitted that the Seller’s Disclosures disclosed the use of a  
26 handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he  
27 specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the  
28 Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,

1 Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the  
2 time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence  
3 showed that Defendants were aware of any of these issues.

4 68. As to 31(h), Mr. Miao admitted that the Seller's Disclosures disclosed issues with  
5 the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao  
6 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and  
7 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified  
8 that this was a condition that Plaintiff could have inspected at or before the time it had originally  
9 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants  
10 were aware of any of these issues.

11 69. As to 31(i), this allegation illustrates the prior knowledge that Plaintiff had before  
12 purchasing the Property, and the overall emphasis on the failure to obtain a professional  
13 inspection of the Property prior to purchasing it. Mr. Miao admitted that he should have  
14 followed up related to the permit issue prior to Plaintiff purchasing the Property.

15 70. As to 31(j), Mr. Miao admitted that the Seller's Disclosures disclosed issues with  
16 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,  
17 he specified that he noted issues were "open and obvious" that a reasonable, professional  
18 inspection could have discovered in 2017. Mr. Miao agreed that there was no noticeable sagging  
19 on the roof. Despite these issues, Plaintiff chose not to have a professional inspection.  
20 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or  
21 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no  
22 evidence showed that Defendants were aware of any of these issues.

23 71. As to 31(l), Mr. Miao admitted that the Seller's Disclosures disclosed issues with  
24 the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao  
25 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and  
26 obvious at the time that Plaintiff purchased the Property in 2017. Mr. Miao noted that this  
27 condition could have been inspected at or prior to the Property's purchase. Mr. Miao  
28 acknowledged there was no evidence that Defendants were aware of these issues.

Plaintiffs Did Not Reply on Broker Agents

72. As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

Mr. Miao Agreed with Defendants' Expert

73. On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate Professor of Construction Management at UNLV and overqualified expert, conducted an inspection of the Property. At that time, as noted earlier, Mr. Miao walked the Property with Professor Opfer. Supplement at 320:31-25.

74. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious:

[n]ote that the Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.

*Id.* at 318:22-25-319:3-4.

75. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not conduct destructive testing, so the same alleged conditions that the expert noted would have been made by an inspector at the time of the purchase. *Id.* at 291:1-5.

76. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did "not recognize prior conditions in existence before any work took place by the Defendants." *Id.* at 321:17-21 – 322:3-6.

Conclusions of Law

1. Summary judgment is appropriate when the pleadings, depositions, answers to

interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exist, and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Substantive law controls whether factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

2. The Nevada Supreme Court has held that the non-moving party may not defeat a motion for summary judgment by relying “on gossamer threads of whimsy, speculation and conjecture.” *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court has also made it abundantly clear when a motion for summary judgment is made and supported as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon general allegations and conclusions, but must by affidavit or otherwise set forth specific facts demonstrating the existence of a genuine factual issue. *Id.*

3. Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment, or partial summary judgment. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The court may rely upon the admissible evidence cited in the moving papers and may also consider other materials in the record as well. *Id.* at 56(c). “If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.” *Id.* at 56(g).

4. The pleadings and proof offered in a Motion for Summary Judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still “bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at

1 1031. “To successfully defend against a summary judgment motion, ‘the nonmoving party must  
2 transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts  
3 that show a genuine issue of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev.  
4 2008) (quoting *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

5 5. The non-moving party bears the burden to set forth specific facts demonstrating  
6 the existence of a “genuine” issue for trial or have summary judgment entered against him.  
7 *Collins v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).  
8 When there is no genuine issue of material fact and the non-moving party provides no admissible  
9 evidence to the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US  
10 317, 322 (1986). When a motion for summary judgment is made and supported, an adversary  
11 party who does not set forth specific facts showing a genuine issue to be resolved at trial may  
12 have a summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99  
13 Nev. 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev.  
14 414, 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

15 6. “Under NRS Chapter 113, residential property sellers are required to disclose any  
16 defects to buyers within a specified time before the property is conveyed.” *Nelson v. Heer*, 163  
17 P.3d 420, 425 (Nev. 2007) (citing NRS 113.140(1)). “NRS 113.140(1), however, provides that a  
18 seller is not required to ‘disclose a defect in residential property of which [she] is not aware.’ A  
19 ‘defect’ is defined as “a condition that materially affects the value or use of residential property  
20 in an adverse manner.” *Id.* (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

21 [a]scribing to the term “aware” its plain meaning, we determine  
22 that the seller of residential real property does not have a duty to  
23 disclose a defect or condition that “materially affects the value or  
24 use of residential property in an adverse manner,” if the seller does  
25 not realize, perceive, or have knowledge of that defect or  
26 condition. Any other interpretation of the statute would be  
unworkable, as it is impossible for a seller to disclose conditions in  
the property of which he or she has no realization, perception, or  
knowledge. The determination of whether a seller is aware of a  
defect, however, is a question of fact to be decided by the trier of  
fact.

27 *Id.* at 425 (citations omitted). Thus, in the context where the plaintiff cannot demonstrate an  
28 omitted disclosure that caused damage, the seller is entitled to summary judgment as a matter of



1 law. *Id.* at 426.

2 7. Generally, “[n]ondisclosure by the seller of adverse information concerning real  
3 property . . . will not provide the basis for an action by the buyer to rescind or for damages when  
4 property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,  
5 552 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer  
6 either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs.,*  
7 *Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general  
8 rule foreclosing liability for nondisclosure when property is purchased as-is does not apply when  
9 the seller knows of facts materially affecting the value or desirability of the property which are  
10 known or accessible only to [the seller] and also knows that such facts are not known to, or  
11 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at  
12 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

13 8. A buyer waives its common law claims of negligent misrepresentation, fraudulent  
14 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would  
15 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close  
16 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*  
17 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).  
18 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is  
19 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on  
20 common law claims. *Id.* (citation omitted).

21 The terms and conditions of the purchase agreement do not create  
22 a duty to disclose. Rather, these disclosures are required by NRS  
23 Chapter 113, which sets forth specific statutory duties imposed by  
24 law independent of the purchase agreement's terms and conditions.  
Additionally, the terms of the purchase agreement do not require  
[the seller] to do anything other than provide the listed disclosures.

25 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at \*5 (Nev. App. Nov. 25,  
26 2020).

27 9. Nevada Revised Statute § 113.140 clearly provides that the Seller Disclosures  
28 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to

1 exercise reasonable care to protect himself. Nevada Revised Statute § 113.140 also provides that  
2 the Seller does not have to disclose any defect that he is unaware of. Similarly, Nevada Revised  
3 Statute § 113.130 does not require a seller to disclose a defect in residential property of which  
4 the seller is not aware. A completed disclosure form does not constitute an express or implied  
5 warranty regarding any condition of residential property. Nevada Revised Statute § 113.140(2).  
6 Chapters 113 and “645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of  
7 the duty to exercise reasonable care to protect himself or herself.” *Id.* at § 113.140(2).

8 10. Summary Judgment is appropriate as a matter of law on all of Plaintiff’s claims.  
9 It is undisputed that the alleged deficiencies were either disclosed by Defendants, could have  
10 been discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu / Mr.  
11 Miao had notice of them at the time Plaintiff purchased the Property, or were unknown to  
12 Defendants at the time of the sale.

13 11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all  
14 known conditions of the Subject Property. TKNR disclosed that “3 units has (sic) brand new AC  
15 installed within 3 months,” and further that the “owner never resided in the property and never  
16 visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was  
17 conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. TKNR also  
18 disclosed that it was aware of issues with the heating and cooling systems, there was  
19 construction, modification, alterations, or repairs done without permits, and lead-based paints.

20 12. On August 11, 2020, through the original RPA, Ms. Zhu waived her due  
21 diligence, although she had a right to conduct inspections:

22 During such Period, Buyer shall have the right to conduct, non-  
23 invasive/non-destructive inspections of all structural, roofing,  
24 mechanical, electrical, plumbing, heating/air conditioning,  
25 water/well/septic, pool/spa, survey, square footage, and any other  
property or systems, through licensed and bonded contractors or  
other qualified professionals.

26 13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures,  
27 Plaintiff did not inspect the Subject Property, request additional information and/or conduct any  
28 reasonable inquires. Ms. Zhu cancelled the original RPA, Ex. E, because of an issue related to

her financing, unrelated to the Seller's Disclosures. Notably, she included the explicit waiver of the inspections, which included her initialing the provision that she had not done in the original RPA. Ms. Zhu informed her agent to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller's Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to Plaintiff.

14. Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. Thus, Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

15. As to the waivers, Paragraph 7(D) of the both the RPA and 2<sup>nd</sup> RPA expressly provided:

*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.*

Nevertheless, Ms. Zhu waived her inspection related to the original RPA and the 2<sup>nd</sup> RPA, reinforced further by actually initialing next to the waiver in the 2<sup>nd</sup> RPA. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection. Thereby, Ms. Zhu waived any liability of

1 Defendants for the cost of all repairs that inspection would have reasonably identified had it been  
2 conducted. The RPA and the 2<sup>nd</sup> RPA clearly indicated that Ms. Zhu was purchasing the  
3 Property “AS-IS, WHERE-IS without any representations or warranties.”

4 16. Additionally, Ms. Zhu also agreed that the Brokers Defendants had “no  
5 responsibility to assist in the payment of any repair, correction or deferred maintenance on the  
6 Property which may have been revealed by the above inspections, agreed upon by the Buyer and  
7 Seller or requested by one party.” Paragraph 7(D) of the RPA.

8 17. Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the  
9 purchase of approximately twenty residential properties. In Clark County alone, Ms. Zhu and  
10 Mr. Miao were involved with the purchase of at least eight rental properties starting in 2014.

11 18. Mr. Miao understood the importance to check public records when conducting  
12 due diligence.

13 19. Plaintiff was a sophisticated buyer aware of the necessity of property inspection.

14 20. At all times relevant prior to the purchase of the Property, Plaintiff had access to  
15 inspect the entire property and conduct non-invasive, non-destructive inspections.

16 21. Prior to the purchase, Mr. Miao was aware that the Seller “strongly recommended  
17 that buyer retain licensed Nevada professionals to conduct inspections”.

18 22. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that  
19 limited potential damages that could have been discovered by an inspection.

20 23. As to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and  
21 understandable, and it was a standard agreement similar to the other agreements he had used in  
22 purchasing the other properties in Clark County, Nevada.

23 24. On or about August 10, 2017, Mr. Miao inspected Property. During that time,  
24 Mr. Miao noted issues with the Property that were not up to code, finishing issues, GFCI outlets<sup>1</sup>,  
25 and electrical issues.

26 25. Mr. Miao acknowledged there was an issue with exposed electrical in Unit C as

27 <sup>1</sup> The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the frivolous nature  
28 of the pleading since Mr. Miao requested TKNR to install these for Plaintiff.

1 well as possible asbestos.

2 26. Mr. Miao noted that there were cracks in the ceramic floor tiles and visible cracks  
3 in the concrete foundation, which were open and obvious.

4 27. Mr. Miao admitted that he could also have seen the dryer vent during his  
5 inspection.

6 28. Mr. Miao admitted that he could have followed up on the issues identified in the  
7 SRPDF that included the HVAC and the permits.

8 29. Similarly, Mr. Miao should have contacted the local building department as part  
9 of his due diligence.

10 30. Plaintiff was also on notice of the potential for mold and the requirement to get a  
11 mold inspection.

12 31. Despite actual knowledge of these issues, Plaintiff did not elect to have a  
13 professional inspection done.

14 32. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to  
15 protect itself by getting an inspection.

16 33. Plaintiff assumed the risk of failing to exercise reasonable care to protect itself.

17 34. The alleged defects identified by both parties' experts could have been discovered  
18 at the time of the original purchase as they were "open and obvious".

19 35. Plaintiff failed to differentiate between conditions prior to when TKNR owned the  
20 Property, while it owned it, and those afterwards.

21 36. No dispute exists that TKNR did not need permits for the interior work it had  
22 done to the Property.

23 37. Plaintiff has always been trying to lease the Property despite not doing any of the  
24 repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are  
25 underlying conditions with the Property.

26 38. Moreover, Plaintiff does not provide any notice to the tenants about its expert's  
27 report or this litigation. This illustrates the lack of merit of Plaintiff's claims and proves that it  
28 has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as

1 it does not tell prospective tenants about them.

2 39. Mr. Miao admitted that multiple third parties could have potentially damaged the  
3 Property.

4 40. Plaintiff did not present any evidence related to Defendants' alleged knowledge  
5 other than his personal belief and speculation.

6 41. Mr. Miao admitted that he has no evidence Defendants knew about the alleged  
7 moisture conditions. Additionally, he also admitted that there is no evidence that Defendants  
8 knew about the alleged issues with the plumbing system. He also admitted that he did not know  
9 if Defendants knew about the alleged issues with the duct work when they owned the Property.  
10 He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between  
11 conditions prior to when TKNR owned the Property, while it owned it, and those afterwards.

12 42. Mr. Miao also recognized that a 63-year-old property could have issues that were  
13 not caused by Defendants.

14 43. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the  
15 Property.

16 44. Plaintiff admittedly amplified its alleged damages by more than 6x, and then  
17 trebled the damages, and have run up egregious attorneys' fees for this frivolous action. These  
18 are undisputed facts that prove abuse of process as a matter of law given the known issues with  
19 the Property and Plaintiff's waivers related to the inspections. Plaintiff waived the inspections  
20 and purchased the property "as is". This shows that Plaintiff had no interest in having a  
21 professional inspection done. It shows the behavior of the Plaintiff related to the entire case.

22 45. Plaintiff was encouraged to inspect the property, and they did not do it. It was a  
23 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff  
24 was strongly encouraged to conduct the inspection, and they did not want to.

25 46. This is a 2018 case. Plaintiff has not been diligent in conducting discovery.

26 Rule 56(f) is not a shield that can be raised to block a motion for  
27 summary judgment without even the slightest showing by the  
28 opposing party that his opposition is meritorious. A party invoking  
its protections must do so in good faith by affirmatively  
demonstrating why he cannot respond to a movant's affidavits as

otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.

See *Bakerink v. Orthopaedic Associates, Ltd.*, 581 P.2d 9, 11 (Nev. 1978) (quoting *Willmar Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975)).

47. Plaintiff failed to articulate the alleged discovery that it would likely have. Additionally, Plaintiff already opposed enlarging discovery by specifying that any extension of discovery would prejudice it, indicating that it had no need for additional discovery and that Plaintiff would largely rest upon the findings of its expert. See Plaintiff's Opposition to Motion to Enlarge Discovery. Also, Plaintiff's counsel's declaration in the Opposition illustrated that he had additional discussions with Plaintiff's expert related to the MSJ, but Plaintiff's expert did not proffer any additional opinions to counter the Motion. See *Opp.* at p. 18:7-9.

48. As a matter of law, Plaintiff is precluded from seeking damages from Defendants because of her failure to inspect. "Nondisclosure by the seller of adverse information concerning real property . . . will not provide the basis for an action by the buyer to rescind or for damages when property is sold 'as is.' " *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993). Moreover, "[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase." *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015).

49. Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property "as-is" within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable care to protect himself. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself." *Id.* at § 113.140(2).

1           50. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent  
2 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would  
3 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close  
4 of escrow, and the information regarding Property was reasonably accessible to the buyer.  
5 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d  
6 104, 111 (Nev. 2018).

7           51. Summary judgment is appropriate under NRS § 113.140(1) (seller is not required  
8 to disclose a defect in residential property of which she is not aware). Under this statute,  
9 “[a]scribing to the term ‘aware’ its plain meaning, . . . the seller of residential real property does  
10 not have a duty to disclose a defect or condition that ‘materially affects the value or use of  
11 residential property in an adverse manner,’ if the seller does not realize, perceive, or have  
12 knowledge of that defect or condition.” *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007). Thus,  
13 as Plaintiff cannot demonstrate an omitted disclosure that caused damage, Defendants are  
14 entitled to summary judgment as a matter of law. *Id.* at 426.

15           52. Under NRS § 113.140(1) (seller is not required to disclose a defect in residential  
16 property of which she is not aware), *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007), and NRS §  
17 645.259(2), Defendants are entitled to Summary Judgment on Plaintiff’s claims for (1) Recovery  
18 Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent  
19 Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under  
20 NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil  
21 Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and  
22 Fair Dealing]. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance,  
23 (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

24           53. Eighth Judicial District Court Rule 2.20(e) provides that, “[f]ailure of the  
25 opposing party to serve and file written opposition may be construed as an admission that the  
26 motion and/or joinder is meritorious and a consent to granting the same.” Simply filing an  
27 opposition does not relieve a party of its duty to actually oppose the issues raised in the motion.  
28 See *Benjamin v. Frias Transportation Mgt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019) (unpublished



1 disposition).

2 54. The Opposition failed to address the Motion’s arguments related to summary  
3 judgment in favor of Defendants on Plaintiff’s claims for: (7) RICO; (10) Fraudulent  
4 Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process.  
5 Additionally, Plaintiff fails to provide any meaningful or competent opposition to the Motion’s  
6 argument for summary judgment as to Plaintiff’s claims against the Broker Defendants. As there  
7 is no Opposition provided to those arguments made in the Motion, this court should find that  
8 those arguments are meritorious and grant the request as to those unopposed issues.

9 55. Pursuant to Nevada Rule of Civil Procedure 11(b), by presenting to the court a  
10 pleading or other paper, an attorney or unrepresented party certifies: (1) it is not being presented  
11 for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the  
12 cost of litigation, (2) the claims and other legal contentions are warranted by existing law or by a  
13 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing  
14 new law, (3) the factual contentions have evidentiary support, and (4) the denials of factual  
15 contentions are warranted on the evidence or.

16 56. “If, after notice and a reasonable opportunity to respond, the court determines that  
17 Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law  
18 firm, or party that violated the rule or is responsible for the violation. Absent exceptional  
19 circumstances, a law firm must be held jointly responsible for a violation committed by its  
20 partner, associate, or employee.” NEV. R. CIV. PRO. 11(c).

21 57. “On its own, the court may order an attorney, law firm, or party to show cause  
22 why conduct specifically described in the order has not violated Rule 11(b).” *Id.* at 11(c)(3). “A  
23 sanction imposed under this rule must be limited to what suffices to deter repetition of the  
24 conduct or comparable conduct by others similarly situated. The sanction may include  
25 nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and  
26 warranted for effective deterrence, an order directing payment to the movant of part or all of the  
27 reasonable attorney fees and other expenses directly resulting from the violation.” *Id.* at  
28 11(c)(4).

1           58. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which  
2 includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation;  
3 or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be  
4 imposed for frivolous actions. *Marshall v. District Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

5           59. A frivolous claim is one that is “both baseless and made without a reasonable and  
6 competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting  
7 *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*  
8 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of  
9 whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine  
10 whether the pleading is “well grounded in fact and is warranted by existing law or a good faith  
11 argument for the extension, modification or reversal of existing law”; and (2) whether the  
12 attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.  
13 A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter  
14 repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

15           60. Furthermore, a court may award attorneys’ fees to a prevailing party when it finds  
16 that the claim was brought or maintained without reasonable ground or to harass the prevailing  
17 party. NEV. REV. STAT. § 18.010(2)(b). In other cases, a court may award attorneys’ fees “when  
18 it finds that the opposing party brought or maintained a claim without reasonable grounds.”  
19 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). “The court shall liberally  
20 construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate  
21 situations.” *Id.* The Nevada Legislature explained that:

22                   [i]t is the intent of the Legislature that the court award attorney’s  
23 fees pursuant to this paragraph and impose sanctions pursuant to  
24 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
25 situations to punish for and deter frivolous or vexatious claims and  
26 defenses because such claims and defenses overburden limited  
judicial resources, hinder the timely resolution of meritorious  
claims and increase the costs of engaging in business and  
providing professional services to the public.

27 *Id.* “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any  
28 credible evidence at trial.’” *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)

1 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

2 77. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The  
3 findings of fact are incorporated by reference.

4 78. Plaintiff's claim is clearly frivolous: (1) where the pleading was not "well  
5 grounded in fact and is warranted by existing law or a good faith argument for the extension,  
6 modification or reversal of existing law", and (2) Plaintiff's attorney continued to make frivolous  
7 claims. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff  
8 and its counsel, which includes an award attorneys' fees to Defendants.

9 79. Alternatively, the elements of an abuse of process claim are: "(1) an ulterior  
10 purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of  
11 the legal process not proper in the regular conduct of the proceeding." *Posadas v. City of Reno*,  
12 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). Abuse of process can arise from both civil and  
13 criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice,  
14 want of probable cause, and termination in favor of the person initiating or instituting  
15 proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit*  
16 *Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts  
17 § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse  
18 of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

19 80. Under either Rule 11, Plaintiff brought and maintained this action without  
20 reasonable ground. NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law illustrate  
21 that Plaintiff brought or maintained this claim without reasonable grounds, which justifies an  
22 award of attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

23 81. The court intends to award to the Defendants the reasonable expenses, including  
24 attorneys' fees and costs, incurred for defending this lawsuit under Rule 11. This sanction is  
25 limited to what suffices to deter repetition of the conduct or comparable conduct by others  
26 similarly situated.

27 Based on the foregoing, the Court GRANTS Defendants Motion, DENIES the  
28 Counterclaim, and GRANTS attorneys' fees and costs to Defendants pursuant to Nevada Rule of

Civil Procedure 11.

**IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED** that the Motion is **GRANTED**.

**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that the Countermotion, including the 56(f) Countermotion, is **DENIED**. This is a 2018 case. Discovery ended October 30, 2020. This Court will not agree to enlarge discovery.

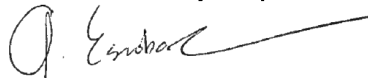
**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that Defendants are awarded attorneys' fees and costs pursuant to Rule 11. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order.

**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that this is a final order related to the claims and counterclaim. This Court directs entry of a final judgment of all claims.

**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that any outstanding or pending discovery is quashed as moot.

**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that any trial dates and/or calendar calls are vacated as moot.

Dated this 7th day of April, 2021



THE HON. ADRIANA ESCOBAR  
DISTRICT COURT JUDGE

158 436 3E2D 40F2  
Adriana Escobar  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 W L A B Investment LLC,  
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

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9 TKNR Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/7/2021

15 Brinley Richeson

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16 Steven Day

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17 Michael Matthis

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19 Nikita Burdick

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20 Michael Lee

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21 Bradley Marx

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22 Frank Miao

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23  
24  
25 If indicated below, a copy of the above mentioned filings were also served by mail  
26 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 4/8/2021

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