

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN B. CHILDS

Petitioner,

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
Jun 01 2021 12:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO

**BENJAMIN B. CHILDS' PETITION
FOR WRIT OF MANDAMUS
OR WRIT OF PROHIBITION**

VOLUME 1

Benjamin B. Childs, Esq.
Nevada Bar No. 3946
318 S. Maryland Parkway
Las Vegas, NV 89101
Telephone: 702-251-0000
Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

VOLUME 1

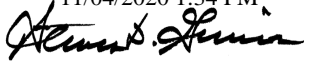
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Email chain commending April 2, 2021 between counsel and Ariana Reed, law clerk for Respondent Court, with Proposed Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure 11(B)

186 - 192

Amended Order Granting Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment filed April 7, 2021 [with Notice of Entry of Order]

193 - 250


CLERK OF THE COURT

1 NIKITA R. BURDICK ESQ. (NSB 13384)
2 **BURDICK LAW PLLC**
3 6625 S. Valley View Blvd. Suite 232
4 Las Vegas, Nevada 89118
5 Telephone: (702) 481-9207
6 Nburdick@Burdicklawnv.com
7 Attorney for Defendants

8
9 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 W L A B INVESTMENT, LLC,

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

12 Plaintiff,

13 vs.

14 **ORDER GRANTING DEFENDANTS'**
15 **MOTION TO ENLARGE DISCOVERY**
16 **(FIRST REQUEST) ON AN ORDER**
17 **SHORTENING TIME**

18 TKNR INC., a California Corporation, and
19 CHI ON WONG aka CHI KUEN WONG, an
20 individual, and KENNY ZHONG LIN, aka
21 KEN ZHONG LIN aka KENNETH ZHONG
22 LIN aka WHONG K. LIN aka CHONG
23 KENNY LIN aka ZHONG LIN, an
24 individual, and LIWE HELEN CHEN aka
25 HELEN CHEN, an individual and YAN QIU
26 ZHANG, an individual, and INVESTPRO
27 LLC dba INVESTPRO REALTY, a Nevada
28 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.

Date of Hearing: October 22, 2020
Time of Hearing: 9:30 a.m.

20 This matter being set for hearing before the Honorable Court on
21 October 22, 2020 at 9:30 a.m., on Defendants' TKNR INC., CHI ON WONG aka CHI KUEN
22 WONG, KENNY ZHONG LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka
23 WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN, LIWE HELEN CHEN aka
24 HELEN CHEN, YAN QIU ZHANG, INVESTPRO LLC dba INVESTPRO REALTY, MAN
25 CHAU CHENG, JOYCE A. NICKRANDT, INVESTPRO INVESTMENTS LLC, and
26 INVESTPRO MANAGER LLC, (collectively, the "Defendant"), Motion to Enlarge Discovery
27 (First Request) ("Motion") on an Order Shortening Time, by and through their attorney of
28 record, BURDICK LAW PLLC. Plaintiff W L A B INVESTMENT, LLC appeared on and

1 through its counsel of record, Benjamin B. Childs, Esq. New counsel for Defendants, MICHAEL
2 B. LEE, P.C., also appeared, and made the argument for Defendants, specifying that he would file
3 a substitution of counsel for Defendants today.

4 Upon review of the pleadings, argument of counsel and for good cause shown, this
5 Honorable Court Grants the Motion as follows:

6 1. There is an "inherent power of the judiciary to economically and fairly manage
7 litigation." *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1029 (2004). NRCP 16(b)(4)
8 provides that a scheduling order for trial may be modified by the court for good cause.

9 2. Further, EDCR 2.35(a) allows requests to extend discovery if in writing and
10 supported by a showing of good cause for the extension and be filed no later than 21 days before
11 the discovery cut-off date or any extension thereof. A request made beyond the period specified
12 above shall not be granted unless the moving party, attorney or other person demonstrates that
13 the failure to act was the result of excusable neglect.

14 3. Defendants bring the instant motion due to their failure to make initial expert
15 disclosures by the October 15, 2020, deadline. Pursuant to the scheduling order entered on June
16 26, 2020, the discovery cut-off date is October 30, 2020. Defendants filed their Motion on
17 October 15, 2020, which was not more than 21 days before the discovery cut-off date. Here, the
18 Court finds that Defendants' failure to seek an extension of the discovery deadline in a timely
19 manner was the result of excusable neglect. Moreover, Defendant demonstrated good cause
20 warranting this Court to extend discovery, namely that due at least in part the current COVID-19
21 pandemic, the parties have not conducted any depositions. Additionally, Defendants failed to
22 designate a rebuttal expert due to excusable neglect.

23 4. Based on the foregoing, the Court GRANTS Defendant's Motion.

24 **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED** that the Motion is
25 GRANTED. For good cause shown, the discovery deadlines in this matter shall be enlarged as
26 follows:

27 ////

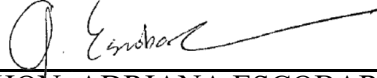
28 ////

Discovery Deadline	Date
Close of Discovery	March 2, 2021
Last Day to File Motion to Amend Pleadings or Add Parties	December 14, 2020
Initial Expert Disclosures due	November 30, 2020
Rebuttal Expert Disclosures due	December 4, 2020
Deadline to file Dispositive Motions	January 25, 2021
Deadline to file Motions in Limine	45 Days before trial

Additionally, the Calendar Call will be reset to April 1, 2021, and the trial stack will be moved to the April 19, 2021.

Dated this 9 day of February, 2020.

Dated this 4th day of November, 2020


 HON. ADRIANA ESCOBAR
 District Court Judge, Department

10A 8EB 17C7 9E00
 Adriana Escobar
 District Court Judge

Date: October 26, 2020.

Respectfully Submitted By:

Approved of as to Form and Content By:

BURDICK LAW PLLC

MICHAEL B. LEE, P.C.

/s/ Nikita Burdick
 NIKITA R. BURDICK ESQ. (NSB 13384)
 6625 S. Valley View Blvd. Suite 232
 Las Vegas, Nevada 89118
 Telephone: (702) 481-9207
Nburdick@Burdicklawnv.com
 Attorney for Defendants

/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
 Attorneys for Defendants

Date: October 29, 2020.

Approved of as to Form and Content By:

/s/ Benjamin Childs
 BENJAMIN B. CHILDS, ESQ. (NSB 3946)
 318 S. Maryland Parkway
 Las Vegas, Nevada 89101
 Tel - (702) 251.0000
 Fax - 702.385.1847
ben@benchilds.com
 Attorney for Plaintiff

From: Ben Childs <ben@benchilds.com>
Sent: Thursday, October 29, 2020 5:52 PM
To: mike@mblnv.com
Cc: 'Michael Matthis'; 'Nikita Burdick'; 'Abigail McGowan'
Subject: Re: WLAB v. Lin et al. - Order Enlarging Discovery

I frankly spaced it then got really busy when I saw this email.
2:17 - the motion was not filed more than 21 days before the discovery cutoff.

But with that change you can affix my electronic signature. Tomorrow is a holiday, but I'll be back on Monday if you want me to sign it.

Thanks

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, NV 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com

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From: mike@mblnv.com <mike@mblnv.com>
Sent: Thursday, October 29, 2020 4:21 PM
To: Ben Childs <ben@benchilds.com>
Cc: 'Michael Matthis' <matthis@mblnv.com>; 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>
Subject: RE: WLAB v. Lin et al. - Order Enlarging Discovery

Any response to the proposed order? I will just put "no response" if I do not hear from you by the end of today.

CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at mike@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: mike@mblnv.com <mike@mblnv.com>
Sent: Monday, October 26, 2020 3:50 PM
To: 'Ben Childs' <ben@benchilds.com>

Cc: 'Michael Matthis' <matthis@mblnv.com>; 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>

Subject: WLAB v. Lin et al. - Order Enlarging Discovery

Ben:

Please find the proposed Order granting the discovery deadlines. If acceptable, please provide a response if we can affix your e-signature or please print, sign, and return. If not, please track any changes you make to the document.

Thank you for your attention to this matter. As always, please contact me with any questions, comments, or concerns.

MICHAEL B. LEE, ESQ.

mike@mblnv.com



1820 E. Sahara Avenue, Suite 110, Las Vegas, NV 89104

Direct Line – 702.731.0244 Main Line: 702.477.7030 Fax: 702.477.0096

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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

8
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 Order Granting 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: 11/4/2020

15 Katherine MacElwain

kmacelwain@nevadafirm.com

16 Michael Matthis

matthis@mblnv.com

17 John Savage

jsavage@nevadafirm.com

18 BENJAMIN CHILDS

ben@benchilds.com

19 Nikita Burdick

nburdick@burdicklawnv.com

20 Michael Lee

mike@mblnv.com

21 Bradley Marx

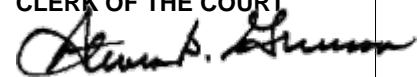
brad@marxfirm.com

22 Nikita Burdick

nburdick@burdicklawnv.com

23 Abigail McGowan

amcgowan@burdicklawnv.com



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mike@mblnv.com
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 (“2nd RPA”). 2nd 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 2nd 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 2nd 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 2nd 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 2nd 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

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

7 **A. Legal Standards**

8 1. Summary Judgment

9 Summary judgment is appropriate when the pleadings, depositions, answers to
10 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate
11 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a
12 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).
13 Substantive law controls whether factual disputes are material and will preclude summary
14 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
15 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the
16 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*
17 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

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

25 Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment,
26 or partial summary judgment. “The court shall grant summary judgment if the movant shows
27 that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a
28 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 website¹ 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

¹ <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 2nd 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 2nd 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 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd 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 2nd 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.*

////

1 NRS 645.252 sets forth the duties of real estate agents. Based on the Seller's
2 Disclosures, the RPA, and the 2nd 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
22 the Due Diligence Period, Buyer is deemed to have
23 waived the right to that inspection and Seller's
24 liability for the cost of all repairs that inspection
25 would have reasonably identified had it been
26 conducted, except as otherwise provided by law.
- 27 8. Ms. Zhu waived any liability of Defendants for the cost of all repairs that
28 inspection would have reasonably identified had it been conducted.
9. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid
removal inspection, mechanical inspection, soil inspection, and structural
inspection.
10. Under Paragraph 7(F), it was Ms. Zhu’s responsibility to inspect the Property
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 2nd 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 2nd 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 2nd RPA that strongly advised to get an inspection done.
16. Ms. Zhu waived any inspections related to the purchase of the Property in the 2nd 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 2nd 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.

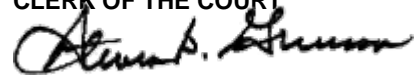
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9 Telephone: (702) 477.7030
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11 mike@mblnv.com
12 Attorney for Defendants

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.
Nevada State Bar No. 3946
318 S. Maryland Parkway
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/s/Mindy Pallares
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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 ///

ARGUMENT OF COUNSEL IS NOT EVIDENCE

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

HISTORICAL SUMMARY

October , 2015

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

August 11, 2017

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

December, 2017

Purchase of Subject Property completed. Plaintiff continued to use

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 2nd 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 In normal transactions involving residential rental building, the buyer only
26 inspects the common spaces because units occupied. The burden is on seller
27 because of warranty of habitability and safety issues for tenants, which are
28 ongoing. This is obviously for consumer protection of both the tenants and the
29 general public. This is also why owners/managers of rental properties have to
30 use licensed contractors ALL the time to do work and to pull permits to do the
31

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 2nd 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 5. Shall disclose to the client material facts of which the
20 licensee has knowledge concerning the transaction;
21

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

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

PLAIN MEANING OF STATUTE

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

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

DISCLOSURES REQUIRED BY STATUTE

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

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

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

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

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

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

(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable

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
as revealed by the seller or the seller's agent without
further recourse.

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

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

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

16 4. If a sale or intended sale of residential property is exempted from the
17 requirements of subsection 1 pursuant to paragraph (a) of subsection 2,
18 the trustee and the beneficiary of the deed of trust shall, not later than
19 at the time of the conveyance of the property to the purchaser of the
residential property, provide written notice to the purchaser of any
20 defects in the property of which the trustee or beneficiary, respectively,
is aware.

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

23 4. Except as otherwise provided in subsection 5, if a seller conveys
24 residential property to a purchaser without complying with the
25 requirements of NRS 113.130 or otherwise providing the purchaser or
the purchaser's agent with written notice of all defects in the property
26 of which the seller is aware, and there is a defect in the property of
27 which the seller was aware before the property was conveyed to the
purchaser and of which the cost of repair or replacement was not
28 limited by provisions in the agreement to purchase the property, the
29 purchaser is entitled to recover from the seller treble the amount
30 necessary to repair or replace the defective part of the property,
together with court costs and reasonable attorney's fees. An action to
31 enforce the provisions of this subsection must be commenced not later
32

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 2nd
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.¹

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 ¹ 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 2nd Amended Complaint filed November 23,
26 2020 [the 2nd 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 inquiries
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.

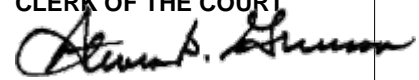
15 (4) The result: whether the attorney was successful and what benefits were
16 derived.

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)



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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

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

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 **A. Overview**

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

28 ////

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

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

7 Finally, sanctions are also justified against Plaintiff. Astonishingly, Plaintiff is claiming
8 \$16.25 Million in damages related to the purchase of the Property (original purchase price -
9 \$200,000). Incredibly, the original demand by Plaintiff for settlement was \$10,000, despite the
10 perjured declaration of Miao denying this in the support of the Opposition. Regardless of
11 whether Plaintiff or Plaintiff's counsel, who have charged Plaintiff approximately \$64,000 for
12 this matter so far, are responsible for the violation of Rule 11 in prosecuting this frivolous claim,
13 Rule 11 permits sanctions against both, which should include an award of attorneys' fees and
14 costs to Defendants.

15 2. Opposition and Countermotions

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

28 ////

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

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

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

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

- 7 (1) “3 units has (sic) brand new AC installed within 3 months,”
8 (2) the “owner never resided in the property and never visited the property.”
9 (3) minor renovations, such as painting, was conducted by the Seller’s “handyman”
10 (4) Seller had done construction, modification, alterations, or repairs without permits.

11 *Id.* at Ex. C.

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

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

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

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

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

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

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

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

3 **Exhibit G – Opfer Expert Report**

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

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

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

21 **Exhibit I – Lin Declaration**

22 Exhibit I sets forth that no Defendant was aware of any issues with any structural,
23 electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues
24 with the Property before the time of the sale to Ms. Zhu. *Id.* at Ex. I. Nor was any Defendant
25 aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof,
26 fungus/mold, flooring, and/or foundation issues with the Property at the time of the sale to Ms.
27 Zhu. *Id.* Also, that any known defects were disclosed in seller’s disclosures, including TKNR
28 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 ROGs

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

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

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

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

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

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

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

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

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

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

5 “The complaints outlined in the 2nd Amended Complaint were
6 hidden behind drywall.” *Id.*

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

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

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

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

1 information concerning real property. . . will not provide the basis for an action by the buyer to
2 rescind or for damages when property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109
3 Nev. 628, 633, 855 P.2d 549, 552(1993). Moreover, “[l]iability for nondisclosure is generally not
4 imposed where the buyer either knew of or could have discovered the defects prior to the
5 purchase.” *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d
6 511, 518 (2015). A buyer waives its common law claims of negligent misrepresentation,
7 fraudulent or intentional misrepresentation, and/or unjust enrichment when it expressly agreed
8 that it would carry the duty to inspect the property and ensure that all aspects of it were suitable
9 prior to close of escrow, and the information was reasonably accessible to the buyer. *Frederic*
10 *and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111
11 (Nev. 2018).

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

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

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28 ////

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

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

5 “Rule 56(f) is not a shield that can be raised to block a motion for
6 summary judgment without even the slightest showing by the
7 opposing party that his opposition is meritorious. A party invoking
8 its protections must do so in good faith by affirmatively
9 demonstrating why he cannot respond to a movant's affidavits as
10 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.”

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

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

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

26 The Opposition's argument related to buyer and seller being represented by agents from
27 the same brokerage firm is a red herring and is not relevant to the Motion's request for summary
28 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.*

////

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

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

3 **III. CONCLUSION**

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

6 Dated this 21 day of January, 2021.

7 MICHAEL B. LEE, P.C.

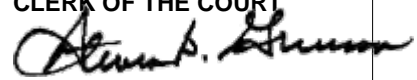
8
9 /s/ Michael Lee
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CERTIFICATE OF MAILING

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:

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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

SUPPLEMENT 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

1 through their counsel of record, Michael B. Lee, P.C., hereby files this Supplement
2 (“Supplement”) to Defendants’ Motion for Summary Judgment (“Motion”). This Supplement is
3 made on the deposition of Frank Miao (“Miao”), the designated 30(b)(6) witness for Plaintiff W
4 L A B INVESTMENT, LLC (“Plaintiff” or “WLAB”).

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 **I. INTRODUCTION**

7 **A. Overview**

8 This supplement includes the testimony of Mr. Miao following his deposition as the
9 person most knowledgeable (“PMK”) for Plaintiff. Mr. Miao’s testimony confirmed numerous
10 undisputed facts that are dispositive to Plaintiff’s claims and support granting Summary
11 Judgment as requested by Defendants’ Motion.

12 **B. Undisputed Facts as Provided by Mr. Miao**

13 **1. Plaintiff is Sophisticated Buyer**

14 Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of
15 approximately twenty residential properties. Miao Deposition at 129:12-18, 138:6-17 attached
16 as **Exhibit 1**. In Clark County alone, Ms. Zhu and Mr. Miao were involved with the purchase of
17 at least eight rental properties starting in 2014. *Id.* at 111:1-25, 114:19-22. Plaintiff understands
18 the importance of reading contracts. *Id.* at 44:17-24. Additionally, Mr. Miao specified that he
19 understands that he needs to check public records when conducting his due diligence. *Id.* at
20 56:21-24.

21 **2. Plaintiff’s Purchase of Property was Part of 1031 Exchange**

22 As to the Property, Plaintiff purchased it as part of a 1031 exchange with four other
23 properties at that time. *Id.* at 114:23-25-115:1-8, 149:1-8, 149:21-25. Plaintiff had an issue with
24 financing and the appraisal for the Property, which threatened the 1031 Exchange. *Id.* at 153:12-
25 25. Interestingly, although the Property failed the appraisal for a value of \$200,000, Plaintiff still
26 pressed forward with the sale although it has not provided the appraisal or the basis for why the
27 Property did not apprise for \$200,000. Prior to purchasing it, Plaintiff was aware that TKNR had
28 purchased it as a foreclosure. *Id.* at 216:22-25.

3. Requirement to Inspect was Known

In terms of the RPA (as defined by the Motion), the terms of the contract were clear to Plaintiff. *Id.* at 156:7-21 (due diligence period), 163:3-11. 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
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· 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.

Id. at 164:9-25-165:1-3.

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
11 one. · I think it's okay; right? · Then the --

Id. at 166:2-11.

8 · · · Q. · So you had the right to inspect the
· 9 structure; correct?
10 · · · A. · Yes, yes, I did that.
11 · · · Q. · You had the right to inspect the roof; is
12 that correct?
13 · · · A. · Yes.
14 · · · Q. · Okay. · Did you do that?
15 · · · A. · I forgot. · I maybe did that because
16 usually I go to the roof.

* * *

22 · · · Q. · You had the right to inspect the
23 mechanical system; correct?
24 · · · A. · Right. · Yes, yes.

25 · · · Q · You had the right to inspect the
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· 1 electrical systems; correct?

· 2 · · · A · I check the electrical system, yes.

· 3 · · · Q · You had a right to inspect the plumbing
· 4 systems; correct?

· 5 · · · A · Yes.

· 6 · · · Q · You had the right to inspect the
· 7 heating/air conditioning system; correct?

· 8 · · · A · Yes.

* * *

· 3 · · · Q · And then you could have inspected any
· 4 other property or system within the property itself;
· 5 correct?

· 6 · · · A · Yes, yes.

Id. at 167:8-16, 167:22-25-168:1-11, 168:25-169:1-6.

Prior to the purchase, Mr. Miao was always aware that the Seller "strongly recommended
that buyer retain licensed Nevada professionals to conduct inspections":

13 · · · Q · "It is strongly recommended that buyer
14 retain licensed Nevada professionals to conduct
15 inspections."

16 · · · A · Yes.

17 · · · Q · Yeah. So you were aware of this
18 recommendation at the time --

19 · · · A · Yeah, I know.

Id. at 176:13-19.

Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited
potential damages that could have been discovered by an inspection:

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
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· 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. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were
17 conspicuous and understandable, and it was a standard agreement similar to the other agreements
18 he had used in purchasing the other properties in Clark County, Nevada. *Id.* at 198:19-25-199:1-
19 2, 200:3-15.

20 3. *Mr. Miao Does Inspections for Plaintiff Although he is not a Licensed,
21 Bonded Professional Inspector*

22 As to all the properties purchased by Plaintiff, Mr. Miao always does the inspections and
23 does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25, 140:5-10.
24 Based on his own belief, he does not believe that a professional inspection is necessary for multi-
25 tenant residential properties. *Id.*, 120:6-9 (his own understanding), 120:16-25 (secondhand
26 information he received). Notably, he does not have any professional license related to being a
27 general contractor, inspector, appraiser, or project manager. *Id.* at 123:5-16 (no professional
28 licenses), 123:23-24 (no property management license), 169:7-14 (no licensed or bonded
inspector), 171:23-25 (have not read the 1952 Uniformed Building Code), 172:17-19 (not an
electrician), 172:23-25-1-16 (no general contractor license or qualified under the intentional
building code), 174:13-23 (not familiar with the international residential code). Importantly, he
has never hired a professional inspector in Clark County, *Id.* at 140:19-21, so does not actually
know what a professional inspection would encompass here. *Id.* at 143:9-13, 144:8-19. The
main reason Plaintiff does not use a professional inspector is because of the cost. *Id.* at 147:2-7.
On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at 158:1-25-159:1-
12. During that time, he admitted that he noticed some issues with the Property that were not up
to code, finishing issues, GFCI outlets¹, and electrical issues:

¹ The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith
and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for
Plaintiff.

16 · · · A. · I looked at a lot of things. · For example,
17 like, the -- I point out some drywall is not
18 finished; right? · And the -- some of smoke alarm is
19 not -- is missing and -- which is law required to
20 put in for smoke alarm. · Then no carbon monoxide
21 alarm, so I ask them to put in.
22 · · · · · Then in the kitchen, lot of electrical,
23 the outlet is not a GFCI outlet, so I tell them, I
24 said, You need to change this GFCI. · Right now this
25 outlet is not meet code. · You probably have problem.

7 *Id.* Similarly, he also specified that there was an issue with exposed electrical in Unit C.
8 175:10-24. He also noted that there could have been a potential asbestos issue as well. *Id.* at
9 160:7-12. Additionally, he noted that there were cracks in the ceramic floor tiles, *Id.* at 249:22-
10 25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269:13-22 (aware of slab
11 cracks), which were open and obvious. *Id.* at 270:14-24. He also admitted that he could also
12 have seen the dryer vent during his inspection. *Id.* at 269:23-25. As to those issues, Mr. Miao
13 determined that the aforementioned issues were the only issues that TKNR needed to be fixed
14 after his inspection. *Id.* at 171:2-9 (was only concerned about the appraisal), *Id.* at 219:13-25-
15 221:1-2.

16 Moreover, Mr. Miao received the Seller's Real Property Disclosure Form ("SRPDF")
17 prior to the purchase of the Property. *Id.* at 201:22-25. As to SRPDF, Plaintiff was aware that
18 TKNR was an investor who had not resided in the Property, and there were issues with the
19 heating systems, cooling systems, and that there was work done without permits. *Id.* at 201:1-
20 25-202:1-12. Similarly, it was aware that the Property was 63 years old at that time, *Id.* at 204:4-
21 7, and all the work was done by a handyman other than the HVAC installation. *Id.* at 205:14-25,
22 *Id.* at 134:14-25 (understands the difference between a handyman and a licensed contractor),
23 243:2 ("Yes. They did by the handyman, yes.").

24 Despite these disclosures, Mr. Miao never followed up:

25 23 · · · Q. · Okay. · So when they disclosed that there
26 24 was construction and modification, alterations,
27 25 and/or repairs made without State, City, County
28 Page 205
· 1 building permits, which was also work that was done
· 2 by owner's handyman, did you ever do any follow-up
· 3 inquiries to the seller about this issue?

1 4 · · · A · · No, I didn't follow up ·

2 *Id.* at 204:23-25-205:1-4. However, Mr. Miao also admitted that he could have followed up on
3 the issues identified in the SRPDF that included the HVAC and the permits:

4 10 · · · Q · · Under the disclosure form --
5 11 · · · A · · Yeah.
6 12 · · · Q · · -- like, where it specified that there
7 13 were heating system/cooling system issues that
8 14 they're aware of, that you could have elected to
9 15 have an inspection done at that time; correct?
10 16 · · · A · · Yes.

11 *Id.* at 206:10-16.

12 15 · · · Q · · Okay · So as your attorney said, you could
13 16 have obtained a copy of the permits at any time?
14 17 Yes?
15 18 · · · A · · Yes.
16 19 · · · Q · · Okay · And then it's fair to say that just
17 20 put you on notice of the potential permit issue;
18 21 correct?
19 22 · · · A · · Yes.
20 23 · · · Q · · It also put you on notice of the issues of
21 24 everything that's basically specified on page 38;
22 25 correct?
23 Page 209
24 1 · · · A · · Yes.

25 *Id.* at 208:15-25-209:1, 245:22-25 (could have obtained permit information in 2018).

26 Similarly, Mr. Miao was aware that he should have contacted the local building
27 department as part of his due diligence:

28 22 · · · Q · · Okay · So you understand that for more
29 23 information during the diligence process, you should
30 24 contact the local building department?
31 25 · · · A · · Yes ·

32 Page 260

33 * * *

34 ·5 · · · Q · · -- it provides you with the address of the
35 ·6 building and safety department; is that correct?

36 ·7 · · · A · · Yes.

37 ·8 · · · Q · · And the office hours; is that correct?

38 ·9 · · · A · · Yes.

39 10 · · · Q · · And it also provides you with a phone
40 11 number; correct?

41 12 · · · A · · Yes.

42 13 · · · Q · · And this is information or resources that
43 14 you could have used at any time related to finding
44 15 information about the permits of the property;
45 16 correct?

46 17 · · · A · · Yes.

1 18 . . . Q. . . And this would have been true prior to the
2 19 purchase of the building; correct?
3 20 . . . A. . . Yes.
4 21 . . . Q. . . And this would also have been true at the
5 22 time you read the disclosure that specified that
6 23 some of the improvements or some of the disclosures
7 24 had been done without a permit; right?
8 25 . . . A. . . Yes.

6 *Id.* at 260:22-25, 261:5-25.

7 Plaintiff was also on notice of the potential for mold and the requirement to get a mold
8 inspection:

9 .5 . . . Q. . . Okay. . . And it says, "It's the buyer's duty
10 .6 to inspect. . . Buyer hereby assumes responsibility to
11 .7 conduct whatever inspections buyer deems necessary
12 .8 to inspect the property for mold contamination.
13 .9 "Companies able to perform such
14 10 inspections can be found in the yellow pages under
15 11 environmental and ecological services."
16 12 I read that correctly? . . Yes?
17 13 . . . A. . . Yes.
18 14 . . . Q. . . Okay. . . And then you elected not to get a
19 15 mold inspection; correct?
20 16 . . . A. . . Yeah. .

16 *Id.* at 213:5-16.

17 .5 . . . Q. . . So you relied upon your own determination
18 .6 related to the potential mold exposure of the
19 .7 property; correct?
20 .8 . . . A. . . Yes.
21 .9 . . . Q. . . Okay. . . And you elected to proceed with
22 10 purchasing it without a professional mold
23 11 inspection; correct?
24 12 . . . A. . . Yes.

22 *Id.* at 216:5-12. Despite actual knowledge of these issues, Plaintiff did not elect to have a
23 professional inspection done. 160:17-20. It would have refused to get a professional inspection
24 because it believed that Mr. Miao had already performed one. *Id.* at 162:23-25-163:1.

25 Finally, Plaintiff was also acutely aware of the requirement of Nevada law to protect
26 itself by getting an inspection:

27 .2 . . . Q. . . If we go to page 40 --
28 .3 . . . A. . . Mm-hmm.
.4 . . . Q. . . --- there's a bunch of Nevada statutes

1 ·5 here.
2 ·6 · · · A · · Mm-hmm.
3 ·7 · · · Q · · If you look at NRS 113.140 --
4 ·8 · · · A · · Mm-hmm.
5 ·9 · · · Q · · -- do you see that at the top of the page?
6 10 "Disclosure of unknown defects not required. Form
7 11 does not constitute warranty duty of buyer and
8 12 prospective buyer to exercise reasonable care."
9 13 · · · · · Do you see that?
10 14 · · · A · · Yes.
11 15 · · · Q · · Okay. So this disclosure form gave Marie
12 16 Zhu, your wife, a copy of the Nevada law that was
13 17 applicable to the sale of the property; correct?
14 18 · · · A · · Yeah.
15 19 · · · Q · · Okay. And under NRS 113.1403, it
16 20 specifies, "Either this chapter or Chapter 645 of
17 21 the NRS relieves a buyer or prospective buyer of the
18 22 duty to exercise reasonable care to protect
19 23 himself."
20 24 · · · · · Did I read that correctly?
21 25 · · · A · · Yes.

22 *Id.* at 209:2-25. As such, no dispute exists that Plaintiff was aware that the Property had the
23 same issues complained of in the pleadings at the time it put an offer on it, and that Plaintiff
24 assumed the risk of failing to exercise reasonable care to protect itself.

25 4. *No Dispute a Professional Inspection Could Have Revealed the Alleged*
26 *Issues*

27 The alleged defects identified by both parties' experts could have been discovered at the
28 time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had access
to the entire building. *Id.* at 250:22-25. He had access to the attic and looked at it. *Id.* at 251:4-
14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

15 ·6 · · · Q · · Okay. So you walked through the property
16 ·7 with him at the time he did his inspection; correct?
17 ·8 · · · A · · Right.
18 ·9 · · · Q · · Okay. During that time, did he inspect
19 10 any areas that -- that you did not have access to in
20 11 2017?
21 12 · · · A · · Yes. He didn't go to anything I didn't
22 13 inspect during 2017 too.
23 14 · · · Q · · So he inspected the same areas you
24 15 inspected?
25 16 · · · A · · Yes, yes.

26 *Id.* at 291:6-16. Notably, Plaintiff's expert did not do any destructive testing, so the expert's
27 access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5. Mr. Miao

1 admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-5, 293:18-23, and the
2 plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as his in 2017. He also
3 admitted that the pictures attached to Plaintiff's expert report were areas that he could have
4 inspected in 2017. *Id.* at 302:6-13.

5 Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id.* at
6 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas
7 inspected by Defendants' expert. *Id.* at 321:1-6. Mr. Miao agreed with Defendants' expert that
8 the alleged conditions identified by Plaintiff's expert were "open and obvious":

9 22 · · · Q. · And then the second line down, the first
10 23 sentence begins, "Items complained about in the Sani
11 24 report were open and obvious in the roof area, attic
12 25 area, and on the exterior/interior of the property."
13 Page 318

* * *

12 ·3 · · · Q. · Do you agree with this statement?
13 ·4 · · · A. · Yes.

14 *Id.* at 318:22-25-319:3-4. He also agreed with Defendants' expert's finding that there was no
15 noticeable sagging in the roof. *Id.* at 333:20-24.

16 Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that
17 failed to differentiate between conditions prior to when TKNR owned the Property, while it
18 owned it, and those afterwards:

19 17 · · · Q. · -- midway down the first complete sentence
20 18 says, "The Sani report does not recognize prior
21 19 conditions in existence before any work took place
22 20 by defendants."

21 21 · · · · · Do you agree with this statement?
22 Page 321

* * *

23 ·3 · · · · · Yes, yes.
24 ·4 BY MR. LEE:
25 ·5 · · · Q. · You agree with that? Okay.
26 ·6 · · · A. · Agree.

27 *Id.* at 321:17-21 – 322:3-6. This would have also included any issues with the dryer vent and
28 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.

///

5. No Permits Required for Cosmetic Work by TKNR

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?
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·1· · · A· · Yes.
·2· · · Q· · Resurfacing shower walls?
·3· · · A· · Yes.
·4· · · Q· · Repair or replace shower heads?
·5· · · A· · Yes.
·6· · · Q· · Repair or replace rain gutters and down
·7 spouts?
·8· · · A· · Yes.
·9· · · Q· · Regrouting tile?
10· · · A· · Yes.
11· · · Q· · And a hose bib, whatever that is.
12· · · A· · Water freezer· It's, like, for the
13 filtration of the water.
14· · · Q· · Okay· And then for the mechanical, no
15 permits required for portable heating appliances;
16 correct.
17· · · A· · Yes.
18· · · Q· · For portable ventilation appliances?
19· · · A· · Yes.

20 · · · Q · · Or portable cooling units; correct?
21 · · · A · · Yes.
22 · · · Q · · And for portable evaporative coolers
23 installed in windows; correct?
24 · · · A · · Yes.

Id. at 264:17-25-265:1-24.

6. *Plaintiff Desperate to Close on Property to Complete 1031 Exchange*

Plaintiff needed to close on the Property to complete the 1031 Exchange. *Id.* at 286:1-7. Thus, when it could not close on the first RPA, it agreed to the second RPA and waived all inspections. *Id.* at 281:12-16 (Miao did inspections already), 288:22-25-289:1-6. Plaintiff could not meet the close of escrow because its financing fell through for the Property, so it amended the first RPA and agreed to guaranty the purchase price of \$200,000 and put down \$60,000 as earnest money to get TKNR to agree to the second RPA. *Id.* at 285:4-25-286:1-7.

7. *Plaintiff Does not Disclose the Alleged Issues to Potential Tenants*

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
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·1 landlord to make sure all these building is safe and
·2 in good condition.

Id. at 120:16-25-121:1-2, 140:10-14. However, they have not done any of the repairs listed by Plaintiff's expert. *Id.* at 331:3-12. This illustrates the lack of merit of Plaintiff that there are underlying conditions with the Property.

Moreover, it does not provide any notice to the tenants about its expert's 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.

* * *

22 · · · Q. · Okay. · So basically, you just tell them,
23 There's this. · You can inspect the unit if you want;
24 is that it?

25 · · · A. · Yeah. · And also we need to tell is a lot
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1 of things report that we don't need to go to the
· 2 inside the building. · It's wall cracking. · It's
· 3 outside. · You can see.

· 4 · · · Q. · Okay. · So it's open and obvious for them?

· 5 · · · A. · Yeah. · You can see always outside.

10 *Id.* at 337:6-13, 337:22-25-338:1-5. This illustrates the lack of merit of Plaintiff's claims, proven
11 that it has done nothing to correct the allegedly deficient conditions that are clearly not so
12 dangerous as it does not tell prospective tenants about them.

13 8. *Squatters or Tenants Could Have Damaged the Property*

14 Multiple third parties could have potentially damaged the Property. The Property has a
15 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.

19 *Id.* at 110:12-16. He also admitted that tenants could have damaged the Property while they
20 were occupying it:

21 · 4 · · · Q. · Okay. · So the tenant in this context would
22 · 5 have damaged the unit at the time that you owned it;
23 · 6 is that fair?

24 · 7 · · · A. · Maybe. · Yes.

25 · 8 · · · Q. · Okay. · So some of the -- so the damage
26 · 9 that was to the water heater system, could the
27 · 10 tenant have damaged that as well?

28 · 11 · · · A. · Yes.

12 · · · Q. · And then he could have damaged the cooler
13 pump and the valve as well; is that correct?

14 · · · A. · Yes.

15 · · · Q. · Okay. · Then on 122, these are all issues
16 that the tenant could have damaged; is that correct?

17 · · · A. · Yes.

18 · · · Q. · And then the same through for 145; is that

19 right?
20 · · · A. · · Yes.

1
2
3 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.
4 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

5 9. *No Evidence That Defendants Knew of Alleged Conditions*

6 Plaintiff's case is based on speculation that Defendants knew about the alleged conditions
7 in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants
8 knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes). The entire case is
9 based on Mr. Miao's personal belief and speculation. *Id.* at 253:17-19.

10 Mr. Miao admitted that he has no evidence Defendants knew about the alleged moisture
11 conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no evidence
12 that Defendants knew about the alleged issues with the plumbing system. *Id.* at 301:21-24. He
13 also admitted that he did not know if Defendants knew about the alleged issues with the duct
14 work when they owned the Property. *Id.* at 314:5-19. He also recognized the deficiency in
15 Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR
16 owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 – 322:3-6. He also
17 recognized that a 63 year old property could have issues that were not caused by Defendants. *Id.*
18 at 324:6-15. This would have also included any issues with the dryer vent and ducts, *Id.* at
19 325:3-20, and when the duct became disconnected. *Id.* at 329:1-16.

20 Notably, during Mr. Miao's due diligence period, he spoke with the tenants of the
21 Property. *Id.* at 163:12-25-164:1-6. This included a conversation with the long-term tenant of
22 Unit A, who still resides in the Property to this day. *Id.* At that time, the tenant reported being
23 very happy with the Property and had no complaints. *Id.* In fact, the tenant reported still being
24 very happy with the Property. *Id.* at 170:7-9. This illustrates that there is no basis that
25 Defendants should have been aware of any of the issues when Mr. Miao, a self-professed expert,
26 did not even know about them following his inspection.

27 ///

28 ///

10. No Basis for Claims for RICO and/or Related to Flipping Fund

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. Mr. Miao solely made his statements in the Declaration related to the Flipping Fund based on information he reviewed on a website and alleged conversations at a holiday party. *Id.* at 227:22-25. He also specified that he does not know the structure between the Investpro Defendants and the scope of each's purpose. *Id.* at 230:20-25-231:1.

11. Miao Declaration is Based on Speculation and Hearsay

As to the representations in the Declaration to the Opposition to the Motion, Mr. Miao makes them according to his experience and his speculation:

11 · · · Q · · So you're -- when you say your experience,
12 it's based on you speculating based on your own
13 belief; correct?
14 · · · A · · Based on my experience.
15 · · · Q · · Okay · So you're still speculating; right?
16 · · · A · · Okay · Yes.

Id. at 233:11-16. His additional statements are based on hearsay statements from third parties.

Id. at 234:12-24. In terms of the allegations he made as to Defendants' knowledge, those are only based on his personal belief:

17 · · · Q · · So no one ever told you that · It's just
18 based on your own personal belief?
19 · · · A · · Yes.
20 · · · Q · · Okay · And then, "Removal of natural gas
21 supply line was, which occurred with no permit or
22 inspection and was not performed by active licensed
23 contractor as required by law," this is also based
24 on your personal belief?
25 · · · A · · Yeah

1 *Id.* at 253:17-25, 254:2-7 (electrical system – personal belief), 254:17-25 (personal belief about
2 HVAC).

3 24 · · · · · So as it relates to all these items here,
4 25 no defendant ever came up to you and said, Yes,
5 Page 255
1 we're actually aware of these issues; right?
6 · 2 · · · A. · No.

7 *Id.* at 255:24-25-256:1-2.

8 19 · · · Q. · This is the first time it ever became an
9 20 issue known to you; right?
10 21 · · · A. · Yeah, for the roof.
11 22 · · · Q. · How do you know that the defendants knew
12 23 about this issue?
13 24 · · · A. · I don't know -- I don't know the
14 25 defendant -- no. I don't know the defendant know
15 Page 256
16 1 this issue or not.

17 *Id.* at 256:19-25-257:1.

18 9 · · · Q. · Like, the violations were hidden behind
19 10 the drywall, like, what information do you have that
20 11 the defendants hid it behind the drywall? You know
21 12 or you don't know?
22 13 · · · A. · I just know behind the drywall that put
23 14 the vent without -- that is a violation, but I don't
24 15 know who did that.
25 16 · · · Q. · Okay. So you don't know who did it?
26 17 · · · A. · Yeah, yes.
27 18 · · · Q. · Okay. So it's possible that the
28 19 defendants did not know about it or hide it; is that
20 20 fair?
21 · · · A. · Yes.

22 *Id.* at 258:9-21.

23 22 · · · Q. · Okay. And then you have this other thing
24 23 about the wood paneling. Same question. How do you
25 24 know the defendants knew about it?
26 25 · · · A. · I don't know defendants know about it. I
27 Page 258
28 · 1 only found out this one.
1 · 2 · · · Q. · So it's possible they didn't know about
2 this issue as well; correct?
3 · 4 · · · A. · Yes.

4 *Id.* at 258:22-25-259:1-4.

5 · 1 · · · Q. · So "It's impossible that Defendants, at
6 · 2 least the ones involved in the sale, which are
7 · 3 Defendants TKNR, et cetera, did not know about the

·4 renovations."
·5 · · · · · So you're basically speculating; right?
·6 · · · A · · Yeah, yeah, yeah.

Id. at 260:1-6.

12. *Plaintiff Admitted it Inflated its Cost of Repairs*

Initially, 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. This illustrates that the bad faith purposes of this lawsuit was to simply harass Defendants.

Mr. Miao perjured himself in his Declaration, Opp'n, Ex. 2. He denied, under the penalty of perjury, that he never made an offer to settle this matter for \$10,000. *Id.* at Page 5 of 5. However, during his deposition he admitted that he did make this offer. Ex. 1 at 259:5-15 ("so maybe I tell Lin, Just pay us \$10,000"). As noted in the Motion, this illustrates the overall bad faith of the litigation where Plaintiff admittedly amplified its alleged damages by more than 6x, and then trebled the damages, and have run up egregious attorneys' fees for this frivolous action. These are undisputed facts that prove abuse of process as a matter of law.

II. DISCUSSION

This Discussion is made in support of the Motion's request for summary judgment and broken down into two (2) subparts. Part A identifies the undisputed facts supported by Mr. Miao's deposition testimony establishing sufficient basis for the court to grant the Motion. Part B illustrates that Plaintiff has engaged in abuse of process by bringing this litigation, supporting summary judgment on Defendants' counterclaim for the same.

A. Mr. Miao's Admissions Support Summary Judgment in Favor of Defendants

1. *Undisputed That No Evidence Shows Defendants' Knowledge of Defects*

Nevada Revised Statute ("NRS") § 113.140 also provides that the Seller does not have to disclose any defect that he is unaware of. "Under NRS Chapter 113, residential property sellers are required to disclose any defects to buyers within a specified time before the property is conveyed." *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007) (citing NRS 113.140(1)). "NRS

1 113.140(1), however, provides that a seller is not required to ‘disclose a defect in residential
2 property of which [she] is not aware.’ ” *Id.* (citing NRS 113.100(1)). The Nevada Supreme
3 Court clarified that:

4 [a]scribing to the term “aware” its plain meaning, we determine
5 that the seller of residential real property does not have a duty to
6 disclose a defect or condition that “materially affects the value or
7 use of residential property in an adverse manner,” if the seller does
8 not realize, perceive, or have knowledge of that defect or
9 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.

10 *Id.* at 425 (citations omitted).

11 Here, Mr. Miao admitted that there is no evidence that shows Defendants knew about
12 them. *Id.* at 245:1-13 (speculating that InvestPro made changes). He admitted that he has no
13 evidence Defendants knew about the alleged moisture conditions. *Id.* at 293:24-25-294:1-3.
14 Additionally, he also admitted that there is no evidence that Defendants knew about the alleged
15 issues with the plumbing system. *Id.* at 301:21-24. He also admitted that he did not know if
16 Defendants knew about the alleged issues with the duct work when TKNR owned the Property.
17 *Id.* at 314:5-19. He also recognized the deficiency in Plaintiff’s expert’s report that failed to
18 differentiate between conditions prior to when TKNR owned the Property, while it owned it, and
19 those afterwards. *Id.* at 321:17-21 – 322:3-6. He also established that a 63 year old property
20 could have issues that were not caused by Defendants. *Id.* at 324:6-15. This would have also
21 included any issues with the dryer vent and ducts, *Id.* at 325:3-20, and when the duct became
22 disconnected. *Id.* at 329:1-16. Finally, as admitted by Mr. Miao, the long-term tenant of the
23 Property was very happy with it and still resides there today, never specifying that Defendants
24 knew or should have known about the alleged issues. *Id.* at 163:12-25-164:1-6.

25 2. *Undisputed That Plaintiff Knew About Issues From SRPDF*

26 “Liability for nondisclosure is generally not imposed where the buyer either knew of or
27 could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v. Bonnie*
28 *Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). NRS § 113.140 clearly

1 provides that the Seller Disclosures does not constitute a warranty of the Subject Property and
2 that the Buyer still has a duty to exercise reasonable care to protect himself. A completed
3 disclosure form does not constitute an express or implied warranty regarding any condition of
4 residential property. NRS § 113.140(2). Chapters 113 and “645 of Nevada Revised Statutes do
5 not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself
6 or herself.” *Id.* at § 113.140(2).

7 Here, Plaintiff received the SRPDF prior to the purchase of the Property. *Id.* at 201:22-
8 25. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the
9 Property, and there were issues with the heating systems, cooling systems, and that there was
10 work done without permits. *Id.* at 201:1-25-202:1-12. Similarly, it was aware that the Property
11 was 63 years old at that time, *Id.* at 204:4-7, and all the work was done by a handyman other than
12 the HVAC installation. *Id.* at 205:14-25, *Id.* at 134:14-25 (understands the difference between a
13 handyman and a licensed contractor), 243:2 (“Yes. They did by the handyman, yes.”).

14 Despite these disclosures, Mr. Miao never followed up although he acknowledged that he
15 knew about the alleged permit issues. *Id.* at 204:23-25-205:1-4. Mr. Miao admitted that he
16 could have followed up on the issues identified in the SRPDF that included the HVAC and the
17 permits, *Id.* at 206:10-16, and he knew how to investigate the permit issue. *Id.* at
18 208:15-25-209:1, 245:22-25 (could have obtained permit information in 2018). Similarly, Mr.
19 Miao was aware that he should have contacted the local building department as part of his due
20 diligence. *Id.* at 260:22-25, 261:5-25. Further, he admitted Plaintiff was also on notice of the
21 potential for mold and the requirement to get a mold inspection. *Id.* at 213:5-16. Finally,
22 Plaintiff was also acutely aware of the requirement of Nevada law to protect itself by getting an
23 inspection. *Id.* at 209:2-25. Despite actual knowledge of these issues, Plaintiff did not elect to
24 have a professional inspection done. *Id.* at 160:17-20.

25 3. Undisputed That an Inspection Could Have Revealed Alleged Defects

26 “Liability for nondisclosure is generally not imposed where the buyer either knew of or
27 could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v. Bonnie*
28 *Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). Liability for nondisclosure

1 does not apply when such facts are within the reach of the diligent attention and observation of
2 the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552 (alteration in original) (internal
3 quotation marks omitted). A buyer waives its common law claims of negligent
4 misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it
5 expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of
6 it were suitable prior to close of escrow, and the information was reasonably accessible to the
7 buyer. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427
8 P.3d 104, 111 (Nev. 2018).

9 Here, the alleged defects identified by both parties' experts could have been discovered at
10 the time of the original purchase. Mr. Miao admitted that he had access to the entire building
11 when he originally inspected the Property in 2017. *Id.* at 250:22-25. He had access to the attic
12 and looked at it. *Id.* at 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same
13 areas that he did. *Id.* at 291:6-16. As Plaintiff's expert did not do any destructive testing, the
14 expert's access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5. In terms
15 of the Plaintiff's expert's inspection, Mr. Miao admitted that Plaintiff's expert's inspection of the
16 HVAC, *Id.* at 292:2-5, 293:18-23, and the plumbing system, *Id.* at 300:19-25-301:1-4, would
17 have been the same as his in 2017, and the pictures attached to Plaintiff's expert report were
18 areas that he could have inspected in 2017. *Id.* at 302:6-13.

19 Moreover, Mr. Miao had the same access to the Property in 2017 for the areas inspected
20 by Defendants' expert. *Id.* at 321:1-6. Incredibly, Mr. Miao agreed with Defendants' expert that
21 the alleged conditions identified by Plaintiff's expert were "open and obvious" in the roof area,
22 the attic area, and on the exterior/interior of the property. *Id.* at 318:22-25-319:3-4. He also
23 agreed with Defendants' expert's finding that there was no noticeable sagging in the roof. *Id.* at
24 333:20-24.

25 **B. Deposition Illustrates Abuse of Process by Plaintiff**

26 Plaintiff inflated its alleged cost of repair for issues known to it at the time it purchased
27 the Property from \$102,873.00 to \$600,000. *Id.* at 307:6-22. Moreover, Mr. Miao perjured
28 himself in his Declaration, Opp'n, Ex. 2, when he denied, under the penalty of perjury, that he

1 never made an offer to settle this matter for \$10,000. Ex. 1 at 259:5-15 (“so maybe I tell Lin,
2 Just pay us \$10,000”). Section II(D)(4) of the Motion illustrates the overall bad faith of the
3 litigation where Plaintiff admittedly amplified its alleged damages by more than 6x, and then
4 trebled the damages demanding \$16.25 Million in damages. It also set forth the egregious
5 attorneys’ fees by Plaintiff, which still continue as evidenced by the Opposition. It is unclear
6 what the driving force is related to this frivolous lawsuit, but the abuse of process is clear as a
7 matter of law and summary judgment should be granted accordingly.

8 **III. CONCLUSION**

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

11 Dated this 29 day of January, 2021.

12 MICHAEL B. LEE, P.C.

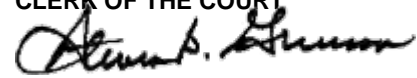
13 /s/ Michael Lee
14 MICHAEL B. LEE, ESQ. (NSB 10122)
15 MICHAEL MATTHIS, ESQ. (NSB 14582)
16 1820 E. Sahara Avenue, Suite 110
17 Las Vegas, Nevada 89104
18 Telephone: (702) 477.7030
19 Facsimile: (702) 477.0096
20 mike@mblnv.com
21 Attorney for Defendants
22
23
24
25
26
27
28

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 29 day of January, 2021, the foregoing **SUPPLEMENT 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.
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Attorneys for *Plaintiff*

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



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(702) 385-3865
Fax 384-1119
ben@benchilds.com
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 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

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

Hearing : February 23, 2021

PLAINTIFF'S REPLY TO OPPOSITION TO COUNTERMOTIONS

Following the Opposition which Plaintiff filed on December 29, 2020,
additional events have occurred which preclude the Court from granting
Defendants' motion, while supporting Plaintiff's Countermotions.

Plaintiff has three motions to compel set before the Discovery
Commissioner. These are set for hearing on three separate dates as follows :

On March 2, 2021 [PLAINTIFF'S MOTION TO COMPEL DISCOVERY
AND FOR IMPOSITION OF SANCTIONS re: TKNR - Request for Production of
Documents and CHI WONG - Request for Production of Documents and
INVESTPRO LLC - Request for Production of Documents].

On March 4, 2021 [PLAINTIFF'S MOTION TO COMPEL DISCOVERY
AND FOR IMPOSITION OF SANCTIONS re: INVESTPRO MANAGER LLC-

1 Second Request for Production of Documents and INVESTPRO INVESTMENTS
2 I, LLC - Request for Production of Documents].

3 On March 11, 2021 [PLAINTIFF'S MOTION TO COMPEL DISCOVERY
4 AND FOR IMPOSITION OF SANCTIONS re: MAN CHAU CHENG - Answers to
5 Interrogatories and INVESTPRO INVESTMENTS I, LLC - Answers to
6 Interrogatories].

7 Plaintiff references those filings evidencing the outstanding discovery which
8 has required Plaintiff to seek a motion to compel compliance.

9 Plaintiff has also been thwarted in it's attempt to schedule the deposition of
10 Defendant Wong, who claims that he's not available any time but weekends and
11 he needs a Cantonese interpreter. As to availability, the exclusive weekend
12 availability was sprung on Plaintiff after Plaintiff was forced to unilaterally notice
13 Mr. Wong's deposition. No dates were provided for his availability for deposition.
14 Mr. Wong's claim to need a Cantonese interpreter is highly suspect. [Exhibit 7]
15 On April 7, 2020 he stated under oath that he had read 22 pages of responses to
16 interrogatories on behalf of TKNR and that those 39 responses were "true and
17 correct of my own knowledge" without reference to any interpreter being required.
18 [Exhibit 6, 23:7] Mr. Wong now states that he requires and interpreter to
19 understand or answer questions in English. Which raises the question of how he,
20 as TKNR's CEO, entered into the sales contracts, completed the SRPD,
21 completed and signed all the escrow documents, the dissolution documents in
22 September, 2018 [Exhibit 8], or even signed the Grant, Bargain and Sale Deed
23 and Declaration of Value Form in December, 2017. [Exhibit 9]

24 The deposition of Defendant Kenny Lin is scheduled for March 1, 2021.
25 Mr. Lin is the key person on many levels in this case.

26 /s/ Benjamin B. Childs, Sr.

27

BENJAMIN B. CHILDS, Sr.
28 Nevada Bar # 3946
29 Attorney for Plaintiff

30 Exhibits

31 7 February 16, 2021 email

32 8 TKNR corporate history, dissolution 09/21/2018

9 Grant, Bargain and Sale Deed and Declaration of Value Form in
December, 2017

1 CERTIFICATE OF ELECTRONIC SERVICE

2
3 This PLAINTIFF'S REPLY TO OPPOSITION TO COUNTERMOTIONS,
4 with attachments, was served through the Odessey File and Serve system.
5 Electronic service is in place of service by mailing.
6

7
8 /s/ Benjamin B. Childs, Sr.

9 _____
10 BENJAMIN B. CHILDS, Sr. ESQ.
11 NEVADA BAR # 3946
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EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

RE: WLAB v. Lin et al. - Depositions**mike@mblnv.com <mike@mblnv.com>**

Mon 2/15/2021 1:57 PM

To: Ben Childs <ben@benchilds.com>**Cc:** 'Michael Matthis' <matthis@mblnv.com>

Mr. Wong said that he is only available on the weekends for his deposition. Please let me know what date you are looking at and I will coordinate with him.

Please be advised that he asked for a Cantonese speaking translator.

CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at mike@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: mike@mblnv.com <mike@mblnv.com>**Sent:** Friday, February 12, 2021 3:41 PM**To:** 'Ben Childs' <ben@benchilds.com>**Cc:** 'Michael Matthis' <matthis@mblnv.com>**Subject:** RE: WLAB v. Lin et al. - Depositions

Just heard from Wong. He is not available on March 1. Please let me know the other date ranges you are looking at.

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EXHIBIT 8

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8

cricket

仅限紧急呼叫



58%



清晨6:44

the received dates of things currently being processed.

The data provided is not a complete or certified record of an entity. Not all images are available online.

C3808594 TKNR, INC.

Registration Date: 07/17/2015
Jurisdiction: CALIFORNIA
Entity Type: DOMESTIC STOCK
Status: DISSOLVED
Agent for Service of Process: CHI ON WONG
 428 CARBONIA AVE
 WALNUT CA 91789
Entity Address: 428 CARBONIA AVE
 WALNUT CA 91789
Entity Mailing Address: 428 CARBONIA AVE
 WALNUT CA 91789




Document Type	↕	File Date	↓	PDF
DISSOLUTION		09/21/2018		
SI-NO CHANGE		08/31/2017		
SI-COMPLETE		08/06/2015		

EXHIBIT 9

EXHIBIT 9

EXHIBIT 9

EXHIBIT 9

Inst #: 20171215-0002824

Fees: \$40.00

RPTT: \$1020.00 Ex #:

12/15/2017 03:14:50 PM

Receipt #: 3274868

Requestor:

NATIONAL TITLE COMPANY

Recorded By: SAO Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

APN: 162-01-110-017
Escrow No: 17006699-003-LM1
R.P.T.T: \$1,020.00

Recording Requested By: National Title Co.
Mail Tax Statements To: *Same as below*
When Recorded Mail To:
WLAB INVESTMENT LLC, A CALIFORNIA LIMITED
LIABILITY COMPANY
2300 SEWANEE LN
ARCADIA, CA 91007

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That for valuable consideration, the receipt of which is hereby acknowledged, TKNR Inc, a California corporation

does hereby Grant, Bargain, Sell and Convey to WLAB INVESTMENT LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

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

For Legal Description, See Attached Exhibit "A", attached hereto and made a part hereof.

SUBJECT TO:

1. Taxes for fiscal year;
2. Reservations, restrictions, conditions, rights, rights of way and easements, if any of record on said premises.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

See page 2 for signature of Grantor(s) and Notary Acknowledgment

TKNR IN, a CALIFORNIA CORPORATION
TKNR Inc, a California Corporation


By: Chi On Wong, CEO

Chi On Wong, CEO

State of _____

}
} ss

County of _____

This instrument was acknowledged before me on _____

by: _____

Signature: _____

Notary Public

ASSessor's COPY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On 12/13/17 before me, Neil M. Faulmino, notary public
Date Here Insert Name and Title of the Officer

personally appeared Chi On Wong
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____

Escrow No. 17006699-003-LM1

EXHIBIT "A"
Legal Description

Lot Nine (9) in Block Four (4) of JUBILEE TRACT, as shown by map thereof on file in Book 4 of Plats, Page 28, in the Office of the County recorder of Clark County, Nevada.

ASSESSOR'S COPY

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 162-01-110-017
b) _____
c) _____
d) _____

2. Type of Property:

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

**FOR RECORDERS OPTIONAL USE
ONLY**

Book _____ Page _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property)
Transfer Tax Value
Real Property Transfer Tax Due:

\$200,000.00
\$ _____
\$200,000.00
\$1,020.00

4. If Exemption Claimed

a. Transfer Tax Exemption, per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

**(GRANTOR) INFORMATION
(REQUIRED)**

Print Name: TKNR Inc
Address: 428 CARBONIA AVE
WALNUT, CA 91789

**(GRANTEE) INFORMATION
(REQUIRED)**

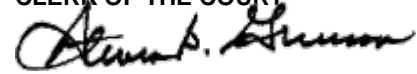
Print Name: WLAB Investment, LLC
Address: 428 CARBONIA AVE
WALNUT, CA 91789

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

Print Name: National Title Co./Lynnette Marujo
Address: 8915 S. Pecos Road, Unit 20A, Henderson, NV 89074
City, State, ZIP Code

Escrow #: 17006699-LM1

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



BENJAMIN B. CHILDS
Nevada Bar # 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 385-3865
Fax 384-1119
ben@benchilds.com
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 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

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

Hearing : March 11, 2021

SUPPLEMENT TO PLAINTIFF'S REPLY TO OPPOSITION TO
COUNTERMOTIONS

The March 2, 2021 hearing before the Discovery Commissioner on
PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND FOR IMPOSITION OF
SANCTIONS re: TKNR - Request for Production of Documents and CHI WONG
- Request for Production of Documents and INVESTPRO LLC - Request for
Production of Documents resulted in a report and recommendation for
Defendants to supplement a combined 23 production of documents. Exhibit 10
is the minute order and the draft Report and Recommendation was forwarded by

1 Plaintiff's counsel on March 2, 2021.

2 The motions set for hearing on March 4, 2021 [PLAINTIFF'S MOTION TO
3 COMPEL DISCOVERY AND FOR IMPOSITION OF SANCTIONS re:
4 INVESTPRO MANAGER LLC- Second Request for Production of Documents and
5 INVESTPRO INVESTMENTS I, LLC - Request for Production of Documents]
6 and on March 11, 2021 [PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND
7 FOR IMPOSITION OF SANCTIONS re: MAN CHAU CHENG - Answers to
8 Interrogatories and INVESTPRO INVESTMENTS I, LLC - Answers to
9 Interrogatories] were resolved by counsel and the hearings vacated. 21 additional
10 production and response to interrogatories from Defendants were agreed upon
11 [Exhibit 11 is the email from defense counsel].
12

13 Finally, Kenny Lin failed to appear at his deposition which was scheduled
14 for March 1, 2021. Defense counsel didn't even appear to make a record about
15 the non-appearance. Mr. Lin is the key person on many levels in this case.
16 When provided with the zoom information for the deposition, Defense counsel
17 unconvincingly sent emails that they were unaware. It's noted that the prior Reply
18 filed by Plaintiff on February 16, 2021 expressly reference Mr. Lin's deposition
19 being scheduled for March 1, 2021. Exhibit 12 is the deposition transcript with
20 exhibits.
21

22 This Supplement is meant to update the Court before the hearing on the
23 status of discovery prior to the motion hearing. It would be prejudicial to grant
24 summary judgment to Defendants on any level when they have failed to provide
25 discovery that was requested in November, 2020.
26
27

28 /s/ Benjamin B. Childs, Sr.

29

BENJAMIN B. CHILDS, Sr.
30 Nevada Bar # 3946
31 Attorney for Plaintiff
32

1
2 Exhibits

10 Minute order from Discovery Commissioner's March 2, 2021 hearing

3 11 Email dated March 3, 2021 resolving outstanding discovery from
4 Defendants

5 12 Lin March 1, 2021 deposition transcript with exhibits
6

7 CERTIFICATE OF ELECTRONIC SERVICE
8

9 This SUPPLEMENT TO PLAINTIFF'S REPLY TO OPPOSITION TO
10 COUNTERMOTIONS, with attachments, was served through the Odyssey File
11 and Serve system. Electronic service is in place of service by mailing.
12

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

15

BENJAMIN B. CHILDS, Sr. ESQ.
16 NEVADA BAR # 3946
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EXHIBIT 10 EXHIBIT 10

EXHIBIT 10 EXHIBIT 10

A-18-785917-C W L A B Investment LLC, Plaintiff(s)
vs.
TKNR Inc, Defendant(s)

March 02, 2021 10:00 AM **Plaintiff's Motion to Compel Discovery and for Imposition of Sanctions re: TKNR - Request for Production of Documents, Chi Wong - Request for Production of Documents and Investpro LLC - Request for Production of Documents on OST**

HEARD BY: Truman, Erin

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Lott, Jennifer

RECORDER: Haak, Francesca

REPORTER:

PARTIES PRESENT:

Benjamin B. Childs, ESQ

Attorney for Plaintiff

Michael B. Lee

Attorney for Defendant

JOURNAL ENTRIES

Frank Maio present.

Arguments by counsel. The Motion for Summary Judgment, or in the alternative, Partial Summary Judgment is set 3-11-2021. Commissioner FINDS there was a misunderstanding, and objections will STAND. Discovery closes today. Upon Commissioner's inquiry, Mr. Lee stated there is no Motion pending to extend the discovery deadlines. As the claims currently stand, Commissioner allowed the discovery to go forward. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART; DENIED as to an award of sanctions.

TKNR

COMMISSIONER RECOMMENDED, RFP 22 supplemental responses are COMPELLED from Deft; RFP 23 is PROTECTED; RFP 24 objection STANDS; RFP 25 identify and produce documents, receipts, and expenses paid for the property during the relevant timeframe; RFP 26 and 27 identify specific bates ranges in 16.1 documents that support Deft's position; RFP 28 is PROTECTED, and limited to communications between TKNR and InvestPro for the subject property from 2015 to 2018; RFP 29 similarly limited for the same time period.

CHI WONG

COMMISSIONER RECOMMENDED, RFP 1 through 6 communications limited to any and all documents for the subject property from 2015 to 2018; RFP 7 clarify and give bates numbers in Deft's possession, custody, or control; RFP 8 as Directed on the record; RFP 9 is PROTECTED; RFP 10 produce documents relevant to what ownership interest Deft has.

INVESTPRO LLC

COMMISSIONER RECOMMENDED, RFP 1 repairs, maintenance, or modifications made from August 2015 to July 31, 2018 at the subject property; RFP 2 is more appropriate for an Interrogatory; RFP 2 and 3 are PROTECTED; RFP 4 supplement required; RFP 5 further supplement required; RFP 6 is PROTECTED; RFP 7 is COMPELLED; RFP 8 is limited to

allow communications, Contracts, instructions, and agreements (further response is required); RFP 11 is allowed limited to the subject property for the timeframe, to the extent it exists; RFP 12 is COMPELLED, and supplement; RFP 13, 14, 15, 16, 17, and 18 must be supplemented.

Commissioner will be as consistent as the Commissioner can be on additional Motions. Commissioner Directed counsel to conduct an additional 2.34 conference to resolve any issues in the upcoming Motions based on the rulings given today. If issues are unresolved, the Motions will remain on calendar. COMMISSIONER RECOMMENDED, Countermotion for Protection is GRANTED IN PART and DENIED IN PART as stated.

Mr. Childs to prepare the Report and Recommendations, and Mr. Lee to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

EXHIBIT 11 EXHIBIT 11

EXHIBIT 11 EXHIBIT 11

2.34 Conference re: Discovery Responses

Michael Matthis <matthis@mblnv.com>

Wed 3/3/2021 2:43 PM

To: Ben Childs <ben@benchilds.com>

Cc: Mike Lee <mike@mblnv.com>

Mr. Childs,

Please see the following breakdown of my understanding regarding the 2.34 conference held earlier today. Defendants agree to supplement their respective responses as follows:

Management RPD

20: will supplement, if any
21-24, 28-32: limit to communications, contracts, agreements regarding subject property, will supplement with respect to limitation
25: will supplement, if any
26, 27: will supplement, or advise if no more documents

Investments RPD

1: will supplement if any
2-3, 9-12: limit to communications, contracts, agreements regarding subject property, will supplement with respect to limitation
4: will supplement
5: limit to subject property related to habitability, maintenance or sale, will supplement with respect to limitation
6-7: Plaintiff concedes (Denied)
8: will supplement, if any

Cheng ROGS

1: will supplement
2: will supplement
3: answered
4: answered
5: Denied
6: answered
7: answered
8: no request made
9: will supplement

Investments ROGS

1: will supplement
2: will supplement
3: will supplement
4: will supplement
5: will supplement

6: Denied
7: will supplement with specific reference to name of witnesses
8: answered
9: will supplement
10: answered
11: supplement
12: duplicative to RPD 8
13: limit to subject property, will supplement

Defendants will provide verifications with the supplemental responses.

Let me know if there is anything I missed or that I may have misstated.

Sincerely,
Mike Matthis, Esq.

matthis@mblnv.com



1820 E. Sahara Avenue, Suite 110, Las Vegas, NV 89104

Main Line: 702.477.7030 Fax: 702.477.0096

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EXHIBIT 12 EXHIBIT 12

EXHIBIT 12 EXHIBIT 12

WLAB Investment, LLC vs TKNR, Inc, et al

Nonappearance of
ZHONG KENNY LIN

March 1, 2021



702.8Rocket (702.876.2538)
www.RocketReporters.com

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC)	
)	
Plaintiff/Counterdefendant)	
)	
vs.)	CASE NO A-18-785917-C
)	DEPT. NO: 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)	

PROPOSED VIDEOCONFERENCE DEPOSITION OF ZHONG KENNY LIN

Henderson, Nevada

March 1, 2021
1:00 p.m. (PST)

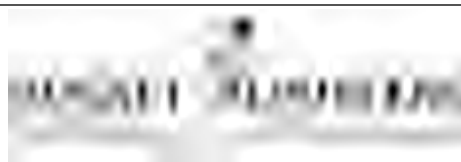
REPORTED BY:
MICHAEL A. BOULEY, RDR
NVCCR #960



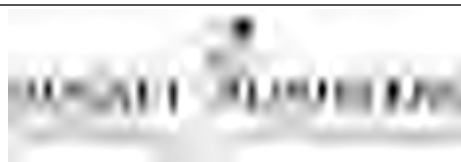
<p>1 PROPOSED VIDEOCONFERENCE DEPOSITION OF ZHONG KENNY LIN, 2 was taken on March 1, 2021, at 1:20 p.m. from Henderson, 3 Nevada, before Michael A. Bouley, RDR, Nevada Certified 4 Court Reporter No. 960. 5 6 APPEARANCES: 7 On Behalf of the Plaintiff/Counterdefendant 8 9 By: Mr. Benjamin B. Childs, Esq. 10 318 S. Maryland Parkway 11 Las Vegas, Nevada 89101 12 (702) 251-0000 13 ben@benchilds.com. 14 15 Also present: 16 Mr. Frank Miao 17 18 19 20 21 22 23 24 25</p>	<p>page 2</p> <p>1 MR. CHILDS: This is the time and date for the 2 deposition of Kenny, K-E-N-N-Y, new word, Zhong, 3 Z-H-O-N-G, new word, Lin, L-I-N, defendant. And it was 4 set for 1:00 o'clock on March 1st. It's now 1:20 on 5 March 1st, and I have had email communications with 6 opposing party claiming that he didn't have notice of it. 7 And so I am making a record, nonappearance even 8 by the attorney, and he did get the Zoom email that I got 9 from the court reporter. I forwarded that to him this 10 morning. 11 There are two exhibits, the email chain and the 12 notice of deposition. 13 (Exhibits 1 and 2 marked for identification.) 14 (Proceedings concluded at 1:21 p.m.) 15 16 * * * * * 17 18 19 20 21 22 23 24 25</p> <p>page 4</p>
<p>1 INDEX 2 PAGE 3 4 Record made by Mr. Childs 4 5 6 EXHIBITS 7 NUMBER DESCRIPTION PAGE 8 Exhibit 1 Notice of Deposition 4 9 Exhibit 2 Email chain 4 10 Exhibit 3 Odyssey Receipt 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>page 3</p> <p>1 BE IT KNOWN that the foregoing proceedings were 2 taken before me; that the witness before testifying was 3 duly sworn to testify to the whole truth; that the 4 foregoing pages are a full, true and accurate record of 5 the proceedings, all done to the best of my skill and 6 ability; that the proceedings were taken down by me in 7 stenographic shorthand and thereafter reduced to print 8 under my direction. 9 I CERTIFY that I am in no way related to any of 10 the parties hereto, nor am I in any way interested in the 11 outcome thereof. 12 13 14 15 () Review and signature was requested. 16 () Review and signature was waived. 17 (X) Review and signature was not requested. 18 19 20 21 22 23 24 25</p> <p>page 5</p> <p><i>Michael A. Bouley</i> Michael A. Bouley, RDR Nevada Certified Reporter, #960</p>



Exhibits	4	Bouley 2:3 5:20	Esq 2:8	4:2
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3	ben@benchilds.com. 2:10	down 5:6	INDEX 3:1	Nevada 2:3,9 5:21
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Receipt 3:10	truth 5:3		



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(702) 251 0000
Fax 385 1847
ben@benchilds.com
Attorney for Plaintiff/Counterdefendant

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

NOTICE OF DEPOSITION

TO : 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 and his
attorney Michael Lee, Esq.

PLEASE TAKE NOTICE that on Monday March 1, 2021, at 1:00 PM Plaintiff will take
the deposition recorded by audio or audiovisual or stenographic means of 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, upon oral examination, pursuant to Rules 26
and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or before some other
officer authorized to administer oaths. The deposition is to be taken by Zoom [Covid-19
protocol].

EXHIBIT

1

1 Oral examination will continue from day to day until completed. You are invited to
2 attend and cross-examine.

3
4 /s/ Benjamin B. Childs
5 BENJAMIN B. CHILDS, ESQ.
6 Nevada Bar No. 3946
7 Attorney for Plaintiff/Counterdefendant

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CERTIFICATE OF ELECTRONIC SERVICE

9 This Notice of Deposition was served through the Odyssey File and Serve system to
10 opposing counsel. . Electronic service is in place of service by mailing.

11
12 /s/ Benjamin B. Childs

13 BENJAMIN B. CHILDS, ESQ.
14 Nevada Bar # 3946

Re: Zoom info for dep today**Ben Childs** <ben@benchilds.com>

Mon 3/1/2021 12:50 PM

To: Mike Lee <mike@mblnv.com>

I'll make a record and send you the bill.

Plus, presumptively you'll vacate the SJ hearing as obviously I haven't been able to complete discovery.

BENJAMIN B. CHILDS, ESQ.

318 S. Maryland Parkway

Las Vegas, NV 89101

(702) 251 0000

Fax 385 1847

ben@benchilds.com

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From: Mike Lee <mike@mblnv.com>**Sent:** Monday, March 1, 2021 12:34 PM**To:** Ben Childs <ben@benchilds.com>**Cc:** mike@mblnv.com <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>**Subject:** Re: Zoom info for dep today

I'm not available at that time.

I don't have an issue with the depo being preserved, so you can take it after the close of discovery.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Ben Childs <ben@benchilds.com>**Date:** 3/1/21 12:21 PM (GMT-08:00)**To:** Mike Lee <mike@mblnv.com>**Cc:** 'Michael Matthis' <matthis@mblnv.com>**Subject:** Re: Zoom info for dep today**EXHIBIT**2

I can't do that because the discovery cutioff is tomorrow and I have a hearing before the NRED.
Can Lin be available at 3 today?

From: Mike Lee <mike@mblnv.com>
Sent: Monday, March 1, 2021 11:48 AM
To: Ben Childs <ben@benchilds.com>
Cc: mike@mblnv.com <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>
Subject: Re: Zoom info for dep today

I haven't had a chance to confirm with Lin. Can you give me some dates to reschedule and I will check with him? I'll waive the 15 day notice.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Ben Childs <ben@benchilds.com>
Date: 3/1/21 11:33 AM (GMT-08:00)
To: mike@mblnv.com
Cc: 'Michael Matthis' <matthis@mblnv.com>
Subject: Re: Zoom info for dep today

Today at 1

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, NV 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com

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From: mike@mblnv.com <mike@mblnv.com>
Sent: Monday, March 1, 2021 11:29 AM
To: Ben Childs <ben@benchilds.com>
Cc: 'Michael Matthis' <matthis@mblnv.com>
Subject: RE: Zoom info for dep today

I only received a notice of deposition for Wong. I never got it the Lin deposition. When did you have it set for?

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From: Ben Childs <ben@benchilds.com>
Sent: Monday, March 1, 2021 11:00 AM
To: mike@mblnv.com
Cc: 'Michael Matthis' <matthis@mblnv.com>
Subject: Re: Zoom info for dep today

Just Wong, not Lin's

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, NV 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com

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From: mike@mblnv.com <mike@mblnv.com>
Sent: Monday, March 1, 2021 10:56 AM
To: Ben Childs <ben@benchilds.com>
Cc: 'Michael Matthis' <matthis@mblnv.com>
Subject: RE: Zoom info for dep today

You vacated the deposition.

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marketing, or recommending to another party any transaction or matter addressed herein.

From: Ben Childs <ben@benchilds.com>
Sent: Monday, March 1, 2021 8:16 AM
To: mike@mblnv.com
Subject: Fw: Zoom info for dep today

I will forward the exhibits in a few

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, NV 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com

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From: Calendar at Rocket Reporters <calendar@rocketreporters.com>
Sent: Monday, March 1, 2021 8:12 AM
To: Ben Childs <ben@benchilds.com>
Subject: RE: Zoom info for dep today

Rocket Reporters II is inviting you to a scheduled Zoom meeting.

Topic: Depo of Zhong Kenny Lin - WLAB Investments vs. TKNR, Job# 104814
Time: Mar 1, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/88258560729?pwd=eUp1SXZmQVFodTI1dDJLSWd6bHFFHUT09>

Meeting ID: 882 5856 0729
Passcode: 062769
One tap mobile
+12532158782,,88258560729#,,,,*062769# US (Tacoma)
+13462487799,,88258560729#,,,,*062769# US (Houston)

Dial by your location
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Meeting ID: 882 5856 0729

Passcode: 062769

Find your local number: <https://us02web.zoom.us/j/kw2yo3Sfo>

YES we are available during the Covid-19 outbreak. We are answering phone calls and emails routinely.

YES we can host remote depositions! Give us a call to find out how.

Please note our new address

Joene Conrad & Savannah Celestino

6070 S. Eastern Avenue, Suite 200

Las Vegas, Nevada 89119

~ and ~

18012 Cowan, Suite 200

Irvine, CA 92614

702-8ROCKET (702.876.2538)

----- Original Message -----

Subject: Zoom info for dep today

From: Ben Childs <ben@benchilds.com>

Date: Mon, March 01, 2021 6:55 am

To: "calendar@rocketreporters.com" <calendar@rocketreporters.com>

Do you have zoom info?

Sent from my iPhone. Please forgive any spelling errors.

Case # A-18-785917-C - W L A B Investment LLC, Plaintiff(s)vs.TKN

Envelope Information

Envelope Id

7392761

Submitted Date

2/12/2021 10:09 AM PST

Submitted User Name

ben@benchilds.com

Case Information

Location

Department 14

Category

Civil

Case Type

Other Real Property

Case Initiation Date

12/11/2018

Case #

A-18-785917-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

Notice of Entry of Order - NEOJ (CIV)

Filing Description

NOTICE OF ENTRY OF ORDER
SHORTENING TIME - PLAINTIFF'S
MOTION TO COMPEL DISCOVERY
AND FOR IMPOSITION OF SANCTIONS
re: TKNR - Request for Production of
Documents and CHI WONG - Request for
Production of Documents and
INVESTPRO LLC - Request for
Production of Documents.

Filing on Behalf of

W L A B Investment LLC

Filing Status

Accepted

Accepted Date

2/12/2021 10:15 AM PST

Accept Comments

Auto Review Accepted



Lead Document

File Name	Security	Download
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Public Filed Document

MotCompel0211211of3NEO.pdf

Original File

Court Copy

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Status	Name	Firm	Served	Date Opened
Sent	BENJAMIN B CHILDS		Yes	2/12/2021 10:14 AM PST
Sent	Michael Matthis	Michael B. Lee, P.C.	Yes	Not Opened
Sent	Michael Lee	Michael B. Lee, PC	Yes	2/12/2021 10:27 AM PST

Filing Type

EFileAndServe

Filing Code

Notice of Entry of Order - NEOJ (CIV)

Filing Description

NOTICE OF ENTRY OF ORDER re
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY AND FOR IMPOSITION OF
SANCTIONS re: INVESTPRO MANAGER
LLC- Second Request for Production of
Documents and INVESTPRO
INVESTMENTS I, LLC - Request for
Production of Documents.

Filing on Behalf of

W L A B Investment LLC

Filing Status

Accepted

Accepted Date

2/12/2021 10:15 AM PST

Accept Comments

Auto Review Accepted

Lead Document**File Name**

MotCompel0211212of3NEO.pdf

Security

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Court Copy**eService Details**

Status	Name	Firm	Served	Date Opened
Sent	Michael Matthis	Michael B. Lee, P.C.	Yes	Not Opened

Status	Name	Firm	Served	Date Opened
Sent	Michael Lee	Michael B. Lee, PC	Yes	2/12/2021 10:26 AM PST
Sent	BENJAMIN B CHILDS		Yes	Not Opened

Filing Type

EFileAndServe

Filing Code

Notice of Entry of Order - NEOJ (CIV)

Filing Description

NOTICE OF ENTRY OF ORDER
SHORTENING TIME re PLAINTIFF'S
MOTION TO COMPEL DISCOVERY
AND FOR IMPOSITION OF SANCTIONS
re: MAN CHAU CHENG - Answers to
Interrogatories and INVESTPRO
INVESTMENTS I, LLC - Answers to
Interrogatories.

Filing on Behalf of

W L A B Investment LLC

Filing Status

Accepted

Accepted Date

2/12/2021 10:15 AM PST

Accept Comments

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Lead Document

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Sent	Michael Lee	Michael B. Lee, PC	Yes	2/12/2021 10:26 AM PST
Sent	Michael Matthias	Michael B. Lee, P.C.	Yes	Not Opened
Sent	BENJAMIN B CHILDS		Yes	Not Opened

Filing Type**Filing Code**

Serve

Service Only

Filing Description

NOTICE OF DEPOSITION - Kenny Lin

Filing on Behalf of

W L A B Investment LLC

Filing Status

Served

Service Documents

File Name	Security	Download
DepNotice021221.pdf		Original File Court Copy

eService Details

Status	Name	Firm	Served	Date Opened
Sent	Michael Lee	Michael B. Lee, PC	Yes	Not Opened
Sent	Michael Matthis	Michael B. Lee, P.C.	Yes	3/1/2021 11:35 AM PST
Sent	BENJAMIN B CHILDS		Yes	2/16/2021 1:42 PM PST

Filing Type

Serve

Filing Code

Service Only

Filing DescriptionNOTICE OF DEPOSITION - Chi On
Wong**Filing on Behalf of**

W L A B Investment LLC

Filing Status

Served

Service Documents

File Name	Security	Download
DepNotice021221.pdf		Original File Court Copy

eService Details

Status	Name	Firm	Served	Date Opened
Sent	Michael Lee	Michael B. Lee, PC	Yes	2/12/2021 10:21 AM PST
Sent	Michael Matthis	Michael B. Lee, P.C.	Yes	Not Opened
Sent	BENJAMIN B CHILDS		Yes	2/16/2021 1:41 PM PST

Parties with No eService

Name	Address
Chi On Wong	428 Carbonia Ave Walnut California 91789

Name	Address
Zhong Kenny Lin	

Name	Address
Investpro LLC	

Name	Address
Joyce A Nickrandt	

Name	Address
Liwe Helen Chen	

Name	Address
Man Chau Cheng	

Name	Address
Investpro Investments I LLC	

Name	Address
Investpro Manager LLC	

Name	Address
Yan Qiu Zhang	

Name	Address
John J. Savage	Holley Driggs Attn: John Savage, Esq 400 South Fourth Street, Third Floor Las Vegas Nevada 89101

Fees

Notice of Entry of Order - NEOJ (CIV)

Description	Amount
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Filing Fee	\$0.00
Filing Total:	\$0.00

Notice of Entry of Order - NEOJ (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Notice of Entry of Order - NEOJ (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Service Only

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Service Only

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total:	\$3.50

Transaction Amount	\$3.50		
Transaction Id	8505342		
Filing Attorney	Benjamin Childs, Sr.	Order Id	007392761-0
Transaction Response	Payment Complete		

Notification of Service for Case: A-18-785917-C, W L A B Investment LLC, Plaintiff(s)vs.TKNR Inc, Defendant(s) for filing Service Only, Envelope Number: 7392761

efilingmail@tylerhost.net <efilingmail@tylerhost.net>

Fri 2/12/2021 10:14 AM

To: Ben Childs <ben@benchilds.com>



Notification of Service

Case Number: A-18-785917-C

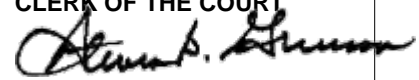
Case Style: W L A B Investment LLC, Plaintiff(s)vs.TKNR Inc,
Defendant(s)

Envelope Number: 7392761

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-18-785917-C
Case Style	W L A B Investment LLC, Plaintiff(s)vs.TKNR Inc, Defendant(s)
Date/Time Submitted	2/12/2021 10:09 AM PST
Filing Type	Service Only
Filing Description	NOTICE OF DEPOSITION - Kenny Lin
Filed By	Benajmin Childs
Service Contacts	Other Service Contacts not associated with a party on the case: Michael Lee (mike@mblnv.com) Michael Matthis (matthis@mblnv.com) W L A B Investment LLC: BENJAMIN CHILDS (ben@benchilds.com)

Document Details	
Served Document	Download Document Appendix Page 138 of 263
This link is active for 30 days.	



MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL B. LEE P.C.
1820 E. Sahara Ave., Ste. 110
Las Vegas, NV 89104
Office: (702) 731-0244
Fax: (702) 477-0096
Email: mike@mblnv.com
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

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

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 Actions.

TO: ALL PARTIES

YOU, AND EACH OF YOU, will please take notice that an order in this matter was entered
in this matter on March 30, 2021. A copy of said ORDER is attached hereto and incorporated
herewith by reference.

Dated this 31 day of March, 2021.

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
Attorneys for Defendants

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL – (702) 477.7030; FAX – (702) 477.0096

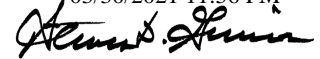
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31 day of March, 2021, I placed a copy of **NOTICE OF ENTRY OF ORDER GRANTING 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.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com

STEVEN L. DAY, ESQ.
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel – 702.309.3333
Fax – 702.309.1085
sday@daynance.com
Attorneys for Plaintiff

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



CLERK OF THE COURT

MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
MICHAEL B. LEE, P.C.
1820 East Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com
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 ("2nd 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 2nd 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 2nd 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 2nd 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 still never did any 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 2nd 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. In 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

11 one. I think it's okay; right? Then the –
Supplement at 166:2-11.

8 Q. So you had the right to inspect the
9 structure; correct?
10 A. Yes, yes, I did that.
11 Q. You had the right to inspect the roof; is
12 that correct?
13 A. Yes.
14 Q. Okay. Did you do that?
15 A. I forgot. I maybe did that because
16 usually I go to the roof.

22 Q. You had the right to inspect the
23 mechanical system; correct?
24 A. Right. Yes, yes.
25 Q. You had the right to inspect the
Page 167
1 electrical systems; correct?
2 A. I check the electrical system, yes.
3 Q. You had a right to inspect the plumbing
4 systems; correct?
5 A. Yes.
6 Q. You had the right to inspect the
7 heating/air conditioning system; correct?
8 A. Yes.

3 Q. And then you could have inspected any
4 other property or system within the property itself;
5 correct?
6 A. Yes, yes.

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”:

13 Q. "It is strongly recommended that buyer
14 retain licensed Nevada professionals to conduct
15 inspections."
16 A. Yes.
17 Q. Yeah. So you were aware of this
18 recommendation at the time --
19 A. Yeah, I know.

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:

////

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
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· 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 outlets¹, 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 also admitted that he could also have seen the dryer vent during his
inspection. *Id.* at 269:23-25.

¹ The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for Plaintiff.

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.

31. Moreover, Mr. Miao received the SRPDF prior to the purchase of the Property. *Id.* at 201:22-25. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the Property, and there were issues with the heating systems, cooling systems, and that there was work done without permits. *Id.* at 201:1-25-202:1-12. Similarly, it was aware that the Property was 63 years old at that time, *Id.* at 204:4-7, and all the work was done by a handyman other than the HVAC installation. *Id.* at 205:14-25, *Id.* at 134:14-25 (understands the difference between a handyman and a licensed contractor), 243:2 ("Yes. They did by the handyman, yes.").

32. Despite these disclosures, Mr. Miao never followed up:

23 · · · Q · Okay · So when they disclosed that there
24 was construction and modification, alterations,
25 and/or repairs made without State, City, County
Page 205
· 1 building permits, which was also work that was done
· 2 by owner's handyman, did you ever do any follow-up
· 3 inquiries to the seller about this issue?
· 4 · · · A · No, I didn't follow up ·

Id. at 204:23-25-205:1-4.

33. However, Mr. Miao also admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits:

10 · · · Q · Under the disclosure form --
11 · · · A · Yeah.
12 · · · Q · -- like, where it specified that there
13 were heating system/cooling system issues that
14 they're aware of, that you could have elected to
15 have an inspection done at that time; correct?
16 · · · A · Yes.

Id. at 206:10-16.

15 · · · Q · Okay · So as your attorney said, you could
16 have obtained a copy of the permits at any time?
17 Yes?
18 · · · A · Yes.
19 · · · Q · Okay · And then it's fair to say that just
20 put you on notice of the potential permit issue;
21 correct?

22 . . . A . . Yes.

23 . . . Q . . It also put you on notice of the issues of
24 everything that's basically specified on page 38;
25 correct?

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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."

1 12 I read that correctly? Yes?
2 13 . . . A . . Yes.
3 14 . . . Q . . Okay . And then you elected not to get a
15 mold inspection; correct?
4 16 . . . A . . Yeah .

5 *Id.* at 213:5-16.

6 .5 . . . Q . . So you relied upon your own determination
7 .6 related to the potential mold exposure of the
8 .7 property; correct?
9 .8 . . . A . . Yes.
10 .9 . . . Q . . Okay . And you elected to proceed with
11 .10 purchasing it without a professional mold
12 .11 inspection; correct?
13 .12 . . . A . . Yes.

14 *Id.* at 216:5-12.

15 36. Despite actual knowledge of these issues, Plaintiff did not elect to have a
16 professional inspection done. 160:17-20.

17 37. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to
18 protect itself by getting an inspection:

19 .2 . . . Q . . If we go to page 40 --
20 .3 . . . A . . Mm-hmm.
21 .4 . . . Q . . -- there's a bunch of Nevada statutes
22 .5 here.
23 .6 . . . A . . Mm-hmm.
24 .7 . . . Q . . If you look at NRS 113.140 --
25 .8 . . . A . . Mm-hmm.
26 .9 . . . Q . . -- do you see that at the top of the page?
27 .10 "Disclosure of unknown defects not required. Form
28 .11 does not constitute warranty duty of buyer and
29 .12 prospective buyer to exercise reasonable care."
30 .13 Do you see that?
31 .14 . . . A . . Yes.
32 .15 . . . Q . . Okay . So this disclosure form gave Marie
33 .16 Zhu, your wife, a copy of the Nevada law that was
34 .17 applicable to the sale of the property; correct?
35 .18 . . . A . . Yeah.
36 .19 . . . Q . . Okay . And under NRS 113.1403, it
37 .20 specifies, "Either this chapter or Chapter 645 of
38 .21 the NRS relieves a buyer or prospective buyer of the
39 .22 duty to exercise reasonable care to protect
40 .23 himself."
41 .24 Did I read that correctly?
42 .25 . . . A . . Yes.

43 *Id.* at 209:2-25.

38. Plaintiff assumed the risk of failing to exercise reasonable care to protect itself.

No Dispute a Professional Inspection Could Have Revealed the Alleged Issues

39. The alleged defects identified by both parties' experts could have been discovered at the time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had access to the entire building. *Id.* at 250:22-25. He had access to the attic and looked at it. *Id.* at 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

·6· · · Q· ·Okay· So you walked through the property
·7 with him at the time he did his inspection; correct?

·8· · · A· ·Right.

·9· · · Q· ·Okay· During that time, did he inspect
10 any areas that -- that you did not have access to in
11 2017?

12· · · A· ·Yes· He didn't go to anything I didn't
13 inspect during 2017 too.

14· · · Q· ·So he inspected the same areas you
15 inspected?

16· · · A· ·Yes, yes.

Id. at 291:6-16.

40. Notably, Plaintiff's expert did not do any destructive testing, so the expert's access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5.

41. Mr. Miao admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-5, 293:18-23, and the plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as his in 2017.

42. Mr. Miao also admitted that the pictures attached to Plaintiff's expert report were areas that he could have inspected in 2017. *Id.* at 302:6-13.

43. Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id.* at 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas inspected by Defendants' expert. *Id.* at 321:1-6.

44. Mr. Miao agreed with Defendants' expert that the alleged conditions identified by Plaintiff's expert were "open and obvious":

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."

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* * *

·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?

1 ·4· ·· A· ·Yes.

2 *Id.* at 265:1-4.

3 17· ·· Q· ·Okay· If you turn the page to 82,
4 18 Plumbing Improvements, no permits required to repair
5 19 or replace the sink; correct?

6 20· ·· A· ·Yes.

7 21· ·· Q· ·To repair or replace a toilet?

8 22· ·· A· ·Yes.

9 23· ·· Q· ·To repair or replace a faucet?

10 24· ·· A· ·Yes.

11 25· ·· Q· ·Resurfacing or replacing countertops?

12 Page 264

13 ·1· ·· A· ·Yes.

14 ·2· ·· Q· ·Resurfacing shower walls?

15 ·3· ·· A· ·Yes.

16 ·4· ·· Q· ·Repair or replace shower heads?

17 ·5· ·· A· ·Yes.

18 ·6· ·· Q· ·Repair or replace rain gutters and down

19 ·7 spouts?

20 ·8· ·· A· ·Yes.

21 ·9· ·· Q· ·Regrouting tile?

22 10· ·· A· ·Yes.

23 11· ·· Q· ·And a hose bib, whatever that is.

24 12· ·· A· ·Water freezer· It's, like, for the

25 13 filtration of the water.

26 14· ·· Q· ·Okay· And then for the mechanical, no
27 15 permits required for portable heating appliances;

28 16 correct.

17 17· ·· A· ·Yes.

18 18· ·· Q· ·For portable ventilation appliances?

19 19· ·· A· ·Yes.

20 20· ·· Q· ·Or portable cooling units; correct?

21 21· ·· A· ·Yes.

22 22· ·· Q· ·And for portable evaporative coolers

23 23 installed in windows; correct?

24 24· ·· A· ·Yes.

25 *Id.* at 264:17-25-265:1-24.

26 *Plaintiff Does not Disclose the Alleged Issues to Potential Tenants*

27 48. Since the date it purchased the Property, Plaintiff has always been trying to lease
28 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
1 landlord to make sure all these building is safe and
2 in good condition.

Id. at 120:16-25-121:1-2, 140:10-14. However, they have not done any of the repairs listed by
Plaintiff's expert. *Id.* at 331:3-12. This illustrates the lack of merit of Plaintiff that there are
underlying conditions with the Property.

49. Moreover, Plaintiff does not provide any notice to the tenants about its expert's
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.

22 Q. Okay. So basically, you just tell them,
23 There's this. You can inspect the unit if you want;
24 is that it?

25 A. Yeah. And also we need to tell is a lot
Page 337

1 of things report that we don't need to go to the
2 inside the building. It's wall cracking. It's
3 outside. You can see.

4 Q. Okay. So it's open and obvious for them?

5 A. Yeah. You can see always outside.

Id. at 337:6-13, 337:22-25-338:1-5.

50. This illustrates the lack of merit of Plaintiff's claims, proven that it has done
nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does
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.

17 *Id.* at 110:12-16. He also admitted that tenants could have damaged the Property while they
18 were occupying it:

19 ·4· · · Q· ·Okay· So the tenant in this context would
20 ·5 have damaged the unit at the time that you owned it;
21 ·6 is that fair?

22 ·7· · · A· ·Maybe· Yes.

23 ·8· · · Q· ·Okay· So some of the -- so the damage
24 ·9 that was to the water heater system, could the
25 10 tenant have damaged that as well?

26 11· · · A· ·Yes.

27 12· · · Q· ·And then he could have damaged the cooler
28 13 pump and the valve as well; is that correct?

29 14· · · A· ·Yes.

30 15· · · Q· ·Okay· Then on 122, these are all issues
31 16 that the tenant could have damaged; is that correct?

32 17· · · A· ·Yes.

33 18· · · Q· ·And then the same through for 145; is that
34 19 right?

35 20· · · A· ·Yes.

36 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.
37 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

38 *No Evidence That Defendants Knew of Alleged Conditions*

39 52. Plaintiff's case is based on speculation that Defendants knew about the alleged
40 conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows
41 Defendants knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes).

42 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at
43 253:17-19.

44 54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
45 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no
46 evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at
47 301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues
48 with the duct work when they owned the Property. *Id.* at 314:5-19. He also recognized the
49 deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to
50 when TKNR owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 –

1 322:3-6.

2 55. Mr. Miao also recognized that a 63-year-old property could have issues that were
3 not caused by Defendants. *Id.* at 324:6-15. This would have also included any issues with the
4 dryer vent and ducts, *Id.* at 325:3-20, and when the duct became disconnected. *Id.* at 329:1-16.

5 56. Plaintiff did not identify any discovery illustrating a genuine issue of material fact
6 that Defendants knew of the alleged issues with the Property that they had not already disclosed
7 on Seller's Disclosures.

8 57. Notably, during Mr. Miao's due diligence period, he spoke with the tenants of the
9 Property. *Id.* at 163:12-25-164:1-6. This included a conversation with the long-term tenant of
10 Unit A, who still resides in the Property to this day. *Id.* At that time, the tenant reported being
11 very happy with the Property and had no complaints. *Id.* In fact, the tenant reported still being
12 very happy with the Property. *Id.* at 170:7-9. This illustrates that there is no basis that
13 Defendants should have been aware of any of the issues when Mr. Miao, a self-professed expert,
14 did not even know about them following his inspection.

15 *No Basis for Claims for RICO and/or Related to Flipping Fund*

16 58. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the
17 Property. *Id.* at 223:15-25.

18 20. . . Q. . . Yeah. . So there's no way that you relied
19 21 upon any flipping fund since it would have been
20 22 closed at this time; right?
21 23. . . A. . . Yeah.

22 *Id.* at 274:20-23. He also admitted that he never received any pro forma, private placement
23 information, calculations of profit and loss, capital contribution requirements, member share or
24 units, or any such information about the Flipping Fund. *Id.* at 277:7-16.

25 *Plaintiff Admitted it Inflated its Cost of Repairs*

26 59. Initially, Mr. Miao contacted contractors to bid the potential cost of repair for the
27 Property and determined that it would have been \$102,873.00. *Id.* at 307:6-22. However,
28 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. This illustrates that the bad faith purposes

of this lawsuit were to simply harass Defendants.

60. Mr. Miao perjured himself in his Declaration in support of the Opposition. He denied, under the penalty of perjury, that he never made an offer to settle this matter for \$10,000. However, during his deposition he admitted that he did make this offer. *Id.* at 259:5-15 (“so maybe I tell Lin, Just pay us \$10,000”). As noted in the Motion, this illustrates the overall bad faith of the litigation where Plaintiff admittedly amplified its alleged damages by more than 6x, and then trebled the damages, and have run up egregious attorneys’ fees for this frivolous action. These are undisputed facts that prove abuse of process as a matter of law.

Allegations in the Second Amended Complaint

61. 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 2nd 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

1 line for one new 5 ton heat pump package unit on one roof
2 top area for the whole building for Unit A. Unit B and Unit
3 C. Investro (sic) Manager, LLC then removed the one year
4 old 5 ton heat pump packaged unit from the roof top with
5 power supply lines and added two new 220v power supply
6 lines for two new 2 ton heart pump package units, one each
7 for Unit B and Unit C.

8 Inestpro (sic) Manager, LLC then added one new 110 volt
9 power supply line for two window cooling units for Unit A.
10 The electrical system load for Unit A was increased due to
11 the installation of two new cooling units and required 100
12 amp service, but the electrical service was not upgraded to
13 100 amp service from the existing 50 amp service. Failure
14 to upgrade the electrical service caused the fuses to be
15 blown out multiple times during the cooling seasons of
16 2018. The tenants in Unit A could not use air conditioning
17 units in cooling seasons of 2018, causing Unit A to be
18 uninhabitable until the Unit A electrical supply panel was
19 upgraded to 100 amp service.

20 All the electrical supply line addition and removal work
21 were performed without code required electrical load
22 calculation, permits and inspections. To save money,
23 minimize flipping cost, minimize flipping time, maximize
24 flipping fund profits, Investpro Manager LLC used
25 unlicensed and unskilled workers to do the electrical work
26 and used low quality materials used inadequate electrical
27 supply lines.

28 Further, to save money, minimize flipping cost, minimize
flipping time, maximize flipping fund profits, Investpro
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.

Further, to save money, minimize flipping cost, minimize
flipping time, maximize flipping fund profits, Investpro
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.

b. SRPDF stated that Plumbing System had no problems
or defects

The fact is that that within two years prior to the sale to
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.

Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro 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.

Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro 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.

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

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

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

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

No full explanation was provided, as required. Investro (sic) Manager, LLC disabled natural gas heating system 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 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.

e. SRPDF stated that the Cooling System had problems or defects

No full explanation was provided, as required. Investro (sic) Manager, LLC removed old swamp cooler systems without UBC required permits and inspections. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro used unlicensed and unskilled workers to disconnect water supply lines, cover swamp cooler ducting holes, and disconnect 110V 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

1 During Plaintiff's inspection at August 10, 2017 afternoon,
2 some smoke detectors were missing.

3 g. SRPDF stated that no Previous or current moisture
4 conditions and or water damage.

5 To save money, minimize flipping cost, minimize flipping
6 time, and maximize flipping fund profits, Investro
7 Manager, LLC used unlicensed and unskilled workers to
8 vent high moisture bathroom fan exhaust and washer/dryer
9 combination unit exhaust into the ceiling attic area instead
10 of venting outside the building roof without UBC required
11 permits and inspections. The improper ventings caused
12 high moisture conditions in ceiling attic and water damages
13 in ceiling and attic. The high moisture conditions in the
14 ceiling attic destroyed ceiling attic insulations, damaged the
15 roof decking, damaged roof trusses and damaged roof
16 structure supports.

17 To saving money, minimize flipping cost, minimize
18 flipping time, and maximize flipping fund profits, Investpro
19 Manager LLC used unlicensed and unskilled workers to
20 complete renovation to all three bathrooms without UBC
21 required permits and inspections. Some faucets and
22 connections behind tile walls and drywall leaks and caused
23 moisture conditions behind tile walls and drywalls.

24 h. SRPDF stated that there was no structure defect.

25 Investpro Manager LLC added one new five ton heat pump
26 package unit with ducting systems on the one roof top area
27 for the whole building in early March, 2016 without UBC
28 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

1 from the washer/dryer combination unit exhaust vent from
2 Unit A without UBC required permits and inspections and
3 this damaged the building structure.
4 The recent inspection of the exterior wall found multiple
5 cracks which indicates structural problems caused by the
6 heavy load on the roof.

7 i. SRPDF marked Yes and NO for construction,
8 modification, alterations or repairs made without required
9 state. city or county building permits.
10 Defendants Lin, Investpro, as TKNR's agent, TKNR, and
11 Wong did not provide detailed explanations. All
12 renovation, demolition, and construction work was done by
13 Investpro Manager LLC using unlicensed, and unskilled
14 workers without UBC required weight load and wind load
15 calculations, permits and inspections.

16 j. SRPDF stated that there were not any problems with
17 the roof.

18 The roof of the Subject Property was damaged by changing
19 roof top HVAC units and ducting systems multiple times
20 from October, 2015 to June, 2017. Investpro Manager LLC
21 removed the existing swamp coolers from roof top and
22 covered the swamp coolers ducting holes. Investpro
23 Manager LLC added a five ton heat pump package unit
24 with a new ducting system on one roof top area in March,
25 2016. Investpro the removed the one year old five ton heat
26 pump package unit with part of the ducting system from the
27 one roof top area in June, 2017. Then Investpro Manager
28 LLC added two two ton heat pump package units on the
two roof top areas in June, 2017. The work damaged the
roof of the Subject Property to such an extent that when it
rains the roof leaks. All of this renovation, demolition, and
construction work was done without UBC required weight
load and wind load calculations, permits and inspections
and this damaged the building roof structure.

k. SRPDF stated that no there were not any fungus or
mold problems.

To save money, minimize flipping cost, minimize flipping
time, and maximize flipping fund profits, Investpro
Manager LLC vented the bathroom high moisture fans and
the washer/dryer combination unit exhaust vents into the
ceiling and attic without venting outside of the roof. All of
this renovation, demolition, and construction work was
done without UBC required permits and inspections and
this damaged the building structure. After the purchase of
the Subject Property, Plaintiff discovered black color
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.

62. As to 31(a), Mr. Miao admitted that the Seller's Disclosures did disclose 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.

63. As to 31(b), Mr. Miao admitted that the Seller's Disclosures did disclose 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

1 “open and obvious” that a reasonable, professional inspection could have discovered in 2017.
2 Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao
3 specified that this was a condition that Plaintiff could have inspected at or before the time it had
4 originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that
5 Defendants were aware of any of these issues.

6 64. As to 31(c), Mr. Miao admitted that the Seller’s Disclosures did disclose the use
7 of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified
8 that he noted issues with the sewer system were “open and obvious” that a reasonable,
9 professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not
10 to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that
11 Plaintiff could have inspected at or before the time it had originally purchased the Property.
12 Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these
13 issues.

14 65. As to 31(d), Mr. Miao admitted that the Seller’s Disclosures did disclose issues
15 with the heating and cooling systems, the use of a handyman, and the lack of permits.
16 Additionally, he specified that he did his inspection and/or that any issues with the heating
17 system were “open and obvious” that a reasonable, professional inspection could have
18 discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection.
19 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or
20 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no
21 evidence showed that Defendants were aware of any of these issues.

22 66. As to 31(e), Mr. Miao admitted that the Seller’s Disclosures did disclose issues
23 with the heating and cooling systems, the use of a handyman, and the lack of permits.
24 Additionally, he specified that he noted issues with the heating and cooling system and items not
25 up to code at the time that he did his inspection and/or that any issues with the heating and
26 cooling system were “open and obvious” that a reasonable, professional inspection could have
27 discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection.
28 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or

1 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no
2 evidence showed that Defendants were aware of any of these issues.

3 67. As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before
4 purchasing the Property, and the overall emphasis on the failure to obtain a professional
5 inspection of the Property prior to purchasing it.

6 68. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture
7 waiver, and understood its affirmative duty to have an inspection done prior to the purchase of
8 the Property. He also admitted that that the Seller's Disclosures did disclose the use of a
9 handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he
10 specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the
11 Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,
12 Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the
13 time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence
14 showed that Defendants were aware of any of these issues.

15 69. As to 31(h), Mr. Miao admitted that the Seller's Disclosures did disclose issues
16 with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao
17 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and
18 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified
19 that this was a condition that Plaintiff could have inspected at or before the time it had originally
20 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants
21 were aware of any of these issues.

22 70. As to 31(i), this allegation illustrates the prior knowledge that Plaintiff had before
23 purchasing the Property, and the overall emphasis on the failure to obtain a professional
24 inspection of the Property prior to purchasing it. Mr. Miao admitted that he should have
25 followed up related to the permit issue prior to Plaintiff purchasing the Property.

26 71. As to 31(j), Mr. Miao admitted that the Seller's Disclosures did disclose issues
27 with the heating and cooling systems, the use of a handyman, and the lack of permits.
28 Additionally, he specified that he noted issues were "open and obvious" that a reasonable,

1 professional inspection could have discovered in 2017. Mr. Miao agreed that there was no
2 noticeable sagging on the roof. Despite these issues, Plaintiff chose not to have a professional
3 inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have
4 inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao
5 admitted that no evidence showed that Defendants were aware of any of these issues.

6 72. As to 31(l), Mr. Miao admitted that the Seller's Disclosures did disclose issues
7 with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao
8 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and
9 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified
10 that this was a condition that Plaintiff could have inspected at or before the time it had originally
11 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants
12 were aware of any of these issues, and also admitted that squatters and tenants could have
13 damaged the Property.

14 No Reliance on Broker Agents

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

24 Mr. Miao Agreed with Defendants' Expert

25 74. On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate
26 Professor of Construction Management at UNLV and overqualified expert, conducted an
27 inspection of the Property. At that time, as noted earlier, Mr. Miao walked the Property with
28 Professor Opfer. Supplement at 320:31-25.

75. 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.

76. Mr. Miao agreed with Professor Opfer 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.* at 291:1-5.

77. Mr. Miao agreed with Professor Opfer that Plaintiff's alleged 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 1031. “To successfully defend against a summary judgment motion, ‘the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev. 2008) (quoting *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

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

6. “Under NRS Chapter 113, residential property sellers are required to disclose any defects to buyers within a specified time before the property is conveyed.” *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007) (citing NRS 113.140(1)). “NRS 113.140(1), however, provides that a seller is not required to ‘disclose a defect in residential property of which [she] is not aware.’ A ‘defect’ is defined as “a condition that materially affects the value or use of residential property in an adverse manner.” *Id.* (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

[a]scribing to the term “aware” its plain meaning, we determine that 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. 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.

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

7. 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). The general rule foreclosing liability for nondisclosure when property is purchased as-is does not apply when the seller knows of facts materially affecting the value or desirability of the property which are known or accessible only to [the seller] and also knows that such facts are not known to, or 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).

8. 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

1 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
2 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*
3 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).
4 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is
5 foreclosed the buyer's common law claims, justifying the granting of summary judgment on
6 common law claims. *Id.* (citation omitted).

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

13 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at *5 (Nev. App. Nov. 25,
14 2020).

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

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

11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all
known conditions of the Subject Property. TKNR disclosed that “3 units has (sic) brand new AC

1 installed within 3 months,” and further that the “owner never resided in the property and never
2 visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was
3 conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. TNKR also
4 disclosed that it was aware of issues with the heating and cooling systems, there was
5 construction, modification, alterations, or repairs done without permits, and lead-based paints.

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

8 During such Period, Buyer shall have the right to conduct, non-
9 invasive/non-destructive inspections of all structural, roofing,
10 mechanical, electrical, plumbing, heating/air conditioning,
11 water/well/septic, pool/spa, survey, square footage, and any other
property or systems, through licensed and bonded contractors or
other qualified professionals.

12 13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures,
13 Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct
14 any reasonable inquiries. In fact, Ms. Zhu only cancelled the original RPA, Ex. E, because of an
15 issue related to her financing, not because of any concerns related to the Seller’s Disclosures.
16 Notably, she included the explicit waiver of the inspections, which included her initialing the
17 provision that she had not done in the original RPA. Ms. Zhu even directly informed her agent
18 to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures
19 from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu
20 still never did any professional inspections. Instead, she put down an additional \$60,000 as a
21 non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of
22 \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant
23 placement fee. Through Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to
24 Plaintiff.

25 14. As to the Brokers Defendants, Ms. Zhu agreed that she was not relying upon any
26 representations made by Brokers or Broker’s agent. Ms. Zhu agreed to purchase the Property
27 AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu agreed to satisfy herself,
28 as to the condition of the Property, prior to the close of escrow. Ms. Zhu waived all claims

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

6 15. As to the waivers, Paragraph 7(D) of the both the RPA and 2nd RPA expressly
7 provided:

8 *It is strongly recommended that Buyer retain licensed Nevada*
9 *professionals to conduct inspections.* If any inspection is not
10 completed and requested repairs are not delivered to Seller within
11 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.

12 Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to
13 satisfy her use. Nevertheless, Ms. Zhu waived her inspection related to the original RPA and the
14 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd RPA. Ms. Zhu
15 also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection,
16 mechanical inspection, soil inspection, and structural inspection. Thereby, Ms. Zhu waived any
17 liability of Defendants for the cost of all repairs that inspection would have reasonably identified
18 had it been conducted. The RPA and the 2nd RPA clearly indicated that Ms. Zhu was purchasing
19 the Property "AS-IS, WHERE-IS without any representations or warranties."

20 16. Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no
21 responsibility to assist in the payment of any repair, correction or deferred maintenance on the
22 Property which may have been revealed by the above inspections, agreed upon by the Buyer and
23 Seller or requested by one party." Paragraph 7(D) of the RPA.

24 17. Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the
25 purchase of approximately twenty residential properties. In Clark County alone, Ms. Zhu and
26 Mr. Miao were involved with the purchase of at least eight rental properties starting in 2014.

27 18. Plaintiff understands the importance of reading contracts.

28 ////

1 19. Mr. Miao specified that he understands that he needs to check public records
2 when conducting his due diligence.

3 20. Plaintiff was a sophisticated buyer who understood the necessity of getting
4 properties inspected.

5 21. The terms of the RPA were clear to Plaintiff.

6 22. As to Paragraph 7(A), Mr. Miao specified that he believed that his inspection and
7 conversations with the tenant constituted the actions necessary to deem the Property as
8 satisfactory for Plaintiff's purchase.

9 23. At all times relevant prior to the purchase of the Property, Plaintiff had access to
10 inspect the entire property and conduct non-invasive, non-destructive inspections.

11 24. Prior to the purchase, Mr. Miao was always aware that the Seller "strongly
12 recommended that buyer retain licensed Nevada professionals to conduct inspections".

13 25. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that
14 limited potential damages that could have been discovered by an inspection.

15 26. As to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and
16 understandable, and it was a standard agreement similar to the other agreements he had used in
17 purchasing the other properties in Clark County, Nevada.

18 27. On or about August 10, 2017, Mr. Miao did an inspection of the Property. During
19 that time, he admitted that he noticed some issues with the Property that were not up to code,
20 finishing issues, GFCI outlets², and electrical issues.

21 28. Similarly, he also specified that there was an issue with exposed electrical in Unit
22 C. He also noted that there could have been a potential asbestos issue as well.

23 29. Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, and
24 he was aware of visible cracks in the concrete foundation, which were open and obvious.

25 ////

26 _____
27 ² The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith
28 and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for
Plaintiff.

1 30. Mr. Miao also admitted that he could also have seen the dryer vent during his
2 inspection.

3 31. However, Mr. Miao also admitted that he could have followed up on the issues
4 identified in the SRPDF that included the HVAC and the permits.

5 32. Similarly, Mr. Miao was aware that he should have contacted the local building
6 department as part of his due diligence.

7 33. Plaintiff was also on notice of the potential for mold and the requirement to get a
8 mold inspection.

9 34. Despite actual knowledge of these issues, Plaintiff did not elect to have a
10 professional inspection done.

11 35. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to
12 protect itself by getting an inspection.

13 36. Plaintiff assumed the risk of failing to exercise reasonable care to protect itself.

14 37. The alleged defects identified by both parties' experts could have been discovered
15 at the time of the original purchase as they were "open and obvious".

16 38. Plaintiff failed to differentiate between conditions prior to when TKNR owned the
17 Property, while it owned it, and those afterwards.

18 39. No dispute exists that TKNR did not need permits for the interior work it had
19 done to the Property.

20 40. Plaintiff has always been trying to lease the Property despite not doing any of the
21 repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are
22 underlying conditions with the Property.

23 41. Moreover, Plaintiff does not provide any notice to the tenants about its expert's
24 report or this litigation. This illustrates the lack of merit of Plaintiff's claims and proves that it
25 has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as
26 it does not tell prospective tenants about them.

27 42. Mr. Miao admitted that multiple third parties could have potentially damaged the
28 Property.

43. Plaintiff did not present any evidence related to Defendants' alleged knowledge other than his personal belief and speculation.

44. Mr. Miao admitted that he has no evidence Defendants knew about the alleged moisture conditions. Additionally, he also admitted that there is no evidence that Defendants knew about the alleged issues with the plumbing system. He also admitted that he did not know if Defendants knew about the alleged issues with the duct work when they owned the Property. 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.

45. Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants.

46. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property.

47. Plaintiff admittedly amplified its alleged damages by more than 6x, and then trebled the damages, and have run up egregious attorneys' fees for this frivolous action. These are undisputed facts that prove abuse of process as a matter of law given the known issues with the Property and Plaintiff's waivers related to the inspections. Plaintiff waived the inspections and purchased the property "as is". This shows that Plaintiff had no interest in having a professional inspection done. It shows the behavior of the Plaintiff related to the entire case.

48. Plaintiff were encouraged to inspect the property, and they did not do it. It was a 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff was strongly encouraged to conduct the inspection, and they did not want to.

49. This is a 2018 case. Plaintiff has not been diligent in conducting discovery.

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.

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

4 50. Plaintiff failed to articulate the alleged discovery that it would likely have.
5 Additionally, Plaintiff already opposed enlarging discovery by specifying that any extension of
6 discovery would prejudice it, indicating that it had no need for additional discovery and that
7 Plaintiff would largely rest upon the findings of its expert. See Plaintiff's Opposition to Motion
8 to Enlarge Discovery. Also, Plaintiff's counsel's declaration in the Opposition illustrated that he
9 had additional discussions with Plaintiff's expert related to the MSJ, but Plaintiff's expert did not
10 proffer any additional opinions to counter the Motion. See *Opp.* at p. 18:7-9.

11 51. As a matter of law, Plaintiff is precluded from seeking damages from Defendants
12 because of her failure to inspect. "Nondisclosure by the seller of adverse information concerning
13 real property . . . will not provide the basis for an action by the buyer to rescind or for damages
14 when property is sold 'as is.' " *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855
15 P.2d 549, 552 (1993). Moreover, "[l]iability for nondisclosure is generally not imposed where
16 the buyer either knew of or could have discovered the defects prior to the purchase." *Land*
17 *Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015).

18 52. Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property
19 "as-is" within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109
20 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not
21 constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable
22 care to protect himself. A completed disclosure form does not constitute an express or implied
23 warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and
24 "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to
25 exercise reasonable care to protect himself or herself." *Id.* at § 113.140(2).

26 53. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent
27 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
28 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close

1 of escrow, and the information regarding Property was reasonably accessible to the buyer.
2 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d
3 104, 111 (Nev. 2018).

4 54. As such, Summary Judgment is appropriate under NRS § 113.140(1) (seller is not
5 required to disclose a defect in residential property of which she is not aware). Under this
6 statute, “[a]scribing to the term ‘aware’ its plain meaning, . . . the seller of residential real
7 property does not have a duty to disclose a defect or condition that ‘materially affects the value
8 or use of residential property in an adverse manner,’ if the seller does not realize, perceive, or
9 have knowledge of that defect or condition.” *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007).
10 Thus, as Plaintiff cannot demonstrate an omitted disclosure that caused damage, Defendants are
11 entitled to summary judgment as a matter of law. *Id.* at 426.

12 55. In total, under NRS § 113.140(1) (seller is not required to disclose a defect in
13 residential property of which she is not aware), *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007),
14 and NRS § 645.259(2), Defendants are entitled to Summary Judgment on Plaintiff’s claims for
15 (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4)
16 Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8)
17 Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education,
18 (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good
19 Faith and Fair Dealing]. It also eliminates the causes of action for (7) RICO, (10) Fraudulent
20 Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in
21 fact or law.

22 56. Eighth Judicial District Court Rule 2.20(e) provides that, “[f]ailure of the
23 opposing party to serve and file written opposition may be construed as an admission that the
24 motion and/or joinder is meritorious and a consent to granting the same.” Simply filing an
25 opposition does not relieve a party of its duty to actually oppose the issues raised in the motion.
26 See *Benjamin v. Frias Transportation Mgt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019) (unpublished
27 disposition).

28 ////

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

8 58. Pursuant to Nevada Rule of Civil Procedure 11(b), by presenting to the court a
9 pleading or other paper, an attorney or unrepresented party certifies: (1) it is not being presented
10 for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the
11 cost of litigation, (2) the claims and other legal contentions are warranted by existing law or by a
12 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing
13 new law, (3) the factual contentions have evidentiary support, and (4) the denials of factual
14 contentions are warranted on the evidence or.

15 59. “If, after notice and a reasonable opportunity to respond, the court determines that
16 Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law
17 firm, or party that violated the rule or is responsible for the violation. Absent exceptional
18 circumstances, a law firm must be held jointly responsible for a violation committed by its
19 partner, associate, or employee.” NEV. R. CIV. PRO. 11(c).

20 60. “On its own, the court may order an attorney, law firm, or party to show cause
21 why conduct specifically described in the order has not violated Rule 11(b).” *Id.* at 11(c)(3). “A
22 sanction imposed under this rule must be limited to what suffices to deter repetition of the
23 conduct or comparable conduct by others similarly situated. The sanction may include
24 nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and
25 warranted for effective deterrence, an order directing payment to the movant of part or all of the
26 reasonable attorney fees and other expenses directly resulting from the violation.” *Id.* at
27 11(c)(4).

28 ////

61. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

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

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

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

Id. “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any 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 78. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The
3 findings of fact are incorporated by reference.

4 79. 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 80. 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 81. Under either Rule 11 or Defendants' counterclaim for abuse of process, Plaintiff
20 brought or maintained this action without reasonable ground and only to harass Defendants.
21 NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law also show that Plaintiff
22 brought or maintained this claim without reasonable grounds, which justifies an award of
23 attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

24 82. Defendants are directed to file a separate order to show cause pursuant to Nevada
25 Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's prior counsel, Benjamin Childs, as
26 this Honorable Court determined that Plaintiff has violated Rule 11(b). The court will impose an
27 appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for
28 the violation. The court intends to award to the Defendants the reasonable expenses, including

attorneys' fees and costs, incurred for defending this frivolous lawsuit, either under Rule 11 or as damages for Defendants' counterclaim for abuse of process. This sanction will be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The Court may also consider sanctions including nonmonetary directives, an order to pay a penalty into court, or, an order directing payment to Defendants for part or all of the reasonable attorney fees and other expenses directly resulting from the violation.

Based on the foregoing, the Court GRANTS Defendants Motion, DENIES the 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. This Honorable 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 and/or under the abuse of process counterclaim. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order and the Order to Show Cause. Plaintiff may file an objection to any portion of the attorney's fees by filing an objection within five judicial days of service of the affidavit and/or the Order to Show Cause. After the fees are granted, Plaintiff will have ten (10) days of entry of this Order to provide proof of payment to be noticed and filed with the Court.

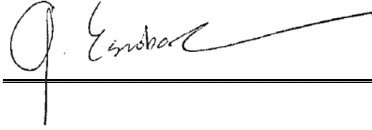
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this is a final order related to the claims and counterclaim. This Honorable Court directs entry of a final judgment of all claims. To the extent that post-judgment award of attorneys' fees are pending, Defendants may make the claim as set forth in Nevada Rule of Civil Procedure 54(d)(D) (claims for attorney fees as sanctions).

////

1 IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any
2 outstanding or pending discovery is quashed as moot.

3 IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any trial dates
4 and/or calendar calls are vacated as moot.

Dated this 30th day of March, 2021



159 FDE 147E 8F8F
Adriana Escobar
District Court Judge

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9 Date: March 12, 2021.

Date: March 12, 2021.

10 Respectfully Submitted By:

Approved of as to Form and Content By:

11 MICHAEL B. LEE, P.C.

DAY & NANCY

12 /s/ Michael Lee
13 MICHAEL B. LEE, ESQ. (NSB 10122)
14 MICHAEL MATTHIS, ESQ. (NSB 14582)
15 1820 E. Sahara Avenue, Suite 110
16 Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com
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NO RESPONSE
17 STEVEN L. DAY, ESQ. (NSB 3708)
18 1060 Wigwam Parkway
19 Henderson, NV 89074
20 Tel – 702.309.3333
21 Fax – 702.309.1085
22 sday@daynance.com
23 Attorneys for Plaintiff
24
25
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27
28

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

8
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 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: 3/30/2021

15 Brinley Richeson

bricheson@daynance.com

16 Steven Day

sday@daynance.com

17 Michael Matthis

matthis@mblnv.com

18 BENJAMIN CHILDS

ben@benchilds.com

19 Nikita Burdick

nburdick@burdicklawnv.com

20 Michael Lee

mike@mblnv.com

21 Bradley Marx

brad@marxfirm.com

22 Frank Miao

frankmiao@yahoo.com

RE: A-18-785917-C - ORDR - Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure11(b)

Reed, Ariana <dept14lc@clarkcountycourts.us>

Thu 4/8/2021 4:15 PM

To: 'mike@mblnv.com' <mike@mblnv.com>

Cc: 'Brinley Richeson' <bricheson@daynance.com>; 'Michael Matthis' <matthis@mblnv.com>; 'Steve Day' <sday@dayattorneys.com>; Ben Childs <ben@benchilds.com>; Powell, Diana <PowellD@clarkcountycourts.us>

Noted. Thank you for your prompt response.

Be well and stay safe,

Ariana Reed, Esq.

Law Clerk to the Honorable Adriana Escobar

Eighth Judicial District Court, Dept. 14

Dept14LC@clarkcountycourts.us

Phone: (702) 671-4423

Fax: (702) 671-4418

From: mike@mblnv.com [mailto:mike@mblnv.com]

Sent: Thursday, April 8, 2021 11:35 AM

To: Reed, Ariana

Cc: 'Brinley Richeson'; 'Michael Matthis'; 'Steve Day'; 'Benjamin B. Childs'; Powell, Diana

Subject: RE: A-18-785917-C - ORDR - Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure11(b)

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Received. It would appear that the proposed order related to the OSC is moot and we can withdraw it.

CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at mike@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: Reed, Ariana <dept14lc@clarkcountycourts.us>

Sent: Wednesday, April 7, 2021 4:44 PM

To: 'mike@mblnv.com' <mike@mblnv.com>

Cc: 'Brinley Richeson' <bricheson@daynance.com>; 'Michael Matthis' <matthis@mblnv.com>; 'Steve Day' <sday@dayattorneys.com>; Benjamin B. Childs <ben@benchilds.com>; Powell, Diana <PowellD@clarkcountycourts.us>

Subject: RE: A-18-785917-C - ORDR - Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure 11(b)

Hello,

In light of the Amended Order (attached) filed on April 7, 2021, the submitted proposed order may no longer be applicable. Please review the Amended Order. If counsel determines the proposed order is in line with the Amended Order, counsel may resubmit to the Department 14 Inbox.

Please reply to confirm receipt and include all parties to avoid *ex parte* communications. Please also include Diana Powell, our JEA, on all email correspondence to ensure you receive the most prompt response (PowellD@clarkcountycourts.us). Thank you.

Please review the notes below for further Department 14 protocol and instructions:

****ELECTRONIC SERVICE****

Pursuant to Administrative Order 20-17, **ALL lawyers** must register for electronic service on **every case they have in the district court**. Please ensure you are registered to receive electronic service at <https://nevada.tylerhost.net/OfsWeb> so that you will receive the electronically filed document once processed.

*****MATTERS ON CALENDAR*****

The Court will hold limited hearings via **Blue Jeans** until further notice. Unless the Court instructs parties to appear via Blue Jeans, **all matters**—except for TROs, preliminary injunctions, record sealing, and default judgment applications exceeding \$50,000.00 in damages—will be decided on the pleadings via Minute Order. This decision will occur in chambers and **no appearances are required**.

Please contact chambers at least two business days prior to your hearing date to confirm how the Court will handle your hearing.

*****STATUS CHECKS ON CALENDAR*****

All **status checks** that are on calendar will be resolved via email and **no appearances are required**.

*****ORDERS*****

Until further notice, all parties must submit **orders** electronically, in **both** PDF version and Word version to the Department 14 inbox at DC14Inbox@clarkcountycourts.us.

All orders must have original signatures from all parties or an email—***appended as the last page(s) of the proposed order***—confirming that the parties approved use of their electronic signatures.

The subject line of the e-mail should identify the full case number, filing code and case caption.

Orders that do not comply with these instructions will be returned for resubmittal.

*****RULE 16 HEARINGS/CONFERENCES*****

All **Rule 16 Conferences** will be heard via Blue Jeans until further notice. Please contact the

Department for information about the hearing schedule.***

Be well and stay safe,

Ariana Reed, Esq.

Law Clerk to the Honorable Adriana Escobar

Eighth Judicial District Court, Dept. 14

Dept14LC@clarkcountycourts.us

Phone: (702) 671-4423

Fax: (702) 671-4418

From: mike@mblnv.com [<mailto:mike@mblnv.com>]

Sent: Friday, April 2, 2021 11:58 AM

To: DC14Inbox

Cc: 'Brinley Richeson'; 'Michael Matthis'; 'Steve Day'; Reed, Ariana; Benjamin B. Childs

Subject: A-18-785917-C - ORDR - Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's Prior Counsel, Benjamin Childs, for Violation of Nevada Rule of Civil Procedure 11(b)

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Dear Administrator:

As directed by this Honorable Court through the Order filed on March 30, 2021, please find the proposed Order to Show Cause related to the Rule 11 violations. I have copied Mr. Childs on this e-mail chain. As noted in the proposed OSC, we will also provide any executed Order to Frank Miao, the representative for Plaintiff, and Mr. Childs through e-mail. We have not included Mr. Miao on this e-mail at this time, but Plaintiff's current counsel is copied.

Thank you for your attention to this matter. As always, please contact me with any questions, comments, or concerns.

MICHAEL B. LEE, ESQ.

mike@mblnv.com



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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 TO SHOW CAUSE PURSUANT
TO NEVADA RULE OF CIVIL
PROCEDURE 11(c)(3) ON PLAINTIFF
AND PLAINTIFF'S PRIOR COUNSEL,
BENJAMIN CHILDS, FOR VIOLATION
OF NEVADA RULE OF CIVIL
PROCEDURE 11(B)**

Date of Hearing:
Time of Hearing:

This matter prior 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”), and this Court’s finding that “[t]he overwhelming facts and law illustrate that Plaintiff’s claim is frivolous” (Order at ¶ 78), issues this Order to Show Cause Pursuant to Nevada Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff’s Prior Counsel, Benjamin Childs, Esq., for Violation of Nevada Rule of Civil Procedure 11(b).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Frank Miao, on behalf of Plaintiff, and Benjamin Childs, Esq., are to appear, which may be through remote means if elected by the Court, before this Honorable Court in Department XIV, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the ____ day of _____, 2021, at ____:____.m., to show cause why they should not be held in contempt of court.

2. Pursuant to Nevada Rule of Civil Procedure 11(b), this Honorable Court previously found that Plaintiff violated Rule 11(b), and the Court sets this Order to Show Cause related to appropriate sanctions on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.” NEV. R. CIV. PRO. 11(c).

3. “On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).” *Id.* at 11(c)(3). “A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.” *Id.* at 11(c)(4).

4. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be

1 imposed for frivolous actions.

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

10 6. The court intends to award to the Defendants the reasonable expenses, including
11 attorneys' fees and costs, incurred for defending this frivolous lawsuit, either under Rule 11 or as
12 damages for Defendants' counterclaim for abuse of process. This sanction will be limited to
13 what suffices to deter repetition of the conduct or comparable conduct by others similarly
14 situated. The Court may also consider sanctions including nonmonetary directives, an order to
15 pay a penalty into court, or, an order directing payment to Defendants for part or all of the
16 reasonable attorney fees and other expenses directly resulting from the violation.

17 7. WLAB and Mr. Childs may file affidavits on their behalf with the Court and may
18 appear and present testimony at the hearing, or may, at or prior to the hearing, file with the Court
19 a written response to this Order to Show Cause and as it relates to the Rule 11 issued identified
20 herein and in the underlying Order;

21 8. In the event that Mr. Miao and/or Mr. Childs fail to appear at the Order to Show
22 Cause hearing, or fail to show sufficient cause why WLAB and Mr. Childs should not be
23 sanctioned under Rule 11, the Court will enter an order holding WLAB, Mr. Childs, and
24 Benjamin B. Childs (Law Firm), jointly and severally liable under Rule 11 for sanctions, and
25 consider holding WLAB and Mr. Childs in contempt of court, which may include both monetary
26 sanctions and jail time in the county jail; and

27 9. Defendants are directed to use reasonable means to serve a copy of this Order on
28 WLAB and Mr. Childs as expeditiously as possible, including, which may include electronic

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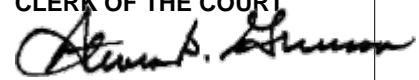
1 service through the court filing system and e-mail to Mr. Miao, Plaintiff's current attorney Day
2 & Nance, and Mr. Childs.
3
4
5
6

7 Date: April 2, 2021.

8 Respectfully Submitted By:

9 MICHAEL B. LEE, P.C.

10 /s/ Michael Lee
11 MICHAEL B. LEE, ESQ. (NSB 10122)
12 MICHAEL MATTHIS, ESQ. (NSB 14582)
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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

**NOTICE OF ENTRY OF AMENDED
ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

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 Actions.

TO: ALL PARTIES

YOU, AND EACH OF YOU, will please take notice that an order in this matter was entered
in this matter on April 7, 2021. A copy of said ORDER is attached hereto and incorporated
herewith by reference.

Dated this 8 day of April, 2021.

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
Attorneys for Defendants

MICHAEL B. LEE, P.C.
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8 day of April, 2021, I placed a copy of **NOTICE OF ENTRY OF AMENDED ORDER GRANTING 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.

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STEVEN L. DAY, ESQ.
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sday@daynance.com
Attorneys for Plaintiff

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

Heather S. Smith

CLERK OF THE COURT

MICHAEL B. LEE, ESQ. (NSB 10122)
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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 ("2nd 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 2nd 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 2nd 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 2nd 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 2nd 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

11 one. I think it's okay; right? Then the –
Supplement at 166:2-11.

8. . . Q. . So you had the right to inspect the
9 structure; correct?
10. . . A. . Yes, yes, I did that.
11. . . Q. . You had the right to inspect the roof; is
12 that correct?
13. . . A. . Yes.
14. . . Q. . Okay. Did you do that?
15. . . A. . I forgot. I maybe did that because
16 usually I go to the roof.

* * *

22. . . Q. . You had the right to inspect the
23 mechanical system; correct?
24. . . A. . Right. Yes, yes.
25. . . Q. . You had the right to inspect the
Page 167
1 electrical systems; correct?
2. . . A. . I check the electrical system, yes.
3. . . Q. . You had a right to inspect the plumbing
4 systems; correct?
5. . . A. . Yes.
6. . . Q. . You had the right to inspect the
7 heating/air conditioning system; correct?
8. . . A. . Yes.

* * *

3. . . Q. . And then you could have inspected any
4 other property or system within the property itself;
5 correct?
6. . . A. . Yes, yes.

Id. at 167:8-16, 167:22-25-168:1-11, 168:25-169:1-6.

19. Prior to the purchase, Mr. Miao was always aware that the Seller “strongly
recommended that buyer retain licensed Nevada professionals to conduct inspections”:

13. . . Q. . "It is strongly recommended that buyer
14 retain licensed Nevada professionals to conduct
15 inspections."
16. . . A. . Yes.
17. . . Q. . Yeah. So you were aware of this
18 recommendation at the time --
19. . . A. . Yeah, I know.

Id. at 176:13-19.

20. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that
limited potential damages that could have been discovered by an inspection:

////

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.

Id. at 179:18-25-180:1-15.

21. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and understandable, and it was a standard agreement similar to the other agreements he had used in purchasing the other properties in Clark County, Nevada. *Id.* at 198:19-25-199:1-2, 200:3-15.

Mr. Miao Does Inspections for Plaintiff Although he is not a Licensed, Bonded Professional Inspector

22. As to all the properties purchased by Plaintiff, Mr. Miao always does the inspections and does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25, 140:5-10. Based on his own belief, he does not believe that a professional inspection is necessary for multi-tenant residential properties. *Id.* at 120:6-9 (his own understanding), 120:16-25 (second-hand information he received).

23. Notably, he does not have any professional license related to being a general 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 10 purchasing it without a professional mold
8 11 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?

12 .12. . . A. . Yes. . He didn't go to anything I didn't
13 inspect during 2017 too.

14 .14. . . Q. . So he inspected the same areas you
15 inspected?

16 .16. . . A. . Yes, yes.

17 *Id.* at 291:6-16.

18 40. Notably, Plaintiff's expert did not do any destructive testing, so the expert's
19 access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5.

20 41. Mr. Miao admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-
21 5, 293:18-23, and the plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as
22 his in 2017.

23 42. Mr. Miao also admitted that the pictures attached to Plaintiff's expert report were
24 areas that he could have inspected in 2017. *Id.* at 302:6-13.

25 43. Additionally, Mr. Miao accompanied Defendants' expert during his inspection.
26 *Id.* at 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas
27 inspected by Defendants' expert. *Id.* at 321:1-6.

28 44. Mr. Miao agreed with Defendants' expert that the alleged conditions identified by
Plaintiff's expert were "open and obvious":

29 22. . . Q. . And then the second line down, the first
30 23 sentence begins, "Items complained about in the Sani
31 24 report were open and obvious in the roof area, attic
32 25 area, and on the exterior/interior of the property."
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* * *

33 .3. . . Q. . Do you agree with this statement?

34 .4. . . A. . Yes.

35 *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?
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.1. . . A. . . Yes.
.2. . . Q. . . Resurfacing shower walls?
.3. . . A. . . Yes.
.4. . . Q. . . Repair or replace shower heads?
.5. . . A. . . Yes.
.6. . . Q. . . Repair or replace rain gutters and down
.7 spouts?
.8. . . A. . . Yes.
.9. . . Q. . . Regrouting tile?
10. . . A. . . Yes.
11. . . Q. . . And a hose bib, whatever that is.
12. . . A. . . Water freezer. . It's, like, for the
13 filtration of the water.
14. . . Q. . . Okay. . And then for the mechanical, no
15 permits required for portable heating appliances;
16 correct.
17. . . A. . . Yes.
18. . . Q. . . For portable ventilation appliances?
19. . . A. . . Yes.
20. . . Q. . . Or portable cooling units; correct?
21. . . A. . . Yes.
22. . . Q. . . And for portable evaporative coolers
23 installed in windows; correct?
24. . . 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
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.1 landlord to make sure all these building is safe and
.2 in good condition.

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 ·6· · · Q· ·All right· In terms of tenants -- renting
7 ·7 out the units to any tenants, do you ever provide
8 ·8 them with a copy of the Sani report?

9 ·9· · · A· ·No.

10 ·10· · · Q· ·Do you ever provide them with any of the
11 ·11 pleadings or the first amended complaint, second
12 ·12 amended complaint, the complaint itself?

13 ·13· · · A· ·No.

14 * * *

15 ·22· · · Q· ·Okay· So basically, you just tell them,
16 ·23 There's this· You can inspect the unit if you want;
17 ·24 is that it?

18 ·25· · · 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 ·2 inside the building· It's wall cracking· It's
22 ·3 outside· You can see.

23 ·4· · · Q· ·Okay· So it's open and obvious for them?

24 ·5· · · 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

were occupying it:

·4· . . Q· ·Okay· So the tenant in this context would
·5 have damaged the unit at the time that you owned it;
·6 is that fair?
·7· . . A· ·Maybe· Yes.
·8· . . Q· ·Okay· So some of the -- so the damage
·9 that was to the water heater system, could the
10 tenant have damaged that as well?
11· . . A· ·Yes.
12· . . Q· ·And then he could have damaged the cooler
13 pump and the valve as well; is that correct?
14· . . A· ·Yes.
15· . . Q· ·Okay· Then on 122, these are all issues
16 that the tenant could have damaged; is that correct?
17· . . A· ·Yes.
18· . . Q· ·And then the same through for 145; is that
19 right?
20· . . A· ·Yes.

Id. at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.
Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

No Evidence That Defendants Knew of Alleged Conditions

52. Plaintiff's case is based on assertions that Defendants knew about the alleged conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes).

53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at 253:17-19.

54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged 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 2nd 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
15 swamp cooler water supply lines without UBC required
16 permits and inspections. To save money, minimize flipping
17 cost, minimize flipping time, and maximize flipping fund
18 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.

19 Further, to save money, minimize flipping cost, minimize
20 flipping time, and maximize flipping fund profits, Investpro
21 Manager LLC used unlicensed and unskilled workers to
22 remove and plug natural gas lines for the natural gas wall
23 furnaces without UBC required permits and inspections.

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 with
27 little knowledge of natural gas pipe connection
28 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.

Further, to save money, minimize flipping cost, minimize
flipping time, and maximize flipping fund profits, Investpro
Manager LLC used unlicensed and unskilled workers to
completely renovate all three bathrooms in the Subject
Property without UBC required permits and inspections.
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.

1 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 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

1 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate
2 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a
3 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).
4 Substantive law controls whether factual disputes are material and will preclude summary
5 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
6 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the
7 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*
8 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

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

16 3. Under Nevada Rule of Civil Procedure 56(a), a party may move for summary
17 judgment, or partial summary judgment. “The court shall grant summary judgment if the movant
18 shows that there is no genuine dispute as to any material fact and the movant is entitled to
19 judgment as a matter of law.” The court may rely upon the admissible evidence cited in the
20 moving papers and may also consider other materials in the record as well. *Id.* at 56(c). “If the
21 court does not grant all the relief requested by the motion, it may enter an order stating any
22 material fact — including an item of damages or other relief — that is not genuinely in dispute
23 and treating the fact as established in the case.” *Id.* at 56(g).

24 4. The pleadings and proof offered in a Motion for Summary Judgment are
25 construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102
26 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still “bears the
27 burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative
28 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 2nd 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 2nd 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 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd 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

Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. The RPA and the 2nd RPA clearly indicated that Ms. Zhu was purchasing the Property “AS-IS, WHERE-IS without any representations or warranties.”

16. 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.” Paragraph 7(D) of the RPA.

17. 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.

18. Mr. Miao understood the importance to check public records when conducting due diligence.

19. Plaintiff was a sophisticated buyer aware of the necessity of property inspection.

20. 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.

21. Prior to the purchase, Mr. Miao was aware that the Seller “strongly recommended that buyer retain licensed Nevada professionals to conduct inspections”.

22. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection.

23. As to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and understandable, and it was a standard agreement similar to the other agreements he had used in purchasing the other properties in Clark County, Nevada.

24. On or about August 10, 2017, Mr. Miao inspected Property. During that time, Mr. Miao noted issues with the Property that were not up to code, finishing issues, GFCI outlets¹, and electrical issues.

25. Mr. Miao acknowledged there was an issue with exposed electrical in Unit C as

¹ The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the frivolous nature 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).

58. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

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

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

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

Id. “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any 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.

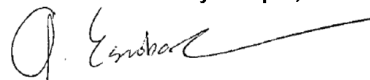
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that Defendants are awarded attorneys' fees and costs pursuant to Rule 11. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order.

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

8
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

bricheson@daynance.com

16 Steven Day

sday@daynance.com

17 Michael Matthis

matthis@mblnv.com

18 BENJAMIN CHILDS

ben@benchilds.com

19 Nikita Burdick

nburdick@burdicklawnv.com

20 Michael Lee

mike@mblnv.com

21 Bradley Marx

brad@marxfirm.com

22 Frank Miao

frankmiao@yahoo.com

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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John Savage	Holley Driggs Attn: John Savage, Esq 400 South Fourth Street, Third Floor Las Vegas, NV, 89101
Nikita Pierce	6625 South Valley View Blvd. Suite 232 Las Vegas, NV, 89118

Other Real Property

COURT MINUTES

May 17, 2021

A-18-785917-C W L A B Investment LLC, Plaintiff(s)
vs.
TKNR Inc, Defendant(s)

May 17, 2021 03:00 AM Minute Order

HEARD BY: Escobar, Adriana COURTROOM: Chambers

COURT CLERK: Packer, Nylasia

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Plaintiffs Motion to Reconsider (Motion), which Defendants opposed, was scheduled for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 18, 2021. Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has determined that it would be appropriate to decide this matter based on the pleadings submitted. Upon thorough review of the pleadings, this Court issues the following order:

Leave for reconsideration of motions is within this Court s discretion under EDCR 2.24.

A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997).

Unless otherwise ordered by the court, papers submitted in support of pretrial and post-trial briefs shall be limited to 30 pages, excluding exhibits. EDCR 2.20(a).

Plaintiff seeks reconsideration of this Court s April 7, 2021, Amended Order Granting Defendants Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment.

It its opposition, Defendants argue that Plaintiff s Notice of Appeal in this matter divests this Court of jurisdiction to rule on Plaintiff s Motion. This Court disagrees. Because Plaintiff filed a motion for reconsideration, the April 7, 2021, order is not final appealable order. Therefore, the appeal was premature. A premature notice of appeal does NOT divest the district court of jurisdiction. NRAP 4(a)(6). Therefore, this Court has jurisdiction to rule on the Motion.

Additionally, Defendants argument that Plaintiff s Motion was untimely filed lacks merit. Defendants filed the Notice of Entry of Order on April 8, 2021. Therefore, Plaintiff had until April 22, 2021, to file the instant Motion. Plaintiff filed this Motion on April 16, 2021, and thus, the Motion is timely.

Before addressing the substantive merits of Plaintiff s Motion, this Court notes that Plaintiff s 179-page Motion includes 40 pages of argument, notwithstanding the exhibits. Although Plaintiff did not seek an order from this Court permitting a longer brief, Court addresses the

Motion in full.

Plaintiff spends a majority of its Motion rehashing the facts of the underlying dispute. Plaintiff argues that exhibits the Court relied on in granting Defendants' underlying motion for summary judgment namely, the Residential Purchase Agreement and the Second Residential Purchase Agreement were not properly authenticated. Plaintiff additionally argues that Defendants discussed an email from Chen to Ms. Zhu without providing a foundation for the email. Plaintiff's argument is that this Court committed clear error by relying on unauthenticated documents, or hearsay, in ruling on Defendants' motion for summary judgment.

In opposing summary judgment, Plaintiff was required to point to specific facts creating a genuine issue of material fact. *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002). Plaintiff did not so.

Moreover, Defendants were not required to authenticate the first and second Residential Purchase Agreement before this Court could rely on those documents in granting summary judgment. First, Plaintiff did not contest the authenticity of the disputed documents in opposing summary judgment. Second, Plaintiff could have objected that these documents, which were Defendants repeatedly cite to in their motion for summary judgment, cannot be presented in a form that would be admissible in evidence. NRCP 56(b)(2) it did not. Finally, summary judgment is not trial. Authentication is for purposes of introducing evidence at trial. Therefore, this argument lacks merits.

Plaintiff has not demonstrated that this Court's ruling was clearly erroneous.

Plaintiff additionally argues that Rule 11 sanctions were not warranted and also asks this Court to clarify whether Mr. Day and his firm are to be included in the sanctions. Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions was clearly erroneous. However, this Court does clarify that the sanctions are awarded against Plaintiff's former counsel, Ben Childs, and not Plaintiff's current counsel, Mr. Day. See NRCP 11(c)(1): (If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.).

The Court additionally notes the following: Although they do not caption their opposition as a countermotion, Defendants' opposition raise an argument that Rule 11 sanctions are warranted as to Plaintiff's instant Motion. This Court does not find that Rule 11 sanctions are warranted for Plaintiff's filing of this Motion.

Defendants also ask that this Court issue an award of attorney fees and costs in the amount of \$128,166.78. In its April 7, 2021, order, this Court granted Defendants attorney fees and costs pursuant to Rule 11. Plaintiff, through its former or new counsel, does not oppose the specific amounts requested. This Court grants the amount Defendants seek.

Based on the foregoing, this Court GRANTS IN PART AND DENIES IN PART Plaintiff's Motion. This Court does not find that its ruling was clearly erroneous. However, the Court clarifies that the attorney fees and costs is awarded against Plaintiff's former counsel.

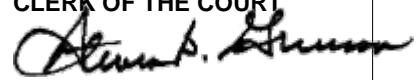
Counsel for Defendants is directed to prepare a proposed order that incorporates the substance of this minute order and the pleadings. Plaintiff must approve as to form and content.

Counsel must submit the proposed order within 14 days of the entry of this minute order. EDCR 1.90(a)(4).

All parties must submit their orders electronically, in both PDF version and Word version, until

further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (5-17-21 np).



MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL B. LEE P.C.
1820 E. Sahara Ave., Ste. 110
Las Vegas, NV 89104
Office: (702) 731-0244
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Email: mike@mblnv.com
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

**NOTICE OF ENTRY OF ORDER
GRANTING, IN PART, AND DENYING,
IN PART, PLAINTIFF'S MOTION TO
RECONSIDER AND JUDGMENT
AGAINST PLAINTIFF AND PREVIOUS
COUNSEL**

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 Actions.

TO: ALL PARTIES

YOU, AND EACH OF YOU, will please take notice that an order and judgment in this
matter was entered in this matter on May, 2021. A copy of said ORDER and JUDGMENT is
attached hereto and incorporated herewith by reference.

Dated this 25th day of May, 2021.

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
Attorneys for Defendants

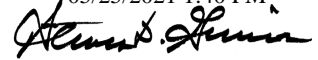
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of May, 2021, I placed a copy of **NOTICE OF ENTRY OF ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF’S MOTION TO RECONSIDER AND JUDGMENT AGAINST PLAINTIFF AND PREVIOUS COUNSEL** 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.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com

STEVEN L. DAY, ESQ.
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel – 702.309.3333
Fax – 702.309.1085
sday@daynance.com
Attorneys for Plaintiff

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


CLERK OF THE COURT

MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
MICHAEL B. LEE, P.C.
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mike@mblnv.com
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

**ORDER GRANTING, IN PART, AND
DENYING, IN PART, PLAINTIFF'S
MOTION TO RECONSIDER
AND
JUDGMENT AGAINST PLAINTIFF AND
PREVIOUS COUNSEL**

Date of Hearing: May 17, 2021
Time of Hearing: chambers

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.

This matter being set for hearing before the Honorable Court on May 18, 2021 at 10:00
a.m., on W L A B INVESTMENT, LLC ("WLAB" or "Plaintiff"), Motion to Reconsider
("Motion"), by and through its attorney of record, DAY & NANCE. 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

1 INVESTMENTS LLC, and INVESTPRO MANAGER LLC, (collectively, the “Defendants”)
2 filed an Opposition to the Motion and appeared by and through its counsel of record, MICHAEL
3 B. LEE, P.C.

4 Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter
5 may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply
6 with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has
7 determined that it was appropriate to decide this matter based on the pleadings submitted. Upon
8 thorough review of the pleadings, the Court issues the following order:

9 1. Leave for reconsideration of motions is within this Court’s discretion under
10 EDCR 2.24.

11 2. A district court may reconsider a previously decided issue if substantially
12 different evidence is subsequently introduced or the decision is clearly erroneous. See *Masonry*
13 *& Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997).

14 3. Plaintiff seeks reconsideration of this Court’s April 7, 2021, Amended Order
15 Granting Defendants Motion for Summary Judgment, or in the Alternative, Partial Summary
16 Judgment (“Amended Order”).

17 4. Although Defendants argue that Plaintiff’s Notice of Appeal divests this Court of
18 jurisdiction to rule on the Motion, this Court disagrees because the Amended Order was not final
19 and appealable by virtue of Plaintiff filing the Motion. Therefore, the appeal was premature, and
20 the court is not divested of jurisdiction on the filing of a premature notice of appeal, allowing the
21 court to rule on the Motion. See NRAP 4(a)(6).

22 5. The Motion was timely filed within fourteen (14) days of the Notice of Entry of
23 the Amended Order.

24 6. Plaintiff spends a majority of its Motion rehashing the facts of the underlying
25 dispute. Plaintiff argues that exhibits the Court relied on in granting Defendants underlying
26 motion for summary judgment namely, the Residential Purchase Agreement and the Second
27 Residential Purchase Agreement were not properly authenticated. Plaintiff additionally argues
28 that Defendants discussed an email from Chen to Ms. Zhu without providing a foundation for the

1 email. Plaintiff's argument is that this Court committed clear error by relying on unauthenticated
2 documents, or hearsay, in ruling on Defendants' motion for summary judgment.

3 7. In opposing summary judgment, Plaintiff was required to point to specific facts
4 creating a genuine issue of material fact. See *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002).
5 Plaintiff did not do so.

6 8. Defendants were not required to authenticate the first and second Residential
7 Purchase Agreement before this Court could rely on those documents in granting summary
8 judgment.

9 9. Plaintiff did not contest the authenticity of the disputed documents in opposing
10 summary judgment.

11 10. Plaintiff could have objected that these documents, which were Defendants
12 repeatedly cite to in their motion for summary judgment, cannot be presented in a form that
13 would be admissible in evidence. See NRCP 56(b)(2). However, Plaintiff did not so object.

14 11. The summary judgment hearing was not a trial. Authentication is for purposes of
15 introducing evidence at trial; therefore, Plaintiff's authentication argument lacks merit.

16 12. Plaintiff has not demonstrated that this Court's ruling was clearly erroneous.

17 13. Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions
18 was clearly erroneous. However, this Court does clarify that the sanctions are awarded against
19 Plaintiff's former counsel, Ben Childs, and not Plaintiff's current counsel, Mr. Day.

20 14. Defendants also ask that this Court issue an award of attorney fees and costs in
21 the amount of **\$128,166.78** related to the Courts' April 7, 2021 Order this Court granting
22 Defendants' attorney fees and costs pursuant to Rule 11. Plaintiff, through its former or new
23 counsel, does not oppose the specific amounts requested.

24 15. As such, this Court grants the amount Defendants seek and enters judgment
25 against Plaintiff and their former counsel, Ben Childs, Esq. in the amount of One Hundred
26 Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents (**\$128,166.78**).

27 16. Defendants' counter-motion for additional Rule 11 sanctions against Plaintiff for
28 filing the Motion is denied.

1 **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED** that the Motion is
2 GRANTED, in part, and DENIED, in part, as the Court’s ruling was not clearly erroneous but
3 clarifies the attorney fees and costs is awarded against Plaintiff and its former counsel Ben
4 Childs, Esq.

5 **IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that Judgment is
6 entered in favor of Defendants against Plaintiff, and its former counsel, Benjamin Childs,
7 individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally, in the amount of
8 One Hundred Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents
9 (**\$128,166.78**) and that they pay Defendants the following amounts:

- 10 1. The principal sum of \$118,955.014 in attorneys’ fees;
- 11 2. The principal sum of \$9,211.64 for costs incurred to date; and
- 12 3. Post-judgment interest from the date of the entry of the underlying Order for the
13 attorneys’ fees and costs be granted at the statutory rate of 5.25% per annum.

14 A total Judgment in favor of Defendants, and against Plaintiff, and its former counsel,
15 Benjamin Childs, individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally,
16 in the amount of **\$128,166.78**, all to bear interest at the statutory rate of 5.25% per annum until
17 paid in full.

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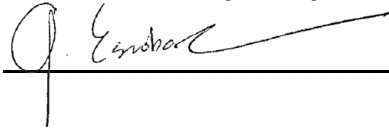
28 /////

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TEL - (702) 477.7030; FAX - (702) 477.0096

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IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this Order and Judgment shall be considered a final for all purposes.

Dated this 25th day of May, 2021



C78 3DB 37F8 7A17
Adriana Escobar
District Court Judge

Date: May 18, 2021.

Respectfully Submitted By:

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
Attorneys for Defendants

Approved of as to Form and Content By:

DAY & NANCE

/s/ Stephen Day
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Las Vegas, Nevada 89074
Tel - (702) 309.3333
Fax - (702) 309.1085
sday@daynance.com
Attorney for Plaintiff

RE: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

From: Steve Day (sday@dayattorneys.com)

To: matthis@mblnv.com

Date: Wednesday, May 19, 2021, 02:20 PM PDT

Looks okay. Okay to use my e-sig. Correct name: Steven L. Day

Steve

Steven L. Day, Esq.

DAY&ASSOCIATES

1060 Wigwam Parkway

Henderson, NV 89074

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Fax (702) 309-1085

Mobile (702) 596-5350

sday@dayattorneys.com

From: Michael Matthis <matthis@mblnv.com>

Sent: Wednesday, May 19, 2021 2:06 PM

To: Steve Day <sday@dayattorneys.com>

Cc: Mike Lee <mike@mblnv.com>

Subject: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

Dear Mr. Day,

Please see the attached proposed order denying Plaintiff's Motion to Reconsider and advise if I can affix your e-signature. If not, I have left the proposed order in word and would ask that you track any proposed edits in redline. If we do not receive a response by 3:00 p.m. on Monday, May 24, we will submit absent your signature.

Sincerely,

Mike Matthis, Esq.

matthis@mblnv.com



1820 E. Sahara Avenue, Suite 110, Las Vegas, NV 89104

Main Line: 702.477.7030 Fax: 702.477.0096

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 W L A B Investment LLC,
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

8
9 TKNR Inc, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing 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: 5/25/2021

15 Brinley Richeson bricheson@daynance.com

16 Steven Day sday@daynance.com

17 Michael Matthis matthis@mblnv.com

18 Nikita Burdick nburdick@burdicklawnv.com

19 Michael Lee mike@mblnv.com

20 Bradley Marx brad@marxfirm.com

21 Frank Miao frankmiao@yahoo.com