

IN THE SUPREME COURT OF NEVADA

BENJAMIN B. CHILDS;

Petitioner,

vs.

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

Respondent,

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
KENNETHZHONG LIN aka WHONG
K. LIN aka CHONG KENNY LIN aka
ZHONG LIN, an individual, and LIWE
HELEN CHEN aka HELEN CHEN, an
individual and YANQIU ZHANG, an
individual and INVESTPRO LLC dba
INVESTPROREALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and
JOYCE A. NICKRANDT, an individual,
and INVESTPROINVESTMENTS LLC,
a Nevada Limited Liability Company,
and INVESTPROMANAGER LLC, a
Nevada Limited Liability Company and
JOYCE A. NICKDRANDT, an
individual and does 1through 15 and roe
corporation I-XXX;

Real Party in Interest.

CASE NO.: 82967

DC Case No.: A-18-785917-C

Dept. No.: XIV Electronically Filed

Jul 22 2021 12:18 p.m.

DC Judge: Hon. Adriana Escobar
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court of the State of Nevada in and for
the County of Clark

The Honorable Adriana Escobar, District Judge

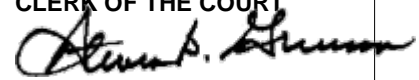
APPENDIX VOLUME VI

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**APPENDIX
VOLUME VI**

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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

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S RENEWED MOTION TO
COMPEL DISCOVERY AND FOR
IMPOSITION OF SANCTIONS
&
COUNTERMOTION FOR A
PROTECTIVE ORDER AND OTHER
RELIEF

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 Opposition (“Opposition”) to Plaintiff’s Renewed Motion to Compel Discovery and for Imposition of Other Sanctions (“Motion”) Motion for a Protective Order and Other Relief (“Countermotion”). This Opposition and Countermotion 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”.

DECLARATION OF MICHAEL LEE IN SUPPORT OF THE OPPOSITION

I, Michael Lee, hereby declare the following under penalty of perjury of the laws of the State of Nevada:

1. I am an attorney with MICHAEL B. LEE, P.C., licensed to practice law in the State of Nevada.

2. I have personal knowledge of, and am competent to testify to, the facts contained in this declaration. I have made this Declaration in Support of Defendants’ Motion for a Protective Order and Other Relief. Specifically, this declaration details compliance with the Eighth Judicial District Court Rule 2.34(d).

3. On November 26, 2020, Plaintiff submitted discovery requests to Cheng, attached as **Exhibit A**, Investments, attached as **Exhibit B and C**, Realty, attached as **Exhibit D**, Wong, attached as **Exhibit E**, Manager, attached as **Exhibit F**, and TKNR, attached as **Exhibit G**.

4. Based on my understanding of the service rules, I added three days for mailing related to the response date. During the 2.34(d) conference with Plaintiff’s attorney, Benjamin Childs, Esq. (“Childs”), on January 5, 2021, I informed him of the same. Additionally, I specified that if there was any error, it was a harmless error as the requests related to the “Flipping Fund” were irrelevant given that his client had independently found the listing for the Property, defined below, through Zillow. Declaration of Frank Miao attached as **Exhibit H** (“I found the property listed on Zillow.”).

5. On December 29, 2020, Defendants submitted their responses to Plaintiff’s discovery requests (collectively, “Responses”). Cheng Response attached as **Exhibit I**;

Investments Response attached as **Exhibit J and K**; Realty Response attached as **Exhibit L**; Wong Response attached as **Exhibit M**; Manager Response attached as **Exhibit N**; TKNR Response attached as **Exhibit O**.

6. During the 2.34(d) phone call on January 5, 2020, I discussed the following issues with Mr. Childs: (1) the Responses; and (2) Plaintiff's expert's billing rate.

7. Previously, I had noted the issue related to the site inspection of the Property, **Exhibit P**, which Defendants based on Plaintiff's proffered date so it could evict the tenants. Lee-Childs email dated October 26, 2020 attached as **Exhibit Q**. On the date of the Inspection, Plaintiff's failed to make two units available for inspection, but refused to pay the cost related to any additional inspection that had to be done by Defendants' counsel and expert. Lee-Childs email chain dated November 19, 2020 attached as **Exhibit R**. As Plaintiff indicated that it would refuse to pay the costs related to the additional inspections, no additional meet-and-confer was necessary. *Id.*

8. As to Plaintiff's expert's billing rate, Mr. Childs confirmed that his expert has never acted as an expert before. He said that he would ask his expert to reduce his fees to match the billing rates for Defense expert. This issue is subject to resolution.

9. As to the Responses, Mr. Childs' position is that the objections were waived. I disagreed and specified it was based on my understanding of the prior rules related to additional days for mailing. I also specified that the information sought was not relevant since his client did not have any interaction with the Flipping Fund. Mr. Childs constantly interrupted, raised his voice, used antagonistic tone of voice, etc., which made the discussion extremely difficult.

10. Mr. Childs then asked to go through each of the requests individually, which I attempted to do so before personality conflicts made it impossible to communicate with him. That said, we were able to discuss Exhibit L before Mr. Childs became extremely antagonistic and made it impossible for the conversation to continue.

11. As to Exhibit L, Mr. Childs and I discussed that his client should have possession of some of the documentation that he requested, which it has not disclosed, since it was in ownership of the Property during the requested period of time and/or should have obtained it

1 during its due diligence of the Property. Nevertheless, I said I would be happy to go back to my
2 client and request additional documentation if he could pinpoint the deficiency of a response so
3 that I could attempt to resolve it. As Plaintiff has not identified any alleged discovery issue other
4 than the waiver of the objections, Defendants have not meaningfully communicated about the
5 alleged deficiencies with their discovery response other than specified herein.

6 12. Thereafter, Mr. Childs indicated that while we had pinpointed actual documents,
7 which he seemed unaware of at the time when we did the discovery conference, his issue was
8 that we had made objections despite responding to the request. I also specified that, even with
9 the Objections in place, we had largely responded to the discovery requests and indicated the
10 bates for the responsive documents. Fifth Supplemental Disclosure (without documents)
11 attached as **Exhibit T**; Exs. I-O.

12 13. When I pressed Mr. Childs what his remedy would be given that we had
13 responded to the discovery request and pinpointed the documents, and what he would argue to
14 the discovery commissioner related to the Responses that we had discussed so far when we
15 disclosed the documents, he became extremely aggravated and hostile, which made any
16 additional communication impossible. Thereafter, the remainder of the conversation was
17 unproductive and unprofessional, so I terminated the call.

18 14. Presently, Defendants have a motion pending for Summary Judgment that
19 illustrates the frivolous nature of Plaintiff's action, Motion attached (brief only) as **Exhibit U**,
20 which is set for hearing on January 28, 2021.

21 15. Based on my phone call with Plaintiff's counsel, we were unable to reach an
22 accord on the alleged discovery issue beyond Plaintiff's complaint that we had waived the
23 Objections based on Mr. Childs' lack of preparation to discuss the individual responses in light
24 of the responses by Defendants that pinpointed the responsive documents. Additionally, Mr.
25 Childs acknowledged that his client should have possession of the requested documentation that
26 it had not disclosed, which also undercut the alleged discovery dispute issue.

27 16. Incredibly, Plaintiffs' counsel has engaged in the same conduct he is complaining
28 of in the Motion. See Feb. 17, 2021 Lee/Childs Email attached as **Exhibit DD**. Plaintiff's

Responses' to TKNR's Second Set of RPD were served on February 16, 2021, five (5) days after the deadline for Plaintiffs' responses. *Id.* However, despite being late, the responses included objections, some of which were the same kind and nature as the objections brought by Defendants, which are the subject of the Motion. *Id.* Defendants mention this to show the duplicity of Plaintiff's actions and the lack of reasonable basis for the Motion.

17. I declare under penalty of perjury under the laws of the State of Nevada, that the foregoing is true and correct, on this 18 day of February, 2021.

/s/ Michael Lee
Michael Lee, Declarant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Overview

The Motion should be denied for lack of legal or factual basis. Defendants have disclosed 512 documents in this matter through five disclosures. As to Plaintiff's requests, on their face, they are overly broad and irrelevant to the subject matter of this litigation. Moreover, the Motion seeks to compel documents that are already in Plaintiff's possession and/or have already been produced by Defendants in response to Plaintiff's previous discovery requests.

Plaintiff's only argument is that the objections made by Defendants are waived. However, Plaintiff ignores the responses made by Defendants following the objections. Plaintiff failed to articulate any basis for the discovery outside the alleged waiver of objections, which is rather trivial considering the filing was untimely by two days and attributable to excusable neglect. Incredibly, Defendants had previously granted Plaintiff's request for extension to respond to discovery only a month prior, thus illustrating the lack of merit of this argument. Moreover, Plaintiff has engaged in the exact same conduct at issue the Motion, i.e., Plaintiff has served late responses, including similar objections to those made in Defendants' Responses currently at issue. See Ex. DD.

Additionally, Plaintiff should be barred from requesting sanctions from Defendants considering the bad faith in which Plaintiff has conducted itself throughout the discovery

1 process. Plaintiff has made duplicative requests to harass Defendants. Plaintiff has requested
2 information that has already been provided by Defendants and/or is in the possession of Plaintiff.
3 Plaintiff has withheld documents in this litigation and engaged in gamesmanship in relation to
4 designating a PMK. The requests themselves were likely brought to harass Defendants as the
5 requests on their face are overbroad, irrelevant, and subject to privacy concerns. Notably,
6 Defendant had previously opposed extending discovery and indicated it would rely on the
7 documents already in the record to make its case. Plaintiff also failed to make the complete
8 property available for inspection, exemplifying additional grounds for bad faith by Plaintiff.

9 Ultimately, a protective order is necessary to prevent Plaintiff from engaging in
10 harassment of Defendants through irrelevant discovery requests unlikely to lead to admissible /
11 relevant evidence and only brought for the purpose of increasing Defendants' legal costs.
12 Plaintiff failed to conduct a meaningful 2.34 conference. Plaintiff's counsel has admitted that
13 several of the disputed documents should be in the possession of Plaintiff, although Plaintiff had
14 not disclosed any of them, and seemed to only be concerned with the argument that Defendants
15 waived their objections. Here, the majority of the requested information was either already
16 responded to, in Plaintiff's possession, or is clearly irrelevant. As such, the Motion should be
17 denied, and the Countermotion should be granted.

18 **B. Statement of Facts**

19 The following facts are taken from the Motion for Summary Judgment, which is attached
20 as Exhibit S.

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

23 The Property (defining as 2132 Houston Drive, Las Vegas, NV 89104) was originally
24 constructed in 1954. MLS Listing. On or about August 11, 2017, Marie Zhu ("Zhu"), the
25 original purchaser, executed a residential purchase agreement ("RPA") for the Property.
26 Residential Purchase Agreement. At all times relevant, Ms. Zhu and Frank Miao ("Miao"), the
27 managing member of Plaintiff, were sophisticated buyers related to "property management,
28 property acquisition, and property maintenance." ROG Response (excerpt) at 3:3-4. The

1 purchase price for the property was \$200,000. *Id.* Through the RPA, Ms. Zhu waived her due
2 diligence, although she had a right to conduct inspections:

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

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

8 Ms. Zhu did not cancel the contract related to any issues with the Property. *Id.* Under
9 Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition. *Id.* Under Paragraph
10 7(D) of the RPA, it provided:

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

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

19 Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently
20 as to satisfy her use. *Id.* Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt
21 (collectively, "Brokers" or "Broker Defendants") had "no responsibility to assist in the payment
22 of any repair, correction or deferred maintenance on the Property which may have been revealed
23 by the above inspections, agreed upon by the Buyer and Seller or requested by one party." *Id.*

24 On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known
25 conditions of the Subject Property. Plaintiff's Disclosure. In fact, TKNR disclosed that "3 units
26 has (sic) brand new AC installed within 3 months," and further that the "owner never resided in
27 the property and never visited the property." *Id.* at Page 38. Plaintiff was also aware that the
28 minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in

1 the Seller's Disclosures. *Id.* Seller also disclosed that it had done construction, modification,
2 alterations, or repairs without permits. *Id.* at 37. Despite these disclosures, Plaintiff chose not to
3 have a professional inspect the Subject Property, request additional information and/or conduct
4 any reasonable inquires. *Id.*

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

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

11 Please note that seller agree the rest of terms and request to add the
12 below term on the contract:

13 "Buyer agree to pay the difference in cash if appraisal come in
14 lower than purchase price, not to exceed purchase price of \$200k"

15 I just send you the docs, please review and sign if you are agree.

16 Thank you!

17 (Per buyer's request will waive licensed home inspector to do
18 the home inspection)

19 *Id.* (emphasis added).

20 On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA
21 dated August 11, 2017, Addendum No. 1, and entered into a new Residential Purchase
22 Agreement dated September 5, 2017 ("2nd RPA"). 2nd RPA. As before, the overall purchase
23 price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to
24 \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the close of
25 escrow ("COE" or "Closing"). *Id.* at DEF4000355. The COE was set for September 22, 2017.
26 *Id.* at DEF4000357 at ¶ 5C.

27 Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve
28 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.

1 As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the
2 2nd RPA. *Id.* at DEF4000357 at ¶ 7. Although Ms. Zhu had actual knowledge of the Seller's
3 Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January
4 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any professional
5 inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the
6 TNKR. *Id.* Moreover, she also agreed to pay rent in the amount of \$650 per month for one of
7 the units, and to also pay the property manager \$800 for the tenant placement fee. *Id.* Through
8 Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff. *Id.*

9 3. *No Reliance on Broker Agents*

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

19 4. *Inspection Would Have Revealed Alleged Conditions*

20 On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate Professor of
21 Construction Management at UNLV and qualified expert, conducted an inspection of the
22 Property. Opfer Report. At that time, while he only had interior access to one of the three units
23 due to the failure of Plaintiff to accommodate the request for the inspection, he did a visual
24 inspection of all the areas specified in Plaintiff's expert's report. *Id.* Moreover, he also found
25 pictures of the Property from 2017 that depicted the condition of the Property prior to August 11,
26 2017. *Id.* at DEF5000368. While Professor Opfer illustrated the dubious findings by Plaintiff's
27 expert with citations showing the actual misstatements of the building code requirements as it
28 relates to permits, he noted that TNKR did disclose that it did the work without permits through

1 its disclosures. *Id.*

2 As to the alleged issues, Professor Opfer noted that the alleged conditions identified by
3 Plaintiff's alleged expert were open and obvious:

4 [n]ote that the Plaintiff could have hired an inspector or contractor
5 to evaluate this real-estate purchase beforehand but did not. Items
6 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.

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

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

13 *Id.* Moreover, he also noted that Plaintiff's alleged expert did "not recognize prior conditions in
14 existence before any work took place by the Defendants." *Id.*

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

- 17 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.*
- 18 2. the alleged attic issues could have been inspected at the
time of the purchase. *Id.*
- 19 3. "any deficient electrical work related to this 220-volt
20 service situation could have been readily ascertained by an
21 inspection at the time of purchase by the Plaintiff". *Id.*
- 22 4. the alleged HVAC issues were open and obvious. *Id.*
- 23 5. "the conditions complained about as to venting and ducting
24 were present at the Property prior to Defendants owning the
Property". *Id.*
- 25 6. Plaintiff could have conducted an online search related to
26 the permits or lack of permits for the Property. *Id.*
- 27 7. The basis of the Sani Estimate is nonsensical in the first
28 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.*

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.*

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.

II. DISCUSSION

The following Discussion is organized into five Parts. Part A sets forth the standard for a protection order. Part B illustrates that Defendants did not waive their objections. Part C explains the factual / legal basis and the applicable discovery requests from Plaintiff that are subject to protection. Part D articulates that Plaintiff's bad faith conduct in conducting discovery in this matter bars any recovery of sanctions. Part E specifies why Plaintiff should have to pay for the cost of the Inspection as a sanction. Finally, Part F requests to set a reasonable fee for Plaintiff's first-time construction expert.

A. Legal Standards

1. Motion to Compel

Any party may serve upon any other party written interrogatories to be answered by the party served. NEV. R. CIV. PRO. § 33(a). An overly broad discovery request lacks specificity as to time, place, and/or subject matter being requested. Discovery is sufficiently limited and specific in its directive where compliance to its terms would not be unreasonably burdensome. *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 695 (D. Nev. 1994) (citing *United States v. Palmer*, 536 F.2d 1278, 1282 (9th Cir. 1976)); *CBS v. Super. Ct.*, 263 Cal. App. 2d 12,

19, 69 Cal. Rptr. 348, 352 (Cal. App. 2d 1968). Requests were over broad because they used language so broad that it was impossible to determine what amongst numerous documents fell within the scope of the requests. *Krause v. Nevada Mut. Ins. Co.*, No. 2:12-CV-00342-JCM, 2014 WL 496936, at *5 (D. Nev. Feb. 6, 2014) aff'd, No. 2:12-CV-342 JCM CWH, 2014 WL 3592655 (D. Nev. July 21, 2014) (citing *Dauska v. Green Bay Packaging Inc.*, 291 F.R.D. 251 (E.D. Wisc. 2013)). A discovery request is overly broad and unduly burdensome on its face if it uses an omnibus term such as 'relating to,' 'pertaining to,' or 'concerning' to modify a general category or broad range of documents or information. *Id.*

Additionally, courts will limit temporally over broad requests. *Aevoe Corp. v. AE Tech Co.*, No. 2:12-CV-00053-GMN, 2013 WL 5324787, at *2 (D. Nev. Sept. 20, 2013); *Painters Joint Comm. v. J.L. Wallco, Inc.*, No. 2:10-CV-1385 JCM PAL, 2011 WL 5854714, at *2 (D. Nev. Nov. 21, 2011); See *First Interstate Bank of Oregon v. Natl. Bank and Trust Co. of Norwich*, 127 F.R.D. 186, 188 (D. Or. 1989) (limiting time frame requested in interrogatories to dates of incident in question, rather than 10-year scope originally propounded in the interrogatory).

Moreover, courts will limit discovery that seeks disclosure of personal and private information because it would invade the responding party's right of privacy. *Nesbit v. Dep't of Pub. Safety*, 283 F. App'x 531, 533 (9th Cir. 2008) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 n. 21, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984) (noting that privacy interests may be a basis for restricting discovery)). Under Nevada Rules of Civil Procedure 37(a)(2), a party may move for an order compelling disclosures. Prior to filing such a motion, the movant must certify that it has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. *Id.*; *see also* E.D.C.R. 2.34(d). Generally, the filing of a motion to compel discovery does not have a time limit, but the moving party should file it after it makes the request for the discovery. FEDPROC § 26:779.

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails [...] to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or to serve a written response to a request for inspection submitted under Rule 34, after proper

service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

NEV. R. CIV. PRO. § 37(d).

For evidence to be relevant, it must have a “tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” NEV. REV. STAT. § 48.015. “Evidence which is not relevant is not admissible.” *Id.* at § 48.025(2). Discovery must be “reasonably calculated to lead to discovery of admissible evidence” to fall with the scope of Rule 26(b)(1). NEV. R. CIV. PRO. 26(b)(1); *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352, 98 S. Ct. 2380, 2390, 57 L.Ed.2d 253 (1978); *Washoe County Bd. Of School Trustees v. Pirhala*, 84 Nev. 1, 6, 435 P.2d 756, 759 (1968); *Darbee v. Super. Ct.*, 208 Cal. App. 2d 680, 685, 25 Cal. Rptr. 520, 524 (Cal.App.1962). N.R.C.P. 26(b)(1) gives parties broad discovery rights into information that is relevant or that could lead to relevant information, even if it is not admissible at trial. The Nevada Supreme Court, citing to the United States Supreme Court, has stated that:

the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of ‘fishing expedition’ serve to preclude a party from inquiring into the facts underlying his opponent’s case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession.

Washoe County Board of School Trustees v. Pirhala, 84 Nev. 1, 6, 435 P.2d 756, 759 (1968).

2. Protective Order

NRCP § 26(c)(1) states:

(1) **In General.** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to an out-of-state deposition, in the court for the judicial district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good

cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

An overly broad discovery request lacks specificity as to time, place, and/or subject matter being requested. Discovery is sufficiently limited and specific in its directive where compliance to its terms would not be unreasonably burdensome. *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 695 (D. Nev. 1994) (citing *United States v. Palmer*, 536 F.2d 1278, 1282 (9th Cir. 1976)); *CBS v. Super. Ct.*, 263 Cal. App. 2d 12, 19, 69 Cal. Rptr. 348, 352 (Cal. App. 2d 1968). Requests were over broad because they used language so broad that it was impossible to determine what amongst numerous documents fell within the scope of the requests. *Krause v. Nevada Mut. Ins. Co.*, No. 2:12-CV-00342-JCM, 2014 WL 496936, at *5 (D. Nev. Feb. 6, 2014) *aff'd*, No. 2:12-CV-342 JCM CWH, 2014 WL 3592655 (D. Nev. July 21, 2014) (citing *Dauska v. Green Bay Packaging Inc.*, 291 F.R.D. 251 (E.D. Wisc. 2013)). A discovery request is overly broad and unduly burdensome on its face if it uses an omnibus term such as ‘relating to,’ ‘pertaining to,’ or ‘concerning’ to modify a general category or broad range of documents or information. *Id.*

Additionally, courts will limit temporally over broad requests. *Aevoe Corp. v. AE Tech Co.*, No. 2:12-CV-00053-GMN, 2013 WL 5324787, at *2 (D. Nev. Sept. 20, 2013); *Painters Joint Comm. v. J.L. Wallco, Inc.*, No. 2:10-CV-1385 JCM PAL, 2011 WL 5854714, at *2 (D.

1 Nev. Nov. 21, 2011); See *First Interstate Bank of Oregon v. Natl. Bank and Trust Co. of*
2 *Norwich*, 127 F.R.D. 186, 188 (D. Or. 1989) (limiting time frame requested in interrogatories to
3 dates of incident in question, rather than 10-year scope originally propounded in the
4 interrogatory).

5 Moreover, courts will limit discovery that seeks disclosure of personal and private
6 information because it would invade the responding party's right of privacy. *Nesbit v. Dep't of*
7 *Pub. Safety*, 283 F. App'x 531, 533 (9th Cir. 2008) (citing *Seattle Times Co. v. Rhinehart*, 467
8 U.S. 20, 35 n. 21, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984) (noting that privacy interests may be a
9 basis for restricting discovery)).

10 **B. Objections Were Not Waived**

11 Defendants believed that they had timely responded to the discovery requests based on
12 their attorney's understanding of Eighth Judicial District Court Rule 1.14(c) ("three [3] calendar
13 days must be added"), 8.06(a) ("three [3] calendar days must be added"). As Defendants served
14 the Responses based on that understanding, and there is no showing of any substantial and/or
15 injurious effect on Plaintiff, any such error is harmless. NEV. REV. STAT. § 178.598 ("Any error,
16 defect, irregularity or variance which does not affect substantial rights shall be disregarded.");
17 *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting *Kotteakos v. U.S.*, 328
18 U.S. 750, 776 (1946) (determination of whether an error is harmless depends on whether it had a
19 substantial and an injurious effect or influence).

20 As noted earlier, Defendants have made five disclosures in this case of approximately
21 512 documents. After the reopening of discovery, they have diligently responded to all
22 discovery requests and made all required production. Notably, as this matter simply relates to
23 the alleged undisclosed defects related to the Property at the time of the sale, where the
24 undisputed evidence shows the alleged conditions were "open and obvious", and that Plaintiff
25 found the Property on his own through Zillow, Ex. H, Plaintiff is hard pressed to show how a
26 three day delay caused them substantial and injurious effect or influence, especially since it
27 waited until January 4, 2021, six days after the service of the Responses, to raise the issue.
28

1 Alternatively, Defendants request relief from any alleged waiver of Objections based on
2 excusable neglect. Nevada is not entirely clear on the approach to assessing excusable neglect.
3 “A court has wide discretion in determining what neglect is excusable and what is inexcusable.”
4 *Cicerchia v. Cicerchia*, 77 Nev. 158, 360 P.2d 839 (1961) (citations omitted). For reference,
5 both the United States Court of Appeals for the Ninth Circuit and the United States Supreme
6 Court follow the general equitable standard. The general equitable standard takes account of
7 factors such as “prejudice, the length of the delay and impact on judicial proceedings, the reason
8 for the delay, including whether it was within the reasonable control of the movant, and whether
9 the movant acted in good faith.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th
10 Cir. 2001) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395,
11 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993)) (additional citations omitted).

12 Incredibly, Plaintiff has engaged in the same conduct that is complained of in Plaintiff's
13 Motion. See Ex. DD. Defendant TKNR propounded its Second Set of RPD to Plaintiff on
14 January 13, 2021. *Id.* However, Plaintiff did not provide responses until February 16, 2021,
15 which was five (5) days after the responses were due. *Id.* Notably, Plaintiff's responses included
16 objections, despite being provided after the 30-day deadline that Plaintiff's Motion argues
17 constitutes a waiver of those objections. *Id.* Additionally, the Responses include objections
18 followed by response, similar to Defendants' responses that Plaintiff took exception to in the
19 Motion. Defendants do not note the issue because they believe Plaintiffs' objections should be
20 waived as untimely. Rather, it is mentioned to illustrate the duplicity of Plaintiff's actions and
21 the hypocrisy related to the Motion's arguments.

22 As illustrated above, Defendants have disclosed 512 documents in this matter through
23 five disclosures. They have timely disclosed their expert and expert report following the
24 enlargement of discovery. Additionally, they provided responses to the discovery requests that
25 pinpointed the underlying documents, and Plaintiff's counsel admitted that Plaintiff should be in
26 possession of the requested documents although it had not disclosed them. As the alleged waiver
27 period is based on a three-day delay, the general equitable standard weighs in favor of
28 Defendants. There is no prejudice to Plaintiff by way of the three day delay, the delay had no

1 impact on judicial proceedings, the reason for the delay is justifiable under the pre-amended
2 local rules, which is still practiced by several attorneys in Clark County, Nevada, and Defense
3 acted in good faith when it served the Responses. *Knoebber*, 244 at 696. This justifies finding
4 that Defendants did not waive their objections.

5 C. **Plaintiff's Requests were Overly Broad, Not Likely to lead to Discovery of**
6 **Admissible Evidence and were Responded to by Defendants or related to**
7 **Documents already Disclosed by Defendants**

8 Other than the fact that Defendants made several objections that preceded the response,
9 which also contained a pinpoint reference to the applicable documents, Plaintiff has failed to
10 articulate any potential basis for an alleged discovery dispute. See Childs Email Requesting 2.34
11 Conference attached as **Exhibit V**. Not only have Defendants disclosed 512 documents in this
12 litigation, [see Ex. T], but Defendants have advised that Plaintiff should be in possession of the
13 documents requested. See Declaration of Michael B. Lee, Esq. at ¶ 11; Ex. P. By and large, the
14 discovery requests allegedly at issue are overly broad, irrelevant and seek information already
15 produced or in Plaintiff's possession. The Motion and the requests were nothing more than an
16 attempt to increase fees and costs in the matter.

17 In laying out the issue, the Motion misrepresents the form, content, and nature of the
18 discovery requests to fit its narrative and conceal the overbreadth of the language included. The
19 following portion of this Opposition will illustrate the unreasonableness of the requests and
20 Plaintiff's lack of good faith in conducting the meet and confer conference prior to filing the
21 Motion.

22 1. *Defendants Provided Responses Following Objections*

23 a. TKNR 2nd RPD 23-25 (Ex. O); Wong RPD 7-8 (Ex. M); Investpro
24 RPD 1-5, 11, 13-14 (Ex. L); Manager 2nd RPD 24, 26-27 (Ex. N)

25 A specific issue with the response to these requests was never raised to Defendants'
26 counsel, besides the alleged waiver of objections. However, prior to communication breaking
27 down, Defendants' counsel did advise that he believed most of the information responsive to the
28 request was either already disclosed or already in Plaintiff's possession. Here, Defendants'
respective responsive to these requests all contained responses with direct citation to the previous

1 disclosures that contain responsive information. Therefore, the Motion is without merit in regard
2 to these requests.

3 Additionally, Plaintiff had already made requests for the same information when
4 Defendants were represented by prior counsel, which Defendants responded to. See Ex. P.
5 Defendants have disclosed 512 pages of documents in this matter related to the sale of the
6 Subject Property, which is the central focus of this litigation. See Ex. T. Upon further review,
7 Defendant previously provided lease information to Plaintiff, which Plaintiff failed to disclose in
8 this litigation. See Emails to Plaintiff with Lease Information attached as **Exhibit W**. Notably,
9 discovery had previously closed in the matter without Plaintiff producing the information, which
10 illustrates the lack of relevancy and Plaintiff's undue purpose in bringing the Motion.

11 b. Cheng ROG 3-4, 6-7 (Ex. I); Investment ROG 7-10, 13 (Ex. K)

12 Similarly, Defendants provided their respective responses to the aforementioned ROG
13 requests following the objections. Plaintiff never discussed with Defendants how/why any of
14 these requests were deficient. In response to ROGS 3-4, Cheng provides that he is/was a
15 manager of Investpro Manager LLC. See Ex. I. In response to ROG 6, Cheng provided reference
16 to the 16.1 disclosures in this matter, which was reasonable considering ROG 6 was a boilerplate
17 interrogatory asking for "each and every person who has any knowledge ...". *Id.* ROG 7 to
18 Cheng asked what was done in answering the interrogatories, and Cheng responded. *Id.* As
19 such, there is not basis for the Motion's request relief as it related to the Cheng ROG 3-4 and 6-
20 7.

21 Also, Defendant Investments provided meaningful responses Plaintiff's ROGS 7-10 and
22 13. See Ex. K. ROG 7 and 8 are boilerplate requests asking for "each and every"
23 agent/employee (ROG 7) or person with any knowledge (ROG 8). *Id.* As such Defendant
24 responded with reference to the 16.1 Disclosures that contain the information. *Id.* ROG 9 asked
25 for identification information from Defendant, which is a dissolved company without any
26 address, phone number, etc. *Id.* Defendant responded accordingly. *Id.* ROG 10 asks for the due
27 diligence conducted in responding to the requests, which Defendant provided a response
28 following the objection. *Id.* Finally, ROG 13 asked again for identification of agents, employees,

1 and/or subcontractors, which Defendant again responded to by referring Plaintiff to the 16.1
2 Disclosures containing the information. As Defendants provided responses, and Plaintiff never
3 articulated a specific issue with those responses, the Motion is without merit related to these
4 requests.

5 2. Overbroad and Irrelevant

- 6 a. TKNR 2nd RPD 22, 28-29 (Ex. O); Wong RPD 1-6 (Ex. M);
7 Investpro RPD 6-10, 12, 15-18 (Ex. L); Investment RPD 1-3, 8-12
(Ex. J); Manager 2nd RPD 20-23, 25; 28-33 (Ex. N)

8 Due to the personality conflict between counsel at the 2.34 conference, the parties never
9 discussed the overbreadth of the requests at issue. This is partly due to Plaintiff's counsel refusal
10 to move off his position that Defendants' objections were waived. However, it is abundantly
11 clear on the face of the requests that the requests are not sufficiently limited in temporal scope,
12 subject matter, nor are they likely to lead to discovery of admissible evidence. Discovery is
13 sufficiently limited and specific in its directive where compliance to its terms would not be
14 unreasonably burdensome. *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 695 (D.
15 Nev. 1994) (citing *United States v. Palmer*, 536 F.2d 1278, 1282 (9th Cir. 1976)); *CBS v. Super.*
16 *Ct.*, 263 Cal. App. 2d 12, 19, 69 Cal. Rptr. 348, 352 (Cal. App. 2d 1968).

17 This matter involves a singular transaction for the sale of real property pursuant to the
18 Residential Purchase Agreement dated September 5, 2017, including the addendums attached
19 thereto. However, Wong RPD Nos. 1-5 (Ex. M); Investment RPD 2, 9-12 (Ex. J); Investpro
20 RPD 7-10, 15-18 (Ex. L); and Manager 2nd RPD 21-23, 28-32 (Ex. N) go way beyond that
21 limited issue and contain the following language: "***all documents of any description whatsoever***
22 ***including, but not limited to, communications, contracts, agreements, instructions, payments,***
23 ***checks, invoices, etc.***" See Exs. J, L, M, and N (emphasis added). Moreover, the requests are not
24 limited to any relevant subject matter. *Id.* Also, the requests fail to reasonably limit the temporal
25 scope of the requests, as most request documents from August 2015 through July 2019. *Id.* As
26 written, the requests would potentially encompass hundreds of documents not relevant to the
27 claims and defenses at issue in this litigation, rendering the request overly broad and unduly
28 burdensome. As such, the Motion should be denied as to these requests.

Moreover, TKNR RPD 22 (Ex. O); Manage 2nd RPD 20 (Ex. N); Investpro RPD 6 (Ex. L); and Investments RPD 1 (Ex. J) request “*organizational documents, articles of incorporation, articles of organization, lists of officers, lists of managers, lists of members, charters, stockholder agreements, operating agreements, minutes of meetings, resolutions, dissolutions, applications for fictitious firm names, statements of financial condition, and financial statements from August 2015 to January 31, 2019.*” See Exs. L, J, O, and N. This is again impermissibly overbroad and not reasonably calculated to lead to discovery of relevant evidence in this matter. Defendants have disclosed hundreds of documents in this matter related to the sale of the Subject Property, which is the central focus of this litigation. Simply put, Defendants do not have anything to hide, which is evidenced by the voluminous disclosure of documents it has already engaged in. Defendants’ respective organizational documents are ultimately not relevant to the litigation. As such the Motion should be denied as to these requests.

Similarly, Investpro RPD 12 (Ex. L), Investments RPD 8 (Ex. J); and Manage 2nd RPD 25 and 33 (Ex. N) request copies of all general license information held by the respective Defendants are impermissibly overbroad and, therefore, oppressive, burdensome, and irrelevant. See Exs. L, J, and N. The subject of this litigation is one singular transaction. Requesting all license information outside the limited scope of that one transaction is unduly burdensome and not likely to lead to admissible evidence.

Finally, TKNR 2nd RPD 28-29 (Ex. O), Wong RPD 6 (Ex. M), and Investment RPD 3 (Ex. J) all request communications with various Defendants, but none are limited in terms of subject matter. See Exs. O, M, and J. The TKNR requests ask for “all documents of communication between yourself and INVESTPRO MANAGER, LLC.” See Ex. O. There is no temporal limit for the communication, nor is there subject matter limitation. As such, these requests are clearly over broad and not reasonably limited, rendering compliance unduly burdensome and not likely to lead to discovery of admissible evidence. The Investment RPD makes the same request but limits the temporal scope from August 2015 through January 31, 2019. See Ex. J. However, there is still no limit as to the subject matter of the communications,

1 and the four-year temporal limitation is not reasonable considering the issue in this litigation is a
2 singular transaction occurring on or about September 2017. WONG RPD 6 asks for
3 communication between Wong and Helen Chen from September 2017, but also fails to limit the
4 subject matter of the request. As such, the Motion should be denied as it relates to these
5 requests.

6 b. Cheng ROG 1-2, 9 (Ex. I); Investment ROG 1-3, 11-12 (Ex. K)

7 Cheng ROG 1-2, 9 (Ex. I) and Investment ROG 2 and 11 (Ex. K) all refer to the
8 “Flipping Fund” which is irrelevant to the subject matter of this lawsuit. See Exs. I and K.
9 Plaintiff has admitted that they found the listing for the Property through Zillow. See Ex. H (“I
10 found the property listed on Zillow.”). As such, any information regarding the Flipping Fund is
11 irrelevant to the claims and defenses at issue in this litigation. This was raised during the limited
12 2.34 conference. As the information sought is not relevant, this honorable court should not
13 compel the same from Defendants.

14 Additionally, Investment ROG 1 and 3 (Ex. K) are also not relevant to the subject matter
15 of this litigation. See Ex. K. ROG1 refers to an undefined term “INVESTPRO INVESTMENTS
16 FOUNDATION”, while ROG 3 asks for the relationship between Investpro Manager LLC. *Id.*
17 First, Plaintiff has failed to articulate how this information is relevant to the limited issue of the
18 sale of real property from Defendant to Plaintiff. Second, the relationship between Investments
19 and Manager is public record and known to Plaintiff, as Investpro Manager is a listed as a
20 manager of Investments on the Nevada Secretary of state website, which has been produced by
21 Plaintiff in this litigation. Ex. P. As the information sought lack relevance, or is already in
22 Plaintiff’s possession, the Motion must be denied as to these requests.

23 3. Invasion of Privacy

24 a. Wong RPD 9-10 (Ex. M); Investment RPD 4-7 (Ex. J); Cheng
25 ROG 5 (Ex. I); Investment ROG 4-6 (Ex. K)

26 These requests invade Defendants’ right of privacy, is impermissibly overbroad and,
27 therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it
28 seeks disclosure of personal and private information. *Nesbit v. Dep’t of Pub. Safety*, 283 F. App’x

1 531, 533 (9th Cir. 2008) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 n. 21, 104 S.Ct.
2 2199, 81 L.Ed.2d 17 (1984) (noting that privacy interests may be a basis for restricting
3 discovery)).

4 Defendant Wong’s investment in/ownership of TKNR, INC. is not relevant to the sale of
5 real property that is the subject of this litigation. See Ex. M. Nor is Defendant Cheng’s
6 compensation or payment for a three-year span. See Ex. I. Similarly, Investments financial
7 records, investors, loan documents, invoices, correspondence, payments, checks, vouchers,
8 receipts, contracts, etc. for any professional fees or services performed for or by any accountants,
9 certified public accountants, bookkeepers, billing services, attorneys, paralegals, private
10 investigators, real estate agents, real estate brokers, realtors, agents, title companies, escrow
11 companies, salespersons, or similar people or entities are not relevant to the subject matter of
12 this litigation. See Exs. J-K. As Defendants have disclosed information related to the repairs,
13 maintenance, improvements, and sale of the Property, they are clearly not hiding any
14 information. At the present time, Plaintiff has made no showing why any of the designated
15 discovery requests are relevant. Considering the privacy concerns and lack of relevancy, the
16 Motion should be denied as to these requests.

17 **D. Plaintiff has Acted in Bad Faith and is not Entitled to Sanctions**

18 “The unclean hands doctrine generally ‘bars a party from receiving equitable relief
19 because of that party's own inequitable conduct.’” *Las Vegas Fetish & Fantasy v. Ahern*
20 *Rentals*, 182 P.3d 764, 766 (S. Ct. Nev. 2008) (citing *Food Lion, Inc. v. S.L. Nusbaum Ins.*
21 *Agency, Inc.*, 202 F.3d 223, 228 (4th Cir.2000)). “Under the maxim that one seeking equity may
22 not do so with ‘unclean hands,’ an intentional tortfeasor by definition seeks such relief from a
23 position of ineligibility for it.” *Evans v. Dean Witter Reynolds, Inc.*, 16 Nev. 598, 610, 5 P.3d
24 1043, 1050-51 (2000). If the party with unclean hand seeking equitable recovery will be
25 absolutely barred from such if it that party acted intentionally. *Banks v. Sunrise Hospital*, 120
26 Nev. 822, 843, 102 P.3d 52, 66 (2004). The court considers two factors when determining if a
27 party’s conduct is sufficient to bar equitable relief: (1) the egregiousness of the misconduct at
28 issue, and (2) the seriousness of the harm caused by the misconduct. *Evans*, 116 Nev. at 610, 5

1 P.3d at 1050-51; *Banks*, 120 Nev. at 843, 102 P.3d at 66. “[W]hen these factors weigh against
2 granting the requested equitable relief [then] the unclean hands doctrine bar that remedy.” *Las*
3 *Vegas Fetish & Fantasy*, 182 P.3d at 767.

4 Here, Plaintiff has continuously engaged in bad faith while conducting discovery in this
5 litigation and should be barred from seeking equitable relief in the form of sanctions against
6 Defendants. First, some of the requests allegedly at issue were not only responded to by
7 Defendants but were previously responded to during the first round of discovery when
8 Defendants were represented by previous counsel. See Ex. P. Additionally, the Defendants have
9 disclosed 512 pages of documents in this matter related to the sale of the Subject Property, which
10 is the central focus of this litigation and are responsive to the requests allegedly at issue. Ex. T.
11 The requests in large part seemed to be a billing exercise for Plaintiff and for the undue purpose
12 of harassing Defendants and vexatiously increasing fees and costs in this matter. Notably, prior
13 to service of the discovery at issue, Plaintiff had opposed enlarging discovery by specifying that
14 any extension of discovery would prejudice it and indicating that Plaintiff would largely rest
15 upon the findings of its expert and had no need for additional discovery. See Plaintiff’s
16 Opposition to Motion to Enlarge Discovery attached as **Exhibit X**.

17 Second, Plaintiff has also withheld documents from disclosure in this matter, further
18 illustrating the bad faith tactics engaged by Plaintiff. In response to Defendants’ Motion for
19 Summary Judgment, Plaintiff provided the Declaration of Frank Miao, including alleged email
20 communication between Miao and Helen Chen where Plaintiff makes certain requests for repair.
21 See Frank Miao Declaration Exhibit 2c attached hereto as **Exhibit Y**. Despite discovery
22 previously closing in this matter, Plaintiff never disclosed the communication, illustrating the
23 failure to disclose was willful. See Plaintiff’s Supplement to Early Case Conference Disclosures
24 (without documents) attached as **Exhibit Z**. The fact Plaintiff proffered it in response to the
25 Motion for Summary Judgment indicates the information was material, further illustrating the
26 egregiousness of Plaintiff’s conduct.

27 The email communication attached to Miao’s declaration is not the only instance of
28 Plaintiff failing to disclose documents in this matter. See Ex. W. As indicated, Defendants

1 provided Plaintiff with the lease information related to the Property in 2017. *Id.* Despite
2 defendants providing the information, Plaintiff still requested the same information through the
3 discovery requests allegedly at issue, which is improper. Moreover, Defendants never disclosed
4 the documents, despite discovery previously closing, further illustrating that the documents are
5 immaterial and should not be compelled. See Ex. Z. This also indicates that the discovery
6 requests propounded by Plaintiff and the subsequent Motion are being frivolously maintained to
7 increase Defendants’ fees and costs.

8 Moreover, Plaintiff has engaged in gamesmanship related to the designation of Plaintiff’s
9 person most knowledgeable (“PMK”) under NRCP 30(b)(6). See Email Chain related to
10 Scheduling of Plaintiff PMK attached as **Exhibit AA**. Defendants noticed the deposition of
11 Plaintiff’s PMK as it relates to certain topics that were included in the notice. See Notice of PMK
12 Deposition attached as **Exhibit BB**. Plaintiff presented Frank Miao as the PMK for certain
13 topics, but refused to proffer Ms. Zhu arguing that she was not designated as PMK. See Ex. AA.
14 However, at the time of the PMK deposition, Mr. Miao stated that Ms. Zhu was the PMK for
15 certain topics. Notably, it is Plaintiff’s duty to designate the PMK related to the noticed topics.
16 See Nev. R. Civ. Pro. § 30(b)(6). Plaintiff’s failure to designate and have someone appear is an
17 abuse that is subject to sanctions under NRCP 37(d). Although Defendants have worked around
18 the issue with Plaintiff’s counsel, this is further evidence of the bad faith engaged by Plaintiff.
19 Plaintiff’s own bad faith conduct should bar any equitable relief requested by the Motion,
20 especially a request for sanctions.

21 Finally, Defendants had previously provided an extension to Plaintiff for responding to
22 Defendants’ discovery requests. See Email re Discovery Extension attached as **Exhibit CC**.
23 Although there is no rule that Plaintiff must provide an extension, this just further indicates the
24 unreasonableness in dealing with Plaintiff related to the discovery process in this matter.

25 ////

26 ////

27 ////

28 ////

E. **Countermotion for Protective Order Should be Granted**

1. **Overbroad, Irrelevant Discovery Requests**

a. **Cheng Requests (Ex. I)**

INTERROGATORY NO. 1:

Describe in detail what your connection or relationships was with INVESTPRO INVESTMENTS FOUNDATION from August 15, 2015 through January 31, 2019.

INTERROGATORY NO. 2:

Describe in detail what your connection or relationship was with Flipping Fund from August, 2015 through January 31, 2019.

INTERROGATORY NO. 5:

Describe in detail any compensation or payment you received from INVESTPRO MANAGER LLC from August, 2015 through July 31, 2018.

INTERROGATORY NO. 9 (As Labeled by Plaintiff):

Identify the person or persons or entities who participated or were involved in any way with in the creation, design and publication of Exhibit 1.

b. **Identical Requests to Investments (Ex. J)**

INTERROGATORY NO. 1:

Describe in detail what your connection or relationships was with INVESTPRO INVESTMENTS FOUNDATION from August 15, 2015 through January 31, 2019.

INTERROGATORY NO. 2:

Describe in detail what your connection or relationship was with Flipping Fund from August, 2015 through January 31, 2019.

INTERROGATORY NO. 5:

Describe in detail any compensation or payment you received from INVESTPRO MANAGER LLC from August, 2015 through July 31, 2018.

INTERROGATORY NO. 9 (As Labeled by Plaintiff):

Identify the person or persons or entities who participated or were involved in any way with in the creation, design and publication of Exhibit 1.

The Court may only order their production if they are relevant and where the requesting party shows a compelling need for the same, which is a higher standard than regular discovery requests. *Copper Sands Homeowners Assoc., Inc. v. Copper Sands Realty, LLC.*, 2012 WL 1080291, *4 (D. Nev. 2012); *Trilegiant Corp. v. Sitel Corp.*, 272 F.R.D. 360, 368 (S.D. NY

2010). Here, as noted above, this issue relates to the alleged defects in the Property, which the undisputed evidence showed that Plaintiff could have discovered through a professional inspection. Ex. S. Notwithstanding the pending Motion for Summary Judgment, these requests are irrelevant to the underlying litigation and are only brought to harass Defendants and seek private information. Plaintiff's intent to harass and vexatiously increase Defendants' fee and costs is indicated by the identical requests made to the parties. Moreover, there is no basis for why the personal records of Defendants' would be relevant in this matter, further illustrating the dilatory intent.

b. Requests to Investments (Ex. K), Realty (Ex. L), Wong (Ex. M), Manager (Ex. N), and TKNR (Ex. O)

REQUEST NO. 6:

Produce all organizational documents pertaining to you, including, but not limited to, articles of organization, lists of officers, lists of managers, lists of members, charters, operating agreements, minutes of meetings, resolutions, dissolutions, applications for fictitious firm names, statements of financial condition, and financial statements from August, 2015 through July 31, 2018.

REQUEST NO. 1:

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and Kenny Lin between August, 2015 and July 31, 2018.

REQUEST NO. 2:

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and INVESTPRO MANAGER LLC, including to any of its agents and employees, between August, 2015 and December 31, 2017.

REQUEST NO. 3:

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and JOYCE A. NICKRANDT, including to any of its agents and employees, between August, 2015 and December 31, 2017.

REQUEST NO. 4:

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and INVESTPRO INVESTMENTS I, LLC, including to

any of its agents and employees, between August, 2015 and December 31, 2017.

REQUEST NO. 5:

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and INVESTPRO MANAGER LLC, including to any of its agents and employees, between June, 2015 and December 31, 2017.

REQUEST NO. 9:

Produce all documents relevant or pertinent to your investment in TKNR, INC.

REQUEST NO. 10:

Produce all documents relevant or pertinent to your ownership of any interest in TKNR, INC.

REQUEST NO. 12 (Erroneously labeled No. 11):

Produce copies of any licenses held by you from August, 2015 through July 31, 2018.

REQUEST NO. 17 (Erroneously labeled No. 16):

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and CHI ON WONG aka CHI KUEN WONG from August, 2015 through July 31, 2018.

REQUEST NO. 18 (Erroneously labeled No. 17):

Produce all documents of any description whatsoever including, but not limited to, communications, contracts, agreements, instructions, payments, checks, invoices, etc between yourself and LIWE HELEN CHEN aka HELEN CHEN from August, 2015 through July 31, 2018.

Information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence is not permitted. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352, 98 S. Ct. 2380, 2390, 57 L.Ed. 2d 253(1978); *Washoe County Bd. of School Trustees v. Pirhala*, 84 Nev. 1, 435 P.2d 756(1968); *Darbee v. Super. Ct.*, 208 Cal. App. 2d 680, 685, 25 Cal. Rptr. 520, 524 (Cal. App.1962). Additionally, questions that invade on a party's right of privacy is impermissibly overbroad and, therefore, oppressive, burdensome, and irrelevant to the subject matter of this action in that it seeks disclosure of personal and private information. *Nesbit v. Dep't of Pub. Safety*, 283 F. App'x 531, 533 (9th Cir. 2008) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 n. 21, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984) (noting that privacy interests may be a basis for restricting discovery)).

Here, each of these requests is overbroad in light of the actual alleged facts related to the Property and the alleged undisclosed defects. The underlying organizational documents for the corporate Defendants, communications, contracts, agreements, instructions, payments, checks, invoices, amongst the Defendants from August, 2015 and July 31, 2018, documents pertinent to the investment in TKNR, INC., and general license information are impermissibly overbroad and, therefore, oppressive, burdensome, and irrelevant. As Defendants have disclosed information related to the repairs, maintenance, improvements, and sale of the Property, they are clearly not hiding any information. At the present time, Plaintiff has made no showing why any of the designated discovery requests are relevant, nor did Mr. Childs articulate any basis during the meet-and-confer in light of the lack of disclosure of the same documents by Plaintiff. At a minimum, if Plaintiff did not disclose the same documents that it possesses, it clearly shows that these requested documents are immaterial.

F. Plaintiff Should Pay Costs for Inspection

Defendants demanded the right to inspect the Property, where “Plaintiff [would] need to notify any tenants of the potential inspection and make sure that the area will be available for inspection. Upon information and belief, Plaintiff should have a right to make this demand pursuant to Nevada Revised Statute § 118A.330 *et seq.*” Ex. P. Although Plaintiff specified the date of the Inspection, Ex. Q, Plaintiff failed to make the entire Property available for Inspection. Ex. R. In that light, Plaintiff should not be permitted to introduce any evidence or damages related to Units A and B, or, alternatively, should be required to pay for the cost of the Inspection.

G. Pending Resolution, Plaintiff’s Expert’s Billing Fee is Unreasonable

Under Nevada Rule of Civil Procedure 30(h)(4)(A), “[i]f a party deems that an expert’s hourly or daily fee for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert.” The supporting Declaration illustrates that counsel for the Parties have discussed the issue of Plaintiff’s expert’s fee. Plaintiff’s expert has never been an expert, but is charging \$400 per hour for depositions. This is unreasonable given that Defense expert has been qualified countless times and only charges \$295. Under Nevada

1 Rule of Civil Procedure 30(h)(4)(B), Plaintiff's expert fee is unreasonable and should be set at
2 what this Honorable Court determines is a reasonable rate for an inexperienced, unqualified
3 contractor posing as an expert.

4 **III. CONCLUSION**

5 Based on the foregoing, Defendants respectfully request that the Motion be denied in its
6 entirety, the Countermotion be granted and a Protective Order as requested therein, sanctions
7 against Plaintiff related to the Inspection, and to set a reasonable fee for Plaintiff's expert.

8 Dated this 18th day of February, 2021.

9 MICHAEL B. LEE, P.C.

10 /s/ Michael Lee
11 MICHAEL B. LEE, ESQ. (NSB 10122)
12 MICHAEL MATTHIS, ESQ. (NSB 14582)
13 1820 E. Sahara Avenue, Suite 110
14 Las Vegas, Nevada 89104
15 Telephone: (702) 477.7030
16 Facsimile: (702) 477.0096
17 mike@mblnv.com
18 Attorney for Defendants
19
20
21
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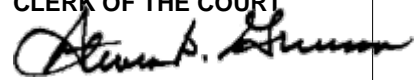
MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL – (702) 546-7055; FAX – (702) 825-4734

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 18th day of February, 2021, the foregoing **DEFENDANTS’
OPPOSITION TO PLAINTIFF’S RENEWED MOTION TO COMPEL DISCOVERY
AND FOR IMPOSITION OF SANCTIONS & COUNTERMOTION FOR A
PROTECTIVE ORDER AND OTHER RELIEF** was served via the Court’s electronic filing
and/or service system and/or via facsimile and/or U.S. Mail first class postage pre-paid to all
parties addressed as follows:

BENJAMIN B. CHILDS, ESQ.
Nevada State Bar No. 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com
Attorneys for *Plaintiff*

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



MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
MICHAEL B. LEE, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com
Attorneys for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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

Defendants.

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

NOTICE TO THE COURT RE:
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S RENEWED MOTION TO
COMPEL DISCOVERY AND FOR
IMPOSITION OF SANCTIONS
&
COUNTERMOTION FOR A
PROTECTIVE ORDER AND OTHER
RELIEF

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 provides notice to the Court that the Opposition (“Opposition”) to Plaintiff’s Renewed Motion to Compel Discovery and for Imposition of Other Sanctions (“Motion”) Motion for a Protective Order and Other Relief (“Counter-motion”) filed by Defendants on February 18, 2021 was made in response to Plaintiff’s Motions to Compel that are set for hearing on March 2, March 4, March 11, and March 16, 2021.

As this Court is aware, Plaintiff’s Motion was originally filed as one, singular motion addressing the alleged issues with the Defendants’ respective discovery responses. However, the Motion was vacated because it did not include the exact language for the requests and responses at issue. Plaintiff refiled the Motion on February 10, 2021, but it was over the page limit allowed by the local rules. It then appears Plaintiff broke up its Motion and received orders shortening time on the three broken up motions, to be heard on March 2, 4, and 11. The full Motion is still on calendar for March 16, 2021. Notably, the three separated Motions contain the exact same information and arguments as the full Motion. The individual Motions are almost identical carbon copies of one another, the argument and analysis are the exact same, the only difference is the requests at issue.

Here, Defendants’ filed the Opposition and Counter-motion believing it was responding to all motions to compel filed by Plaintiff. As such, the Opposition and Counter-motion discusses the subject matter of all motions and is relevant and responsive to each motion individually and collectively. The Opposition and Counter-motion are within the 30-page limit and Defendants believed it was in the interest of judicial economy to respond in this manner. Therefore, Defendants are providing notice that it intends to rely on the Opposition and Counter-motion when arguing against the Motions set for hearing on March 2, 4, 11, and 16.

Dated this 24th day of February, 2021.

MICHAEL B. LEE, P.C.

/s/ Michael Matthis
MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
1820 E. Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
mike@mblnv.com
Attorney for Defendants

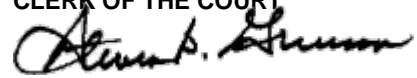
MICHAEL B. LEE, P.C.
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LAS VEGAS, NEVADA 89104
TEL – (702) 546-7055; FAX – (702) 825-4734

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 24th day of February, 2021, the foregoing **NOTICE TO
THE COURT RE: DEFENDANTS’ OPPOSITION TO PLAINTIFF’S RENEWED
MOTION TO COMPEL DISCOVERY AND FOR IMPOSITION OF SANCTIONS &
COUNTERMOTION FOR A PROTECTIVE ORDER AND OTHER RELIEF** was served
via the Court’s electronic filing and/or service system and/or via facsimile and/or U.S. Mail first
class postage pre-paid to all parties addressed as follows:

BENJAMIN B. CHILDS, ESQ.
Nevada State Bar No. 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com
Attorneys for *Plaintiff*

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



BENJAMIN B. CHILDS, ESQ.
Nevada Bar # 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(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

Hearing : March 4, 2021 @ 09:30

[Discovery Commissioner]

REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY
AND FOR IMPOSITION OF SANCTIONS re:

INVESTPRO MANAGER LLC- Second Request for Production of
Documents

INVESTPRO INVESTMENTS I, LLC - Request for Production of
Documents

OPPOSITION TO COUNTERMOTION FOR PROTECTIVE ORDER AND OTHER
RELIEF

Plaintiff filed three separate Motions to Compel after the initial motion
hearing on February 9, 2021 was vacated because the entire discovery request
and response were not contained in the motion. Adding the entire discovery

1 request and response resulted in a 72 motion, which exceeded the 30 page limit of
2 EDCR 2.20(a), so three separate motions were filed and Orders Shortening Time
3 were requested and granted. The separate motions are set for hearings before
4 the Discovery Commissioner on March 2, March 4 and March 11, 2021.

5 Defendants' Opposition and Countermotion filed February 18, 2021 is an omnibus
6 response to all three of Plaintiff's Motions.

7 Defendants' Countermotions reference discovery issues outside of Plaintiff's
8 three discovery motions.

9 A countermotion has to be related to "to the same subject matter" as the
10 original motion.

11 EDCR 2.20(f)

12 (f) An opposition to a motion that contains a motion **related to the**
13 **same subject matter** will be considered as a countermotion. A
14 countermotion will be heard and decided at the same time set for the
15 hearing of the original motion if a hearing was requested, unless the
16 court sets it for hearing at a different time.

17 The Motion to Compel set for hearing on March 4, 2020 only addresses
18 written discovery proffered by Plaintiff as follows :

19 INVESTPRO MANAGER LLC- Second Request for Production of Documents

20 INVESTPRO INVESTMENTS I, LLC - Request for Production of Documents

21 Defendants' Opposition and Countermotion addresses other issues. Thus,
22 any matters addressed in Defendants' Opposition and Countermotion outside of
23 Plaintiff's Motion should be ignored and summarily denied.

24
25 PLAINTIFF'S DISCOVERY REQUESTS SEEK RELEVANT INFORMATION
26

27
28 The requested documents should have been produced by Defendants as
part of their obligation under NRCP 16.1(a)(1)(A)(ii), which requires a party

1 “without awaiting a discovery request, provide to the other parties :

2 (ii) a copy — or a description by category and location — of all
3 documents, electronically stored information, and tangible things that
4 the disclosing party has in its possession, custody, or control and may
5 use to support its claims or defenses, including for impeachment or
6 rebuttal, and, unless privileged or protected from disclosure, any
7 record, report, or witness statement, in any form, concerning the
8 incident that gives rise to the lawsuit;”

9 Defendants have not complied with this obligation. Plaintiff sent narrowly
10 drafted requests as set forth in the moving papers. In response to which
11 Defendants produced essentially nothing. And defense counsel wouldn’t even
12 discuss a possible resolution, instead hanging up during the meet and confer
13 phone call. Thus compelling the instant motion.

14 Defendants’ Opposition references a pending summary judgment motion
15 which they filed December 15, 2020, months before the discovery cutoff. This
16 was after Defendants failed to timely disclose an expert, instead seeking to extend
17 the discovery deadline for doing so, which was granted over Plaintiff’s objections.

18 Plaintiff needs the requested information to respond to Defendants’
19 summary judgment motion, and have filed a countermotion pursuant to NRCP
20 56(f). This Motion to Compel deals solely with discovery issues and why
21 Defendants set forth their version of facts in a contested pending motion is a
22 mystery and solely intended to confuse and waste time, and unnecessarily
23 increase the costs of litigating this case.

24 REQUESTS TO DEFENDANT INVESTPRO MANAGER LLC

26 INVESTPRO MANAGER LLC “presented” the Flipping Fund. INVESTPRO
27 INVESTMENTS I, LLC is also part of the Flipping Fund. [Exhibit 6]

28 Defendants Kenny Lin aka Zhong Lin and Man Chau Cheng are the

1 managers of INVESTPRO MANAGER LLC . [Exhibit 7]

2 INVESTPRO MANAGER LLC managed INVESTPRO INVESTMENTS I
3 LLC, the Flipping Fund, and also managed the renovation project of the Subject
4 Property prior to the sale of the Subject Property to Plaintiff. [Exhibit 1, 3:16-19]

5 The requested discovery is solely in the possession of Defendants, is
6 relevant information to the pending case, and should be provided. Plaintiff's
7 motion will not be restated, but as to the timing and specificity of the requests,
8 Plaintiff limited its inquiry to the duration of ownership of the subject property
9 [September, 2015] until either January, 2019 [Requests 20 through 23, and 28
10 through 32], a month after this lawsuit was filed, or July, 2018 [Requests 24, 26
11 and 27].

12 Inquiry into INVESTPRO MANAGER LLC are relevant.

13
14 REQUESTS TO DEFENDANT INVESTPRO INVESTMENTS I, LLC

15
16 INVESTPRO INVESTMENTS I, LLC is part of the Flipping Fund. [Exhibit 6]
17 Plaintiff seeks corporate documents and communications between other
18 defendants from August, 2015 [when TKNR, Inc purchased the Subject Property]
19 through January 31, 2019.
20

21 CONCLUSION

22
23
24 Plaintiff's Motion to Compel discovery should be granted and Defendants'
25 Countermotions denied.
26

27 /s/ Benjamin B. Childs, Sr.

28

BENJAMIN B. CHILDS, Sr. ESQ.
NEVADA BAR # 3946
Attorney for Plaintiff/Counterdefendant

1 Exhibits

2 6 Flipping Fund promotional literature

3 7 INVESTPRO MANAGER LLC from Nevada Secretary of State

4
5 CERTIFICATE OF ELECTRONIC SERVICE

6
7 This REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL
8 DISCOVERY AND FOR IMPOSITION OF SANCTIONS re: INVESTPRO
9 MANAGER LLC- Second Request for Production of Documents and INVESTPRO
10 INVESTMENTS I, LLC - Request for Production of Documents , with
11 attachments, was served through the Odyssey File and Serve system on filing.
12 Electronic service is in place of service by mailing.

13 /s/ Benjamin B. Childs, Sr.

14 _____
15 BENJAMIN B. CHILDS, Sr. ESQ.

16 NEVADA BAR # 3946
17
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EXHIBIT 6

EXHIBIT 6

EXHIBIT 6

EXHIBIT 6

Flipping Fund Iv - InvestPro Realty

[Statement]



FLIPPING FUND
INVESTPRO INVESTMENTS I LLC
PRESENT BY INVESTPRO MANAGER LLC



KENNY LIN
Phone: +1 (702) 726-0000
Email: zhong.kenny@gmail.com
中国境内 95013515588 x 88855
联系电话

InvestPro REALTY 恆興地產



1. 周期: 1-3 年。
2. 投资门槛: 最少\$5万, 每股\$1000。
2. 用途: 在拉斯维加斯短炒住宅。
3. 回报: 每年先付8%的红利, 按季度付, 然后在所有本金收回后, 纯利润的75%给投资人, 25%给管理公司。
5. 退出: 头12 个月不可退出, 过后可以自行买卖或由公司买回。

截止日期: 2015年12月31日

1. TERM : 1-3 YEARS
2. MINIMUM UNITS: \$50,000 MINIMUM, \$ 1000 PER UNIT.
3. USE OF FUND: FLIPPING RESIDENTIAL PROPERTIES IN LAS VEGAS.
4. RETURNS: 8 % PREFERRED PER ANNUL PAYS EVERY QUARTER, THEN AFTER ALL MONEY RETURNED TO INVESTORS, THE NET PROCEED SPLIT 75% TO INVESTORS AND 25 % TO MANAGER LLC.
5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015



WHAT's FLIPPING FUND?

所谓 | 短炒基金

FLIPPING FUND IS ESTABLISHED BY INVESTPRO INVESTMENTS FOUNDATION. THE FUND WILL BE INVESTED ON PURCHASING VALUE INCREASING REAL ESTATES IN LAS VEGAS. ONCE REACHED THE TERM, THE PROPERTY WILL BE SOLD OUT. PROFITS WILL BE PUT BACK INTO THE FUND FOR INVESTING ANOTHER PROPERTY.

「短炒基金」是由恒

兴投资基金建立的一个投资资金池，用于在拉斯维加斯买入预期升值的房产项目。短期获利后，迅速抛售套现离场，所获利资金再次用于投资其他相似房产项目，以此循环获利。

InvestPro Investment Foundation | 3553 S Valley View Blvd, Las Vegas, NV 89103 | P: +1 (702) 997-3832 | F: +1 (702) 997-3836 | www.investprorealty.net



04

案例分析
SUCCESSFUL PROJECTS

06

已运作项目
PROJECT LIST

09

短炒周期
FLIPPING TERM

10

资金分配
INVESTMENTS & EXPENSES

11

投资回报
PRO FORMA

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案例分析 SUCCESSFUL PROJECTS

4320 NOLAN LN

LAS VEGAS NV

03/02
2015

102天/DAY

06/12
2015

增值
INCREASE
IN VALUE
\$55,500.00

HOW LONG's THE FLIPPING TERM? 多久 | 短炒周期

134 DAY. WE SET THE FLIPPING TERM AS 130 DAYS. IT IS A ESTIMATED NUMBER BASED ON THE PROPERTIES WE ARE OPERATING NOW. WE AVERAGE THE TERM BETWEEN PURCHASE AND SOLD, THEN PLUS 15 ACQUISITION DAYS. THEREFORE IN 365 DAYS, ALL OF FUNDS WILL BE FLIPPED FOR 2.72 TIMES

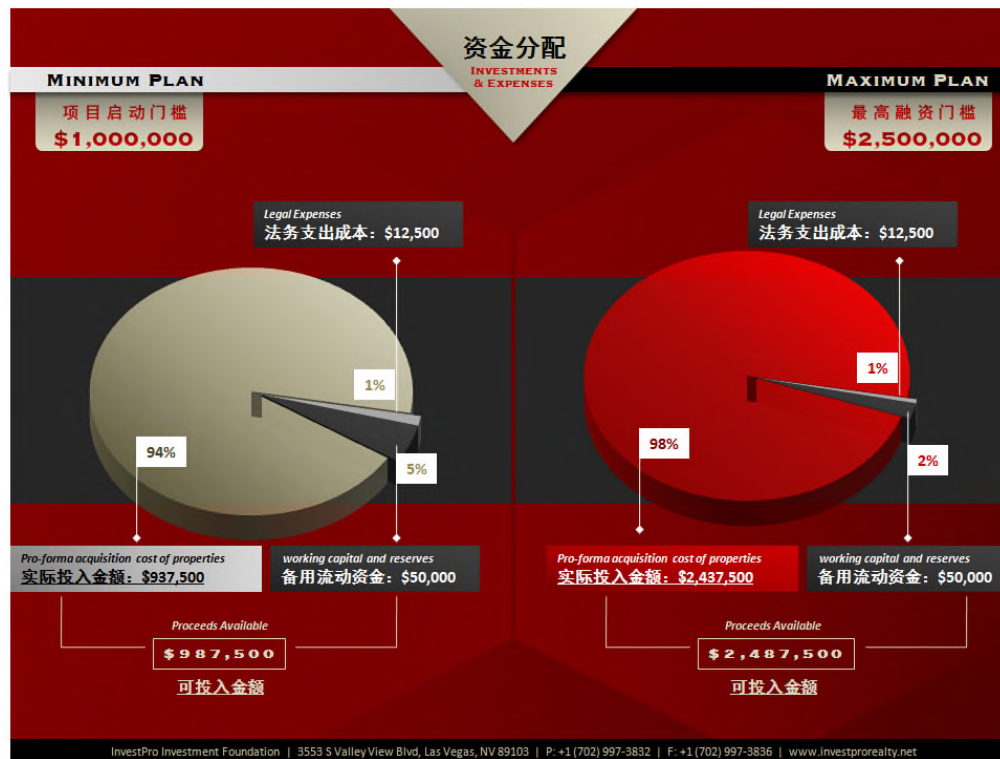
「134天」我们将短炒周期设定为134天，这是以我们目前已运作房产项目，从买入至卖出所用天数的平均值（119天）加上购置周期（15天），所得出的一个平均短炒周期数。若全年以365天计，资金将用于短炒2.72次/年

年盈利率

PROFIT PER FLIP 每次利润 8.71% × FLIPS PER YEAR 年短炒次数 2.72 = 23.69%

COMPOUND RATE

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投资回报率						
PRO FORMA						
MINIMUM PLAN						
项目启动门槛 \$1,000,000						
可投入金额	年盈利率	资金成长	年固定回报额	基金管理年费	总剩余资本	



相关政策 TERMS & CONDITIONS

1. 周期: 1-3 年。
2. 投资门槛: 最少\$5万, 每股\$1000。
2. 用途: 在拉斯维加斯短炒住宅。
3. 回报: 每年先付8%的红利, 按季度付, 然后在所有本金收回后, 纯利润的75%给投资人, 25%给管理公司。
5. 退出: 头12 个月不可退出, 过后可以自行买卖或由公司买回。

截止日期: 2015年12月31日

1. TERM : 1-3 YEARS
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5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015

(<http://investprorealty.net/wp/wp-content/uploads/2015/12/13.jpg>)



CONTACT
联系我们



KENNY LIN
Phone: +1 (702) 726-0000
Email: zhong.kenny@gmail.com
中国境内
联系电话 95013515588 x 88855



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(<https://www.addtoany.com/share?url=http%3A%2F%2Finvestprorealty.net%2Finvestment-opportunities%2Fflipping-fund-iv%2F&title=Flipping%20Fund%20Iv>)



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(<http://investprorealty.net/las-vegas-strip-tribute-remembers-jerry-lewis/>)

By Eli Segall Las Vegas Review-Journal July 20, 2017 (<http://investprorealty.net/eli-segall-las-vegas-review-journal-july-20-2017/>)

December, 2016 Residential Hot Spot Report
(<http://investprorealty.net/december-2016-residential-hot-spot-report/>)

在美国留学, 这7条红线千万不能碰!
(<http://investprorealty.net/%e5%9c%a8%e7%be%8e%e5%9b%bd%e7%95%99%e5%ad%a6-%e8%bf%997%e6%9d%a1%e7%ba%a2%e7%ba%bf%e5%8d%83%e4%b8%87%e4%b8%8d%e8%83%bd%e7%a2%b0/>)

在美国买房宜早规划财务, 这三种买家尤其要注意!
(<http://investprorealty.net/%e5%9c%a8%e7%be%8e%e5%9b%bd%e4%b9%b0%e6%88%bf%e5%ae%9c%e6%97%a9%e8%a7%84%e5%88%92%e8%b4%a2%e5%8a%a1%ef%bc%8c%e8%bf%99%e4%b8%89%e7%a7%8d%e4%b9%b0%e5%ae%b6%e5%b0%a4%e5%85%b6%e8%a6%81%e6%b3%a8%e6%84%8f-2/>)

Categories

Agents (<http://investprorealty.net/category/agents/>)

Events (<http://investprorealty.net/category/news-and-events/events/>)

Helen (<http://investprorealty.net/category/agents/helen/>)

Homes for Sale in Las Vegas (<http://investprorealty.net/category/homes-for-sale-in-las-vegas/>)

Information (<http://investprorealty.net/category/information/>)

Jobs (<http://investprorealty.net/category/jobs/>)

Kenny (<http://investprorealty.net/category/agents/kenny/>)

News (<http://investprorealty.net/category/news-and-events/news/>)

News & Events (<http://investprorealty.net/category/news-and-events/>)

Uncategorized (<http://investprorealty.net/category/uncategorized/>)

Meta

Log in (<http://investprorealty.net/wp/wp-login.php>)

Entries [RSS \(Really Simple Syndication\)](#) (<http://investprorealty.net/feed/>)

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[TERMS AND CONDITIONS \(/terms-and-conditions/\)](#)
[DISCLAIMER \(/disclaimer/\)](#)

InvestPro Realty
3553 S Valley View Blvd
Las Vegas NV 89103

Las Vegas Website Design (<https://websitecenter.com/design/>) and Hosting (<https://websitecenter.com/hosting/>) By WebsiteCenter.com (<https://www.websitecenter.com>)

Office phone: 702-997-3832
Fax: 702-997-3836
Fax: 866-782-3075
Email: info@investprorealty.net
Hours: Mon – Fri 9:00 AM – 6: 00PM
Closed Saturday & Sunday

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

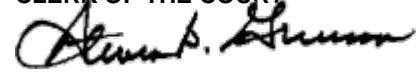
ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:** INVESTPRO MANAGER LLC**Entity Number:** E0372322015-8**Entity Type:** Domestic Limited-Liability
Company (86)**Entity Status:** Active**Formation Date:** 08/04/2015**NV Business ID:** NV20151464172**Termination Date:** Perpetual**Annual Report Due Date:** 8/31/2021**Series LLC:** ☐**Restricted LLC:** ☐**REGISTERED AGENT INFORMATION****Name of Individual
or Legal Entity:** ZHONG LIN**Status:** Active**CRA Agent Entity
Type:****Registered Agent Type:** Non-Commercial Registered
Agent

NV Business ID:**Office or Position:****Jurisdiction:****Street Address:** 3553 S VALLEY VIEW BLVD,
LAS VEGAS, NV, 89103, USA**Mailing Address:****Individual with
Authority to Act:****Fictitious Website
or Domain Name:****OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Manager	ZHONG LIN	3601 W Sahara Ave ste 207, Las Vegas, NV, 89102, USA	06/21/2020	Active
Manager	MAN CHAU CHENG	3601 W Sahara ave Ste 207, Las Vegas, NV, 89102, USA	06/21/2020	Active

Page 1 of 1, records 1 to 2 of 2

[Filing History](#)[Name History](#)[Mergers/Conversions](#)[Return to Search](#)[Return to Results](#)



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

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
17
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EXHIBIT 10 EXHIBIT 10

EXHIBIT 10 EXHIBIT 10

Other Real Property

COURT MINUTES

March 02, 2021

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 <u>Michael A. Bouley</u> 22 Michael A. Bouley, RDR 23 Nevada Certified Reporter, #960 24 25</p> <p>page 5</p>

Exhibits	4	Bouley 2:3 5:20	Esq 2:8	4:2
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Lin Ex 2 3:9	7	Certified 2:3 5:21	Exhibit 3:8,9,10	KNOWN 5:1
Lin Ex 3 3:10	702 251-0000 2:10	CERTIFY 5:9	exhibits 3:6 4:11,13	L
#	8	chain 3:9 4:11	F	L-I-N 4:3
#960 5:21	89101 2:9	Childs 2:8 3:4 4:1	foregoing 5:1,4	Las 2:9
(9	claiming 4:6	forwarded 4:9	Lin 2:1 4:3
(X) 5:17	960 2:4	communications 4:5	Frank 2:14	M
1	A	concluded 4:14	full 5:4	made 3:4
1 3:8 4:13	ability 5:6	court 2:4 4:9	G	making 4:7
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2	B	DESCRIPTION 3:7	hereto 5:10	Michael 2:3 5:20
2 3:9 4:13	before 2:3 5:2	direction 5:8	I	morning 4:10
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3	ben@benchilds.com. 2:10	down 5:6	INDEX 3:1	Nevada 2:3,9 5:21
3 3:10	Benjamin 2:8	duly 5:3	interested 5:10	new 4:2,3
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				notice

3:8 4:6,12	record 3:4 4:7 5:4	two 4:11	
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O	related 5:9	under 5:8	
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RDR 2:3 5:20	true 5:4		
Receipt 3:10	truth 5:3		

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Fax 385 1847
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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

Page 1 of 2

1195

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

8
9
10 CERTIFICATE OF ELECTRONIC SERVICE

11
12 This Notice of Deposition was served through the Odyssey File and Serve system to
13 opposing counsel. . Electronic service is in place of service by mailing.

14 /s/ Benjamin B. Childs

15
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BENJAMIN B. CHILDS, ESQ.
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

1197

exhibitstick.com

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)

1200

+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**

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1202

Public Filed Document

MotCompel0211211of3NEO.pdf

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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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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

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2/12/2021 10:15 AM PST

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

Filing Type**Filing Code**

1204

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NOTICE OF DEPOSITION - Kenny Lin

Filing on Behalf of

W L A B Investment LLC

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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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1206

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

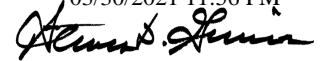
Case Style: W L A B Investment LLC, Plaintiff(s)vs.TKNR Inc,
Defendant(s)

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 1208
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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. 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.

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
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· 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 related to the potential mold exposure of the
8 property; correct?
9 .8 . . . A. Yes.
10 .9 . . . Q. Okay. And you elected to proceed with
11 purchasing it without a professional mold
12 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
12 prospective buyer to exercise reasonable care."
13 Do you see that?
14 .14 . . . A. Yes.
15 .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.

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
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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.

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
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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.

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
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 –

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

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

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.

1 75. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by
2 Plaintiff's alleged expert were open and obvious:

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

8 *Id.* at 318:22-25-319:3-4.

9 76. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not do any
10 destructive testing, so the same alleged conditions that the alleged expert noted, would have been
11 made by an inspector at the time of the purchase. *Id.* at 291:1-5.

12 77. Mr. Miao agreed with Professor Opfer that Plaintiff's alleged expert did "not
13 recognize prior conditions in existence before any work took place by the Defendants." *Id.* at
14 321:17-21 – 322:3-6.

15 Conclusions of Law

16 1. Summary judgment is appropriate when the pleadings, depositions, answers to
17 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate
18 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a
19 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).
20 Substantive law controls whether factual disputes are material and will preclude summary
21 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
22 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the
23 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*
24 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

25 2. The Nevada Supreme Court has held that the non-moving party may not defeat a
26 motion for summary judgment by relying "on gossamer threads of whimsy, speculation and
27 conjecture." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada
28 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.

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

3 44. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
4 moisture conditions. Additionally, he also admitted that there is no evidence that Defendants
5 knew about the alleged issues with the plumbing system. He also admitted that he did not know
6 if Defendants knew about the alleged issues with the duct work when they owned the Property.
7 He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between
8 conditions prior to when TKNR owned the Property, while it owned it, and those afterwards.

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

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

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

19 48. Plaintiff were encouraged to inspect the property, and they did not do it. It was a
20 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff
21 was strongly encouraged to conduct the inspection, and they did not want to.

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

23 Rule 56(f) is not a shield that can be raised to block a motion for
24 summary judgment without even the slightest showing by the
25 opposing party that his opposition is meritorious. A party invoking
26 its protections must do so in good faith by affirmatively
27 demonstrating why he cannot respond to a movant's affidavits as
28 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.

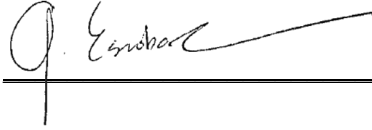
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this is a final order related to the claims and counterclaim. This Honorable Court directs entry of a final judgment of all claims. To the extent that post-judgment award of attorneys' fees are pending, Defendants may make the claim as set forth in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

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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.

5 Dated this 30th day of March, 2021

6 
7

8 159 FDE 147E 8F8F

Adriana Escobar

District Court Judge

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

NO RESPONSE

13 MICHAEL B. LEE, ESQ. (NSB 10122)

STEVEN L. DAY, ESQ. (NSB 3708)

14 MICHAEL MATTHIS, ESQ. (NSB 14582)

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Attorneys for Plaintiff

Attorneys for Defendants

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

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18 BENJAMIN CHILDS

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19 Nikita Burdick

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20 Michael Lee

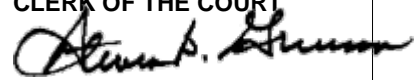
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Attorneys for *Defendants*

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

TKNR INC., a California Corporation, ET
AL.

Defendants.

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

AFFIDAVIT IN SUPPORT OF
ATTORNEYS' FEES FOR 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.

Amount Requested: \$128,166.78

And Related Claims

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

MICHAEL B. LEE, ESQ., being first duly sworn, deposes and says:

1. I, MICHAEL B. LEE, being first duly sworn, deposed, and said, that I have personal knowledge and am competent to testify to the facts below, and that this Declaration is submitted in support of the pleading referenced in the above-matter. The facts stated herein are true to the best of my own personal knowledge, except for those facts stated upon information and belief, and as to those facts, I believe them to be true.

2. This Declaration is made in support of the attorneys' fees related to ORDER ("Order") GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT ("Motion"). I am an attorney with the law firm of MICHAEL B. LEE, P.C. This law firm represents Defendants.

3. Defendants were awarded attorneys' fees related to the underlying Order and related to the Motion. To date, Defendants incurred attorneys' fees in the total amount of \$100,267.64 from the office of Michael B. Lee, P.C. A true and correct copy of the Invoices are attached as **Exhibit A**. The Firm charged Defendants an hourly rate of \$425.00 per hour. This is a reasonable rate giving that the Firm charges \$475 per hour for business law cases, and was just approved at that rate related to a fee award in business court for an evidentiary hearing. A true and correct copy of the Minute Order is attached as **Exhibit B**.

4. I anticipate an additional twenty hours of work related to this Application, which would be an estimated fee of \$8,500.

5. To date, Defendants incurred attorneys' fees in the total amount of \$10,187.50 from the office of Burdick Law, PLLC. A true and correct copy of the Invoices are attached as **Exhibit C**.

6. Further illustrating the reasonableness of the rate, Plaintiff's counsel, Benjamin Childs, charged Plaintiff \$400 per hour for his representation. A true and correct copy of Childs Retainer Agreement is attached as **Exhibit D**.

7. Defendants are seeking reimbursement of **\$118,955.14** for their attorneys' fees and costs.

Michael B. Lee, P.C.

8. I graduated in the top 25% of my law school class, was on the Dean's List, and achieved a CALI Award. I also did an externship with the Clark County Public Defender's Office and one with the United States District Court, District of Nevada with (then) Chief Judge Phillip M. Pro.

9. I have been practicing law since 2006. I am an AV rated attorney and have been AV rated since 2012. I have several industry awards and recognitions based on peer reviews for being a top lawyer in Southern Nevada from Super Lawyers Magazine, AVVO, Nevada Business Magazine, Desert Companion, and various other publications. Additionally, I have also argued before the Nevada Supreme Court and the Ninth Circuit and have three published opinions in the favor of my clients, and several unpublished opinions. I am licensed in Nevada,

1 California, the United States District Court, District of Nevada, the United States Court of
2 Appeals for the Ninth Circuit, and the Supreme Court of the United States. I have sat on the
3 Executive Council for the Young Lawyers Section of the State Bar of Nevada, the Fee Dispute
4 Arbitration Committee for the State Bar of Nevada, and currently sit on the Discipline Panel for
5 the State Bar of Nevada. I am also a vice-chair of the Business Law Committee, SOLO Law
6 Firms, and Plaintiff's Task Force for the Tort Insurance Practice Section of the America Bar
7 Association, and was previously a vice-chair for the Trial Techniques and Corporate Counsel
8 committees.

9 10. I have the highest level of professional standing and skill. Based on my qualities,
10 ability, training, experience, and professional standing with the Nevada Bar Association, the rate
11 and fees charges by Michael B. Lee, P.C. are reasonable according to the *Brunzell* factors.

12 *Burdick Law, PLLC*

13 11. Mrs. Burdick served as a research assistant for Professor Goodman teaching
14 California Evidence, and student articles editor for the Dispute Resolution Law Journal, and
15 finally as a judicial extern to the Honorable Mark R. Denton. She served as a law clerk to the
16 Honorable Mark R. Denton. During this clerkship, Mrs. Burdick gained extensive exposure to a
17 docket of over 800 complex business litigation cases from both the litigator's perspective and the
18 judge. After her clerkship, Mrs. Burdick joined several prestigious law firms in Las Vegas,
19 Nevada prior to opening Burdick Law, PLLC. Her rate of \$200 per hour is reasonable according
20 to the *Brunzell* factors.

21 *Character of the Work Done*

22 12. The work performed in this matter was reasonably suited to the nature of this
23 dispute. Defendants had to defend a frivolous lawsuit from Plaintiff. To illustrate the frivolous
24 nature of the lawsuit, Plaintiff submitted false, misleading representations to defend the initial
25 motion to dismiss by Defendants. A true and correct copy of Opposition is attached as **Exhibit**
26 **E**. The court minutes demonstrate that Mr. Childs falsely argued that there were issues not
27 disclosed by Defendants, a true and correct copy of Minutes is attached as **Exhibit F**, which the
28 underlying Order denoted as false, misleading.

13. After this Honorable Court permitted Plaintiff leave to amend its pleadings, Plaintiff amended the initial complaint's three causes of action ((1) RECOVERY UNDER NRS CHAPTER 113 [Defendants TKNR and Wong]; (2) CONSTRUCTIVE FRAUD [Defendants Investpro and Nickrandt]; (3) COMMON LAW FRAUD [Defendants Investpro and Nickrandt and Lin]; and (4) FRAUDULENT INDUCEMENT [All Defendants]) to fifteen baseless 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].

14. On November 19, 2020, Defendants proffered an offer of judgment on Plaintiff that illustrated the overall frivolous nature of Plaintiff's case. A true and correct copy of Offer of Judgment is attached as **Exhibit F**. In Response, Plaintiff propounded frivolous discovery requests on Cheng, Investments, Management, Realty, Wong, Manager, and TKNR on November 26, 2020, with actual knowledge that there was no basis for the alleged discovery. This action substantially increased Defendants' cost of defense.

15. More illustrating the improper actions by Plaintiff, on February 4, 2021, counsel responded to an e-mail inquiry from Ariana Reed. I sent a simple response. A true and correct copy of the Email chain is attached as **Exhibit G**. Thereafter, Mr. Childs responded with

misleading information, which I had to correct and provide the corroborating documentation. A true and correct copy of the Email chain is attached as **Exhibit H**. As noted in Mr. Childs' e-mail, Plaintiff used discovery to directly try to circumvent the frivolous nature of the lawsuit ("Defendants' Summary Judgment motion is highly unlikely to be granted given the state of outstanding discovery and Plaintiff has filed an extensive opposition and counter-motion"). *Id.* at February 4, 2021 5:39 PM.

Actual Work Done

16. The actual work performed in this matter required expertise and significant time and attention to the work. As noted by the preceding exhibits, counsel had to create an exacting plan to demonstrate the frivolous nature of this lawsuit. After extensive preparation for Frank Miao's ("Miao") deposition, the person most knowledgeable, counsel successfully obtained testimony related to the frivolous nature of this lawsuit. Moreover, this testimony also illustrated that this lawsuit was frivolous from the commencement of the action based on the disclosures made prior to the purchase of the property, Mr. Miao's actual knowledge prior to the purchase, and Mr. Miao's actual knowledge of what due diligence required of him.

Work Performed

17. I actually performed all the work on the case with the requisite skill, time and attention required for the work, other than the work performed by Mrs. Burdick.

The Result

18. Defendants successfully obtained, *inter alia*, orders for summary judgment, an order finding that Plaintiff's case was frivolous and violated Rule 11, and an order granting attorneys' fees under either Rule 11 or for abuse of process.

19. This Application is not made or based to cause any undue harassment, delay, or annoyance.

20. Defendants are seeking reimbursement of **\$118,955.14** for attorneys' fees and costs.

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////

Memo of Costs

21. Michael Lee, Esq., being duly sworn, states: he has personal knowledge of the costs and disbursements expended below; that the items contained in the memorandum are true and correct to the best of this declarant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

1. Odyssey Record attached as **Exhibit I**. The Fees only show the filing fee, but do not show the additional electronic filing fees of \$3.50, the merchant fee for the original filing, etc.

2. Transcript invoices attached as **Exhibit J**.

3. Expert Fee attached as **Exhibit K**.

Pursuant to NRS 18.005, 18.010, and 18.020, Defendants hereby claim the following costs:

Filing Fees:	\$766.00
Photographs:	\$12.97
Transcripts:	\$3,934.14
Expert:	\$5,000

TOTAL: **\$9,211.64**

Summary

22. Defendants are seeking \$118,955.14 for attorneys' fees, and \$9,211.64 in costs for a total of \$128,166.78.

23. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 6 day of April, 2021.

/s/ Michael Lee
MICHAEL B. LEE

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 6 day of April, 2021, I placed a copy of **AFFIDAVIT IN SUPPORT OF ATTORNEYS' FEES FOR 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.

Exhibit A

Exhibit A

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1616
Invoice Date: 11/2/2020
Due Date: 11/2/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
9/29/2020	Review file to determine scope of discovery necessary and other follow up	2	425.00	850.00
9/30/2020	Review Plaintiff's ROG request and Draft initial response for Nikita's finalization and service	2.5	425.00	1,062.50
9/30/2020	Review Plaintiff's RFA request and Draft initial response for Nikita's finalization and service	1.25	425.00	531.25
9/30/2020	Review Plaintiff's RPD request and Draft initial response for Nikita's finalization and service	1.75	425.00	743.75
9/30/2020	(NO CHARGE) Draft e-mail to Nikita re: discovery responses	0.2	0.00	0.00
10/5/2020	Draft Second Supplemental Disclosure of Documents and Witnesses	1.5	425.00	637.50
10/5/2020	(NO CHARGE) Review and respond to multiple e-mails with N. Burdick re: case status and discovery	0.5	0.00	0.00
10/5/2020	Run comparison to ROG responses drafted by N. Burdick and update response	1	425.00	425.00
10/5/2020	Draft Request for Interrogatories	3	425.00	1,275.00
10/5/2020	Draft Request for Production of Documents	2	425.00	850.00
10/6/2020	(NO CHARGE) Review and respond to multiple e-mails with N. Burdick re: case status and discovery	0.5	0.00	0.00
10/6/2020	Draft Request for Admissions	2	425.00	850.00
10/16/2020	Review minute order re: settlement	0.1	425.00	42.50
10/19/2020	Review discovery responses	1	425.00	425.00
10/19/2020	(NO CHARGE) Draft e-mail to client re: review of discovery responses and next steps	0.4	0.00	0.00
10/21/2020	(NO CHARGE) Conference with Kenny re: [REDACTED]	1	0.00	0.00
10/21/2020	Draft e-mail to N. Opfer (expert) re: retention and scope of work	0.2	425.00	85.00
10/21/2020	Telephone call with N. Opfer (expert) re: retention and scope of work	0.3	425.00	127.50

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1616
Invoice Date: 11/2/2020
Due Date: 11/2/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
10/21/2020	(NO CHARGE) Draft multiple e-mails to clients re: [REDACTED]	0.5	0.00	0.00
10/22/2020	Review and Respond to e-mail with N. Opfer (expert) re: retention	0.2	425.00	85.00
10/22/2020	Review brief and opposition in preparation to attend hearing and Attend Hearing	1.5	425.00	637.50
10/22/2020	Draft Notice of Site Inspection	1	425.00	425.00
10/22/2020	Draft multiple e-mails to B. Childs (attorney for Plaintiff) re: settlement conference and leave to amend	0.3	425.00	127.50
10/22/2020	Review e-mail from district court re: minute order	0.1	425.00	42.50
10/22/2020	Draft Order	1.25	425.00	531.25
10/22/2020	Draft Notice of Inspection	0.3	425.00	127.50
10/22/2020	Draft multiple e-mails to B. Childs (attorney for Plaintiff) re: leave to amend, inspection, deposition, settlement conference	0.5	425.00	212.50
10/22/2020	Review and respond to multiple e-mails with B. Childs (attorney for Plaintiff) re: leave to amend, inspection, deposition, settlement conference	0.5	425.00	212.50
10/22/2020	(NO CHARGE) Draft multiple e-mails to client re: [REDACTED]	0.5	0.00	0.00
10/22/2020	(NO CHARGE) Review and Respond to multiple e-mails with client re: [REDACTED]	0.5	0.00	0.00
10/23/2020	Review parties' disclosures	3	425.00	1,275.00
10/23/2020	Prepare Notice of Deposition and Topics	2	425.00	850.00
10/23/2020	Review and respond to multiple e-mails with B. Childs (attorney for Plaintiff) re: leave to amend, inspection, deposition, settlement conference	0.5	425.00	212.50
10/23/2020	(NO CHARGE) Draft multiple e-mails to client re: [REDACTED]	0.5	0.00	0.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1616
Invoice Date: 11/2/2020
Due Date: 11/2/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
10/23/2020	(NO CHARGE) Review and Respond to multiple e-mails with client re: [REDACTED]	0.5	0.00	0.00
10/26/2020	Finalize notice of deposition	0.1	425.00	42.50
10/26/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: deposition and settlement conference	0.5	425.00	212.50
10/26/2020	Draft e-mail to N. Opfer (expert) re: inspection and availability	0.1	425.00	42.50
10/27/2020	Review and Respond to multiple e-mails from N. Opfer (expert) re: inspection	0.3	425.00	127.50
10/27/2020	Amend Notice of Site Inspection	0.2	425.00	85.00
10/29/2020	Review Order setting settlement conference	0.1	425.00	42.50
10/29/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: order enlarging discovery	0.1	425.00	42.50
10/29/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: order	0.2	425.00	85.00
10/30/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: order	0.2	425.00	85.00
10/30/2020	Finalize Order	0.2	425.00	85.00
10/30/2020	Draft e-mail to Department 14 re: proposed order	0.2	425.00	85.00
10/30/2020	Draft Second Request for Interrogatories for Lin	2	425.00	850.00
10/30/2020	Draft First set of request for interrogatories for Cheng	2.5	425.00	1,062.50
10/21/2020	Filing Fee for substitution of attorney		3.25	3.25
Total				\$15,494.50
Payments/Credits				-\$15,494.50
Balance Due				\$0.00

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1628
Invoice Date: 12/4/2020
Due Date: 12/4/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
10/31/2020	Review pleadings in preparation to Draft Amended Answer, Counterclaim, and Crossclaim	1	425.00	425.00
10/31/2020	Draft Amended Answer and compare with responses by N. Burdick	1.5	425.00	637.50
11/1/2020	Review residential purchase order, disclosures, Air Invoice and papers, etc. in preparation to Draft Counterclaim, and Crossclaim	1.5	425.00	637.50
11/1/2020	Review pleading elements for abuse of process, contribution, and indemnification in preparation to Draft Counterclaim, and Crossclaim	0.5	425.00	212.50
11/1/2020	Draft Counterclaim general allegations	3	425.00	1,275.00
11/2/2020	Review and respond to e-mail from B. Childs (attorney for Plaintiff) re: amended pleading	0.2	425.00	85.00
11/3/2020	Draft Crossclaim	1.5	425.00	637.50
11/3/2020	Review and respond to e-mail from B. Childs (attorney for Plaintiff) re: amended pleading	0.2	425.00	85.00
11/4/2020	Review briefs and attend hearing on Motion to Compel	2	425.00	850.00
11/4/2020	Draft notice vacating deposition	0.2	425.00	85.00
11/4/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: resetting deposition	0.1	425.00	42.50
11/4/2020	(NO CHARGE) Draft e-mail to client re: [REDACTED]	0.2	0.00	0.00
11/10/2020	Review case law and authority related to amending pleadings and shortening time in preparation to Draft Motion for Leave to File Amended Pleading on Shortened Time	0.5	425.00	212.50
11/10/2020	Review correspondence in preparation to Draft Motion for Leave to File Amended Pleading on Shortened Time	0.2	425.00	85.00
11/10/2020	Draft Motion for Leave to File Amended Pleading on Shortened Time	4	425.00	1,700.00
11/10/2020	Draft e-mail to Department 14 re: request for OST	0.1	425.00	42.50

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1628
Invoice Date: 12/4/2020
Due Date: 12/4/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
11/10/2020	Draft notice of depositions for PMK and Zhu	0.5	425.00	212.50
11/12/2020	Draft Exhibits to Motion for Leave to Amend	0.3	425.00	127.50
11/17/2020	Review Opposition to Motion for leave to amend in preparation to Draft Reply Brief	0.5	425.00	212.50
11/17/2020	Review motion and planned disclosures in preparation to Draft Reply Brief	0.5	425.00	212.50
11/17/2020	Draft Reply Brief	2	425.00	850.00
11/17/2020	Draft e-mail to Department 14 re: Reply Brief	0.1	425.00	42.50
11/17/2020	Travel to/from Property to attend inspection and Attend	3	425.00	1,275.00
11/18/2020	Draft e-mail to N. Opfer (expert) re: amended pleading	0.1	425.00	42.50
11/18/2020	Review Zillow page and save, print photos for disclosure	1.5	425.00	637.50
11/18/2020	Draft Third Supplemental Disclosure	1	425.00	425.00
11/18/2020	(NO CHARGE) Review and Respond to multiple e-mails from N. Opfer (expert) re: Zillow	0.2	0.00	0.00
11/18/2020	(NO CHARGE) Draft e-mail to client re: [REDACTED]	0.2	0.00	0.00
11/18/2020	Review minute order granting motion for leave to amend	0.1	425.00	42.50
11/19/2020	Draft Offer of Judgment	0.75	425.00	318.75
11/19/2020	(NO CHARGE) Draft multiple emails to client re: [REDACTED]	0.2	0.00	0.00
11/19/2020	Review correspondence and procedural rules and Draft e-mail to B. Childs (attorney for Plaintiff) re: inspection and spoliation issues	1	425.00	425.00
11/20/2020	Review Plaintiff's motion for leave to amend	0.2	425.00	85.00
11/20/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: stipulate to amend pleading	0.1	425.00	42.50
11/20/2020	(NO CHARGE) Review and Respond to multiple e-mails from Kenny re: [REDACTED]	0.5	0.00	0.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Invoice #: 1628
Invoice Date: 12/4/2020
Due Date: 12/4/2020
Project: WLAB Invest...
P.O. Number:

Bill To:
 Investpro
 Kenny Zhong Lin

Serviced	Description	Hours	Rate	Amount
11/20/2020	Review and format photographs for disclosure by screen capturing images, cropping, and printing to PDF	3	425.00	1,275.00
11/21/2020	Review and format photographs for disclosure by screen capturing images, cropping, and printing to PDF	3	425.00	1,275.00
11/21/2020	Draft fourth supplemental disclosure	0.5	425.00	212.50
11/21/2020	Review additional client documents related to RFA, addenda, receipts, etc. in both Nikita's file (not disclosed) and additional information provided by Kenny	1.25	425.00	531.25
11/21/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: 4th Supplement	0.1	425.00	42.50
11/21/2020	Draft e-mail to N. Opfer (expert) re: 4th Supplement	0.1	425.00	42.50
11/22/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: amended pleading and stipulation	0.3	425.00	127.50
11/22/2020	Review stipulation and approve	0.2	425.00	85.00
11/23/2020	Review Notice of Entry of Order of SAO for Second Amended Complaint	0.1	425.00	42.50
11/28/2020	Draft Order Granting Motion for Leave to amend	1	425.00	425.00
11/28/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: leave to amend	0.1	425.00	42.50
11/30/2020	Telephone call with N. Opfer (expert) re: report	0.2	425.00	85.00
11/30/2020	(NO CHARGE) Zoom session with client	0.4	0.00	0.00
11/11/2020	Exhibits for Motion for Leave to Amend		3.50	3.50
11/17/2020	Photo Print from site inspection		12.97	12.97
	Total Reimbursable Expenses			16.47
Total				\$16,166.47
Payments/Credits				-\$16,166.47
Balance Due				\$0.00

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1641
Invoice Date: 1/7/2021
Due Date: 1/7/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
12/1/2020	Telephone call with N. Opfer re: report	0.2	425.00	85.00
12/2/2020	Review and Respond to e-mail from B. Childs (attorney for Plaintiff) re: proposed order for leave to amend	0.3	425.00	127.50
12/2/2020	Review, Revise, and Finalize proposed order	0.2	425.00	85.00
12/2/2020	Draft e-mail to Department 14 re: Order	0.1	425.00	42.50
12/2/2020	Review Opfer report and photographs, my inspection photographs, and other documents, and prepare Fifth Disclosure of Documents	1.5	425.00	637.50
12/2/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: Opfer photographs and fifth disclosure	0.1	425.00	42.50
12/7/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: settlement conference	0.2	425.00	85.00
12/7/2020	Review discovery responses, second amended complaint, disclosures, RPA, amendments, expert reports, permit information, and other documents in preparation to Draft Motion for Summary Judgment	3	425.00	1,275.00
12/7/2020	Review case law and authority related to realtor duties, real estate disclosures, caveat emptor, duty to inspect, and other topics in preparation to Draft Motion for Summary Judgment	3	425.00	1,275.00
12/8/2020	Draft fact section and cross reference to exhibits in support of Motion for Summary Judgment	8	425.00	3,400.00
12/8/2020	Draft statement of procedure and review of Second Amended Complaint in support of Motion for Summary Judgment	1	425.00	425.00
12/9/2020	Draft Discussion Section in support of Motion for Summary Judgment	6	425.00	2,550.00
12/10/2020	Continue Drafting Discussion Section in support of Motion for Summary Judgment	5	425.00	2,125.00
12/10/2020	Draft Declaration of K. Lin in support of Motion for Summary Judgment	1	425.00	425.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1641
Invoice Date: 1/7/2021
Due Date: 1/7/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
12/11/2020	Review Order vacating settlement conference	0.1	425.00	42.50
12/16/2020	Review notice of hearing	0.1	425.00	42.50
12/22/2020	Review Request for Discovery to Cheng and prepare a response	2	425.00	850.00
12/22/2020	Review Request for Discovery (ROG and RPD) to Investments and prepare a response	3	425.00	1,275.00
12/23/2020	Review Request for Discovery to Realty and prepare a response	1.5	425.00	637.50
12/23/2020	Review Request for Discovery to Wong and prepare a response	1.5	425.00	637.50
12/23/2020	Review Request for Discovery to Manager and prepare a response	1.5	425.00	637.50
12/23/2020	Review Request for Discovery to TKNR and prepare a response	1.5	425.00	637.50
12/15/2020	Filing Fee for motion for summary judgment		200.00	200.00
12/15/2020	E Payment Fee		6.00	6.00
12/15/2020	Electronic Filing Fee for motion		3.50	3.50
	Total Reimbursable Expenses			209.50
Total				\$17,549.50
Payments/Credits				-\$17,549.50
Balance Due				\$0.00

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1642
Invoice Date: 2/2/2021
Due Date: 2/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
1/4/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: demand for meet and confer	0.5	425.00	212.50
1/4/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: alleged discovery dispute	0.2	425.00	85.00
1/5/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: alleged discovery dispute	0.5	425.00	212.50
1/5/2021	Telephone call with B. Childs (attorney for Plaintiff) re: alleged discovery dispute	0.5	425.00	212.50
1/5/2021	Review discovery requests and responses, correspondence, communications, disclosures, and other information in preparation to Draft Motion for Protective Order	2	425.00	850.00
1/5/2021	Review case law and authority related to protective orders, calculation of time, excusable neglect, and other areas in preparation to Draft Motion for Protective Order	1	425.00	425.00
1/5/2021	Draft Motion for Protective Order	6	425.00	2,550.00
1/6/2021	Revise/ Finalize motion for a protective order	1	425.00	425.00
1/7/2021	Review and respond to multiple e-mails with court reporter re: link for deposition and exhibits	0.5	425.00	212.50
1/8/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: consolidating hearings	0.1	425.00	42.50
1/8/2021	Review exhibits for deposition in preparation for Deposition and prepare outline	8	425.00	3,400.00
1/9/2021	Review exhibits for deposition in preparation for Deposition and prepare outline	5	425.00	2,125.00
1/12/2021	Attend Deposition	7.75	425.00	3,293.75
1/13/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: deposition of M. Zhu	0.1	425.00	42.50
1/13/2021	Draft Sixth Disclosure of documents	1	425.00	425.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1642
Invoice Date: 2/2/2021
Due Date: 2/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
1/13/2021	Draft Second request for RPD re: materials related to deposition	1	425.00	425.00
1/19/2021	Review motion to compel in preparation to Draft Opposition to Motion to Compel	0.5	425.00	212.50
1/19/2021	Review prior discovery responses and current requests in preparation to Draft Opposition to Motion to Compel	1.5	425.00	637.50
1/19/2021	Review case law and authority related to motion to compel, unclean hands, excusable neglect, etc. in preparation to Draft Opposition to Motion to Compel	1	425.00	425.00
1/19/2021	Draft Opposition to Motion to Compel	6	425.00	2,550.00
1/19/2021	Revise/Finalize Opposition to Motion to Compel	1	425.00	425.00
1/20/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: deposition of Marie Zhu	0.1	425.00	42.50
1/20/2021	Draft notice of deposition of Marie Zhu	0.3	425.00	127.50
1/21/2021	Review opposition to motion for summary judgment in preparation to Draft Reply Brief	0.5	425.00	212.50
1/21/2021	Review motion and exhibits to illustrate evidentiary support for summary judgment in preparation to Draft Reply Brief to Opposition	0.5	425.00	212.50
1/21/2021	Review case law and authority related to rule 56(f) in preparation to Draft Reply Brief to Opposition	5	425.00	2,125.00
1/26/2021	Draft Reply Brief to Opposition	4	425.00	1,700.00
1/27/2021	Review transcript and prepare deposition summary	4	425.00	1,700.00
1/28/2021	Draft third request for production of documents re: appraisals	0.5	425.00	212.50
1/28/2021	Condense deposition summary and prepare working notes for testimony of Frank Miao	4	425.00	1,700.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1642
Invoice Date: 2/2/2021
Due Date: 2/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
1/29/2021	Draft Supplement to Motion to dismiss with F. Miao deposition	4	425.00	1,700.00
1/29/2021	Extrapolate deposition testimony and highlight in support of supplement	1.25	425.00	531.25
2/1/2021	Review Opposition to motion for protective order in preparation to Draft Reply	0.5	425.00	212.50
2/1/2021	Draft Reply Brief	4.25	425.00	1,806.25
1/6/2021	Filing Fee for Motion for Protective order		3.50	3.50
1/21/2021	Filing Fee for Reply Brief to Opposition		3.50	3.50
1/29/2021	Filing Fee for Supplement		3.50	3.50
2/1/2021	Filing Fee for Reply Brief		3.50	3.50
2/2/2021	Advanced Client Costs:transcript		2,967.67	2,967.67
	Total Reimbursable Expenses			2,981.67
Total				\$34,665.42
Payments/Credits				-\$34,665.42
Balance Due				\$0.00

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1673
Invoice Date: 3/4/2021
Due Date: 3/4/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
2/4/2021	Review and respond to e-mail from Department 14 re: status of case	0.3	425.00	127.50
2/10/2021	Review minute order setting status check	0.1	425.00	42.50
2/10/2021	Review and Respond to e-mail from B. Childs (attorney for Plaintiff) re: depositions	0.3	425.00	127.50
2/10/2021	Draft notice of deposition of Plaintiff's expert and supporting subpoena	1.5	425.00	637.50
				0.00
2/12/2021	Review notice of deposition of Chi On Wong	0.2	425.00	85.00
2/12/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: depositions	0.1	425.00	42.50
2/12/2021	Draft notice vacating deposition of M. Zhu	0.2	425.00	85.00
2/17/2021	Review Plaintiff's Responses to TKNR's second request for RPD	0.5	425.00	212.50
2/17/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: Plaintiff's response to TKNR's 2nd RPD	0.5	425.00	212.50
2/18/2021	Review renewed motion to compel and draft opposition and Countermotion	2	425.00	850.00
2/22/2021	Review pleadings and briefs for motion for summary judgment in preparation to attend hearing	1.5	425.00	637.50
2/23/2021	Attend motion for summary judgment	0.5	425.00	212.50
2/23/2021	Review and Respond to e-mail from court re: resetting of hearing	0.2	425.00	85.00
2/24/2021	Draft general notice re: oppositions to all renewed motions	1	425.00	425.00
2/18/2021	Filing Fee for Opposition and Countermotion		3.50	3.50
2/24/2021	Filing Fee for General Opposition		3.50	3.50
	Total Reimbursable Expenses			7.00
Total				\$3,789.50
Payments/Credits				-\$3,789.50
Balance Due				\$0.00

1273

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1689
Invoice Date: 4/2/2021
Due Date: 4/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
2/4/2021	Review and respond to e-mail from Department 14 re: status of case	0.3	425.00	127.50
3/2/2021	Review motions and prepare for discovery hearing and Attend	2	425.00	850.00
3/2/2021	Prepare Seventh Supplemental disclosure	1	425.00	425.00
3/2/2021	Review Plaintiff's Second Supplemental Disclosure	0.2	425.00	85.00
3/3/2021	Telephone call with B. Childs (attorney for Plaintiff) to discuss outstanding discovery	1	425.00	425.00
3/3/2021	Draft e-mail to Discovery Commissioner re: request to vacate hearings	0.1	425.00	42.50
3/3/2021	Review and Respond to multiple e-mails with Discovery and B. Childs (attorney for Plaintiff) re: vacating hearings	0.5	425.00	212.50
3/3/2021	Telephone call with B. Childs (attorney for Plaintiff) re: meet and confer for discovery dispute	1	425.00	425.00
3/3/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: meet and confer for discovery dispute	0.5	425.00	212.50
3/4/2021	Review and Respond to multiple e-mails with Discovery, B. Childs (attorney for Plaintiff), and F. Miao re: Childs termination and depositions	0.5	425.00	212.50
3/5/2021	Review and Respond to multiple e-mails with Discovery, B. Childs (attorney for Plaintiff), and F. Miao re: Childs termination and depositions	0.5	425.00	212.50
3/5/2021	Review Objection to deposition of A. Sani (expert)	0.1	425.00	42.50
3/5/2021	Review motion to withdraw	0.2	425.00	85.00
3/8/2021	Attend Deposition of A. Sani (Plaintiff's expert)	0.75	425.00	318.75
3/8/2021	Review proposed DCRR for motion to compel and make changes	1	425.00	425.00
3/9/2021	Attend status check	0.5	425.00	212.50
3/9/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: DCRR	0.2	425.00	85.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
 1820 E. Sahara Avenue, Suite 110
 Las Vegas, NV 89104

Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1689
Invoice Date: 4/2/2021
Due Date: 4/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
3/9/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: DCRR	0.3	425.00	127.50
3/9/2021	Review and Respond to multiple e-mails with S. Day (new attorney) re: new hearing date	0.2	425.00	85.00
3/10/2021	Draft e-mail to Court re: brief continuance of hearing	0.1	425.00	42.50
3/10/2021	Review and Respond to multiple e-mails with Department 14 and S. Day (new attorney) re: new hearing date	0.5	425.00	212.50
3/10/2021	Review and Respond to multiple e-mails with S. Day (new attorney) re: new hearing date	0.3	425.00	127.50
3/10/2021	Review substitution of attorneys	0.1	425.00	42.50
3/11/2021	Review briefs and other materials related to motion for summary judgment	1	425.00	425.00
3/11/2021	Attend hearing on Motion for Summary Judgment	1	425.00	425.00
3/11/2021	Review briefs, exhibits, and other information in preparation to Draft Order granting summary judgment and Rule 11 Sanctions	1	425.00	425.00
3/11/2021	Draft Order granting summary judgment and Rule 11 Sanctions	6	425.00	2,550.00
3/12/2021	Draft Order granting summary judgment and Rule 11 Sanctions	6	425.00	2,550.00
3/12/2021	Draft e-mail to S. Day (attorney for Plaintiff) re: proposed Order	0.2	425.00	85.00
3/16/2021	Review and respond to multiple e-mails from the Discovery Commissioner re: defective DCRR	0.5	425.00	212.50
3/17/2021	Review and Respond to e-mail from S. Day (attorney for Plaintiff) re: defective DCRR	0.2	425.00	85.00
3/17/2021	Draft e-mail to Department 14 re: proposed order	0.2	425.00	85.00
3/17/2021	Finalize Proposed Order	0.3	425.00	127.50
3/31/2021	Draft Notice of Entry of Order	0.3	425.00	127.50
3/4/2021	WLAB v. Lin et al. - Expert Deposition Fee		0.00	0.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1689
Invoice Date: 4/2/2021
Due Date: 4/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
3/16/2021	Deposition of Amin Sani		465.00	465.00
3/30/2021	Filing Fee for Notice of Entry of Order		3.50	3.50
	Total Reimbursable Expenses			468.50
Total				\$12,602.25
Payments/Credits				\$0.00
Balance Due				\$12,602.25

EXHIBIT B

EXHIBIT B

A-18-780627-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Purchase/Sale of Stock, Assets,
or Real Estate**

COURT MINUTES

April 02, 2021

A-18-780627-B Fred Khalilian, Plaintiff(s)
vs.
Monster Products, Inc., Defendant(s)

April 02, 2021 3:00 AM Status Check: Response to Application for Fees

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Carina Bracamontez-Munguia/cbm

PARTIES None. Minute order only – no hearing held.
PRESENT:

JOURNAL ENTRIES

- The Court having reviewed the Application for Attorney's Fees following the Rule 37 Evidentiary Hearing and the related briefing and being fully informed, ORDERED request GRANTED IN PART. After evaluation of the Brunzell factors, the Court AWARDS \$43,943.45. Mr. Lee is DIRECTED to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

CLERK S NOTE: A copy of this minute order was distributed via e-mail to all parties. // cbm
04/02/2021

PRINT DATE: 04/02/2021

Page 1 of 1

Minutes Date: April 02, 2021

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EXHIBIT C

EXHIBIT C

Burdick Law, PLLC
6625 South Valley View Blvd
Suite 232
Las Vegas, NEVADA (NV) 89118
United States
702-481-9207

Burdick Law, PLLC

Kenny Lin
3553 S Valley View Blvd
Las Vegas, NV 89103
United States

Balance \$2,687.50
Invoice # 00482
Invoice Date April 6, 2021
Payment Terms
Due Date

Litigation: WLAB Investment LLC v. Investpro et. al. (403)

Time Entries

Date	EE	Activity	Description	Rate	Hours	Line Total
01/02/2019	NB	Review and Analyze	Review and analyze documents provided by the client in preparation of responding to the complaint.	\$200.00	3.7	\$740.00
01/03/2019	NB	Review and Analyze	Review and analyze Plaintiff's Complaint in preparation of responding thereto.	\$200.00	1.3	\$260.00
01/07/2019	NB	Draft	Draft, finalize and file Defendant's Motion to Dismiss or in the alternative for Summary Judgment or in the Alternative for a More Definitive Statement.	\$200.00	6.2	\$1,240.00
01/28/2019	NB	Review and Analyze	Review and analyze Plaintiff's Opposition to our Motion to Dismiss.	\$200.00	1.9	\$380.00
02/04/2019	NB	Draft	Draft, finalize and file Reply to Defendant's Motion to Dismiss.	\$200.00	1.3	\$260.00
02/07/2019	NB	Attend hearing	Prepare for, attend hearing and present arguments on Defendant's Motion to Dismiss.	\$200.00	3.4	\$680.00
03/18/2019	NB	Review and Analyze	Review and analyze Amended Complaint in preparation of drafting the answer.	\$200.00	2.1	\$420.00
03/19/2019	NB	Draft	Draft, finalize and file Answer to Plaintiff's Amended Complaint.	\$200.00	1.8	\$360.00
04/12/2019	NB	Draft	Draft, finalize and prepare Initial Disclosures and review documents to disclose.	\$200.00	2.7	\$540.00
04/12/2019	NB	Review and Analyze	Review additional documents provided by the client in preparation of disclosing the same in the initial disclosures.	\$200.00	2.4	\$480.00
05/31/2019	NB	Arbitration	Preparing for and attending Arbitration conference-Early Case Conference	\$200.00	0.8	\$160.00
12/19/2019	NB	Review and Analyze	Review and analyze Court Scheduling Order.	\$200.00	0.3	\$60.00
02/27/2020	NB	Review and Analyze	Review and analyze Request for Admissions and email the client regarding [REDACTED]	\$200.00	0.5	\$100.00

02/27/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he F rs Reques for In erroga or es d rec ed a TKNR and ema he c en [REDACTED]	\$200.00	0.7	\$140.00
02/27/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he F rs Reques for Produc on o TKNR and break down he documen s [REDACTED]	\$200.00	1.2	\$240.00
03/25/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he c en's responses o he F rs Reques for Adm ss ons d rec ed a TKNR and ema he c en [REDACTED]	\$200.00	1.2	\$240.00
03/25/2020	NB	Rev ew and Ana yze	Rev ew and ana yze c en's responses o he F rs Se of In erroga or es o TKNR and ema he c en [REDACTED]	\$200.00	0.6	\$120.00
03/25/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he documen s prov ded by he c en n prepara on of draf ng a response o he F rs Reques for Produc on o TKNR.	\$200.00	1.8	\$360.00
04/03/2020	NB	Draf	Draf , f na ze and f e Defendan's Response o P a n ff's F rs Reques s for Adm ss ons o Defendan TKNR.	\$200.00	2.8	\$560.00
04/03/2020	NB	Draf	Draf correspondence o he c en den fyng [REDACTED] [REDACTED] Correspond w h c en regard ng [REDACTED]	\$200.00	1.2	\$240.00
04/05/2020	NB	Rev ew and Ana yze	Rev ew and ana yze documen s prov ded by he c en n prepara on of f ng responses o P a n ff's frs reques for produc on of documen s o TKNR Inc.	\$200.00	4.3	\$860.00
04/08/2020	NB	Draf	Draf , f na ze and f e Defendan's Responses o P a n ff's F s Se of In erroga or es o Defendan TKNR, Inc.	\$200.00	2.2	\$440.00
04/08/2020	NB	Draf	Draf Response o P a n ff's F rs Se of Reques s for Produc on of Documen s o Defendan TKNR, Inc. Prepare documen s for d sc osure.	\$200.00	4.2	\$840.00
04/08/2020	NB	Draf	Draf , f na ze and f e Responses o P a n ff F rs Reques for Adm ss ons o Defendan Inves pro Manager, LLC.	\$200.00	0.4	\$80.00
10/15/2020	NB	Draf	Draf , f na ze and f e Defendan's Mo on o En arge D sc overy on OST.	\$200.00	0.7	\$140.00

To a s: **49.7 \$9,940.00**

Expenses

Da e	EE	Ac v y	Descr p on	Cos	Quan y	L ne To a
01/07/2019	NB	Cour F ng	In a Appearance Fee D sc osure Defendan s	\$3.50	1.0	\$3.50
01/07/2019	NB	Cour F ng	Mo on o D sm s	\$3.50	1.0	\$3.50
01/09/2019	NB	Cour F ng	In a Appearance Fee D sc osure	\$3.50	1.0	\$3.50
03/04/2019	NB	Cour F ng	Rep y o Mo on	\$3.50	1.0	\$3.50
03/19/2019	NB	Cour F ng	F ng of Answer	\$226.50	1.0	\$226.50
04/12/2019	NB	Cour F ng	F ng of In a D sc osure	\$3.50	1.0	\$3.50
10/15/2020	NB	Cour F ng	F ng of Mo on o En arge D sc overy	\$3.50	1.0	\$3.50

Expense To a : **\$247.50**

Adjustments

Item	Applied To	Type	Description	Bas s	Percen	Line To a
Discount	Sub-To a	\$ - Amount	Re a ner rece ved from c en			(\$7,500.00)

Discount To a : **(\$7,500.00)**

Time Entry Sub-To a :	\$9,940.00
Expense Sub-To a :	\$247.50
Sub-Total:	\$10,187.50
Discounts:	(\$7,500.00)
Total:	\$2,687.50
Amount Paid:	\$0.00
Balance Due:	\$2,687.50

EXHIBIT D

EXHIBIT D

ATTORNEY FEE AGREEMENT

This contract witnesses that Benjamin B. Childs, Esq.(attorney) and W L A B Investment, LLC (client(s)), agree to enter into a binding contract as provided below.

GENERAL PROVISIONS

1. Attorney will represent client's legal interests by taking whatever steps attorney deems necessary and appropriate concerning the following case(s):

1. Failure to disclose defect on 2132 Houston Dr Las Vegas, NV
Case # A-18-785917-C

2. Client will do nothing which could adversely affect the engagement of attorney and will fully cooperate with attorney.

2a. Client acknowledges that failure to cooperate fully with attorney may result in withdrawal of representation if, in the attorney's sole discretion, such failure to cooperate substantially interferes with attorney's ability to provide adequate legal representation.

2b. Client will provide all information required by attorney to effectively represent client's legal interests. Client will be solely responsible for the accuracy and completeness of this information.

2c. Client acknowledges that attorney will send any notices to client's last address. Client is responsible for keeping attorney informed of client's address.

FEES

3. Client will pay a \$ 15,000 retainer. \$15,000 is the minimum amount that attorney will charge for this case. Client has paid \$10,000 by charging to credit card on June 11, 2020 and will pay the remaining \$5,000 balance on or before June 20, 2020.

3A. Attorney will charge \$ 400 per hour for attorney time and \$ 150 per hour for paralegal time billed in 1/10 hour increments. Interest on unpaid invoices is assessed at 1.5 % per month. The client is deemed to have accepted the attorney bill if not disputed within 30 days.

3B. Client will pay all costs associated with attorney's representation. Client agrees to pay \$.10 per copy for all copies required by attorney.

3C. You, as the client, have the right to terminate our attorney-client relationship at any time at will – meaning for any reason or no reason. Because the attorney-client relationship is one of mutual trust and respect, by this agreement you are expressly agreeing that my Firm similarly terminate can the attorney-client relationship at will – that is, at any time and for any reason or no reason. Further, you agree that if my Firm seeks to withdraw from any litigated matter, I may present this paragraph to the tribunal as part of my motion to be relieved as counsel.

Initial EQM

4. Client agrees that the retainer will be replenished by him/her/it in \$3,000 increments within five business days of being notified by attorney that the retainer balance remaining with attorney is less than \$750.
5. This agreement, and/or portions thereof, may be actual or potential interests adverse to you, the client. Accordingly, you need to review this agreement carefully. Further, by signing this agreement you are acknowledging that you have been advised of your right to obtain independent counsel to review this agreement and advise you regarding it.

WE UNDERSIGNED HAVE READ AND UNDERSTAND THE ABOVE AGREEMENT BEFORE SIGNING IT.



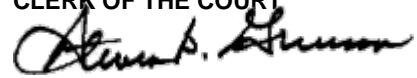
_____ ^{Date}
6/1/10 (CLIENT)

BENJAMIN B. CHILDS, ESQ.

_____ (ATTORNEY)

EXHIBIT E

EXHIBIT E



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, 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 : 2/7/2019
09:30

=====

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS / ALTERNATIVE FOR
SUMMARY JUDGMENT / ALTERNATIVE FOR A MORE DEFINITE STATEMENT

CONDITIONAL COUNTERMOTION FOR CONTINUANCE BASED ON NRCP
56(f) IF THE COURT TREATS DEFENDANT'S MOTION AS ONE FOR
SUMMARY JUDGMENT

INTRODUCTION

Rather than address the issue of the case, or even deny the allegations of
the complaint, Defendants have filed a frivolous motion to delay the inevitable trial
on the issue of Defendants selling a residential rental property, knowing of the
existence of structural and mechanical defects without disclosing those defects
as required by Nevada law. Defendants knew about the defects because they
had created them during their ownership of the property.

1 A detailed narrative declaration of Frank Miao, and the attached Exhibits A
2 through F¹ are incorporated herein by reference. Defendants KENNY LIN [Lin]
3 and INVESTPRO, LLC are property flippers who owned the Subject Property for
4 about 2 years, during which time they performed multiple major alterations to the
5 property, none of which were permitted. TKNR, INC is the corporate entity that
6 Lin and Investpro used for this particular investment, which is owned and
7 managed by Defendant CHI ON WONG [Wong]. They altered the property to
8 hide the many defects detailed in Miao's declaration, then sold the property
9 without disclosing the defects.
10

11
12 MOTION TO DISMISS CANNOT CONSIDER MATTERS OUTSIDE OF THE
13 PLEADINGS
14

15 It's important to note that pleadings are defined in NRCP 7 as complaints
16 and answers. Motions are not pleadings. Exhibits to Motions are not pleadings.

17 Defendants' Motion must be treated as a Summary Judgement if the Court
18 considers matters outside the pleadings. See Mendenhall v. Tassinari 133 Nev
19 Ad Op 78 (2017) quoted below.
20

21 In deciding a motion to dismiss, if the district court considers
22 matters outside the pleadings—as was the case here—the motion
23 “shall be treated as one for summary judgment and disposed of as
24 provided in Rule 56.” NRCP 12(b); Thompson v. City of N. Las
25 Vegas, 108 Nev. 435, 438, 833 P.2d 1132, 1134 (1992). Pursuant to
26 NRCP 56(c), summary judgment is proper when no genuine issue of
27 material fact remains and the movant is entitled to a judgment as a
28 matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d
29 1026, 1029 (2005).
30

31 ¹ Defendants used numbers for their exhibits contrary to local rules. However, to avoid
32 confusion, Plaintiff has used letters for their exhibits.

1 While Defendants' motion references exhibits, Plaintiff encourages the
2 court to simply review the pleadings and deny the motion because Plaintiff's
3 Complaint sets forth the elements for its causes of action, thus making the prima
4 facie case. See Exhibit D.
5

6 NO CONCISE STATEMENT OF UNDISPUTED FACTS 7

8
9 NRCP 56(c) requires "a concise statement setting forth each fact material
10 to the disposition of the motion which the party claims is or is not genuinely in
11 issue, citing the particular portions of any pleading, affidavit, deposition,
12 interrogatory, answer, admission, or other evidence upon which the party relies."

13 The only statement of fact in Defendants' motion is essentially stating what
14 Plaintiff's allegations are. If Defendants are disputing those facts, there are
15 obviously disputes of material fact which preclude summary judgment.
16

17 EXHIBITS TO DEFENDANTS' MOTION ARE NOT INCORPORATED BY 18 REFERENCE IN AMENDED COMPLAINT 19

20
21 Defendant repeatedly refers to Plaintiff's Complaint. The Complaint
22 contained no attachments and incorporated no documents by reference. The
23 Complaint, which purportedly incorporates all these documents by reference, is
24 noticeably absent as an exhibit to the motion.
25

26 MOTION DISMISS TREATED AS SUMMARY JUDGMENT MOTION IF THE 27 COURT CONSIDERS MATTERS OUTSIDE THE PLEADINGS 28

29 If the Court does consider the attachments to Defendant's Motion,
30 Defendants' motion must be treated as a motion for summary judgment, and the
31
32

1 following standards apply. John v. Douglas County School District, 125 Nev.
2 746, 754, 219 P.3d 1276, 1284 (2009) addresses the issue as set forth below.

3
4 First, the district court can only grant the special motion to
5 dismiss if there is no genuine issue of material fact and “ ‘the moving
6 party is entitled to a judgment as a matter of law.’ ” Id. (quoting
7 NRCP 56(c)). Second, the nonmoving party cannot overcome the
8 special motion to dismiss “ ‘on the gossamer threads of whimsy,
9 speculation and conjecture.’ ” Id. at 731, 121 P.3d at 1030 (quoting
10 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14, 57 P.3d
11 82, 87 (2002)) (other internal quotations omitted). Instead, the
12 nonmoving party must provide more than general allegations and
13 conclusions; it must submit specific factual evidence “ ‘demonstrating
14 the existence of a genuine factual issue.’ ” Id. at 731, 121 P.3d at
15 1030-31 (quoting Pegasus, 118 Nev. at 713, 57 P.3d at 87).

16 NO WAIVER OF REQUIRED DISCLOSURES

17 Defendants do not argue that Plaintiff waived its right to receive required
18 disclosures.

19 Defendants desperately want the Court to ignore their collective and
20 concerted fraudulent actions.

21 There was no waiver of the required disclosures. Further, disclosure of
22 know defects can only be waived if the waiver is “signed by the purchaser **and**
23 **notarized.**” See NRS 113.130(3) and 115.150(6).

24 Further, the “waiver” of the inspection which Defendants essentially rests
25 their entire motion on, Exhibit 3, means nothing because Plaintiff had already
26 inspected the property on August 10, 2019.

28 PLAIN MEANING OF STATUTE

29
30
31 “It is well established that when the language of a statute is plain and
32

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

7
8 NRS 113.130 and 113.150, set forth below, are clear and unambiguous.

9
10 DISCLOSURES REQUIRED BY STATUTE

11
12 NRS 113.130 requires disclosure of know defects by seller of a residential
13 real estate. The relevant portions of that statute are set forth below.

14
15 NRS 113.130 Completion and service of disclosure form before
16 conveyance of property; discovery or worsening of defect after service
17 of form; exceptions; waiver.

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

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

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

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

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

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

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

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

3 (a) By foreclosure pursuant to chapter 107 of NRS.

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

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

8 (d) By a person who takes temporary possession or control of or title to
9 the property solely to facilitate the sale of the property on behalf of a
10 person who relocates to another county, state or country before title to
11 the property is transferred to a purchaser.

12 3. A purchaser of residential property may waive any of the
13 requirements of subsection 1. Any such waiver is effective only if it is
14 made in a written document that is signed by the purchaser and
15 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
20 residential property, provide written notice to the purchaser of any
21 defects in the property of which the trustee or beneficiary, respectively,
22 is aware.

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

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

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

(a) Rescind the agreement to purchase the property at any time before

1 the conveyance of the property to the purchaser; or
2 (b) Close escrow and accept the property with the defect as revealed
3 by the seller or the seller's agent without further recourse.

4 3. Rescission of an agreement pursuant to subsection 2 is effective
5 only if made in writing, notarized and served not later than 4 working
6 days after the date on which the purchaser is informed of the defect:
7 (a) On the holder of any escrow opened for the conveyance; or
8 (b) If an escrow has not been opened for the conveyance, on the seller
9 or the seller's agent.

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

25 5. A purchaser may not recover damages from a seller pursuant to
26 subsection 4 on the basis of an error or omission in the disclosure
27 form that was caused by the seller's reliance upon information
28 provided to the seller by:
29 (a) An officer or employee of this State or any political subdivision of
30 this State in the ordinary course of his or her duties; or
31 (b) A contractor, engineer, land surveyor, certified inspector as defined
32 in NRS 645D.040 or pesticide applicator, who was authorized to
practice that profession in this State at the time the information was
provided.

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

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

5 DEFENDANTS KNEW THE CONDITION OF THE PROPERTY
6

7
8 As outlined in Plaintiff’s narrative affidavit, Lin and Investpro were more
9 than just real estate agents selling property. Lin and Investpro were the
10 manager for the flipping fund which had recruited investor TKNR, they arranged
11 the purchase of this property in September, 2015, they identified the scope of
12 the renovation, managed the renovation project from soliciting bids, to awarding
13 bids to paying contractors, and then sold the Subject Property. They were also
14 managing the property involving obtaining renters. Every condition described in
15 the Complaint was **KNOWN** to Lin and Investpro. Contrary to their argument,
16 the renovations undertaken during TKNR’s ownership were major, including
17 electrical upgrades, installation of three separate HVAC systems, and plumbing
18 issues.
19

20 Thus, it seems that the seminal factual question is what Defendants knew
21 when they sold the property. All Defendants clearly knew about substantial work
22 which they chose not to disclose to Plaintiff. TKNR and Wong had the work
23 performed during their ownership, by their agents Lin, Investpro and JOYCE A.
24 NICKRANDT.²

25 Further, Plaintiff did inspect the property on August 10, 2017, so that the
26 representation in Defendants’ motion that Plaintiff never inspected the property
27 is simply false.
28
29

30
31 ² JOYCE A. NICKRANDT is the licensee of Investpro.
32

1 FACTUAL STATEMENTS IN THE COMPLAINT COMPLY WITH NRCP 9

2
3 The factual allegations in the Complaint comply with the requirements of
4 NRCP 9(b) as to time, place, identity of the parties and the nature of the fraud.

5 See Exhibit D, pages 3 - 4.
6

7 INVESTPRO REPRESENTED BUYER IN THE PURCHASE
8

9
10 Exhibit E is an excerpt from the Offer and Acceptance for the purchase of
11 the Subject Property. Pages 9 and 10 evidence that Investpro represented both
12 the Plaintiff and TKNR in the purchase transaction. Thus, Investpro not only had
13 a fiduciary duty to represent Plaintiff's interests, the very statute cited in
14 Defendants' Motion, NRS 645.259(1) expressly creates liability for
15 misrepresentations that are made by a seller that the broker knows is false.
16 Miao's declaration identifies in detail the construction which was done by
17 Investpro, on behalf of seller TKNR, which was not disclosed.
18

19
20 COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) IF THE
21 COURT CONSIDERS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

22 NRCP 56(f) states as follows :

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

28 Discovery hasn't even commenced. In an abundance of caution, the
29 declaration of Plaintiff's attorney is attached supporting its Countermotion
30 pursuant to NRCP 56(f).
31

1 CONCLUSION

2
3 As set forth above, Defendants' motion serves no purpose other than to
4 unreasonably and vexatiously harass Plaintiff, increase its costs, and waste the
5 Court's time.

6
7 Plaintiff is the purchaser, and was entitled to honest and complete
8 disclosures.. In this case. Investpro and Lin were the organizers of the
9 residential investment property which Plaintiff purchased from TKNR. During the
10 time that TKNR owned the property, significant structural, mechanical, electrical
11 and plumbing alterations were made to the property.

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

14 The Court cannot grant summary judgment, if it is inclined to consider
15 exhibits outside the pleadings, without allowing discovery.

16
17 /s/ Benjamin B. Childs, Sr.

18
19

BENJAMIN B. CHILDS, Sr.
20 Nevada Bar # 3946
21 Attorney for Plaintiff

22 CERTIFICATE OF ELECTRONIC SERVICE

23
24 This OPPOSITION and COUNTERMOTION, with attachments, was
25 served through the Odessey File and Serve system. Electronic service is in
26 place of service by mailing.

27
28 /s/ Benjamin B. Childs, Sr.

29
30

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

1 Exhibits

- 2
- 3 A Promotional Website for flipping fund
- 4 B Deed to TKNR recorded September, 2015
- 5 C Emails regarding inspection
- 6 D Filed Complaint
- 7 E Excerpt from offer and acceptance for the Subject Property
- 8 F Requirements for permits and inspections
- 9

10

11 DECLARATION OF COUNSEL REGARDING LACK OF DISCOVERY

12

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

14 Discovery has not commenced in this case. Testimony, affidavits and

15 other admissible evidence such as responses to written discovery, documents,

16 and inspection of physical items are not possible to be produced by Plaintiff until

17 discovery has been completed. Defendants are believed to have much more

18 significant additional documentation and knowledge than they disclosed in their

19 Motion, which information and knowledge will only be obtained through

20 discovery. Specifically about the alterations to the subject property, which are at

21 issue in the case. Thus, this declaration is made pursuant to NRCP 56(f) in

22 response to Defendants' Motion to Dismiss.

23

24 These statements are made based on my personal knowledge. I

25 declare under penalty of perjury that the foregoing is true and correct.

26

27 Executed on January 25, 2019

28 (date)

/s/ Benjamin B. Childs, Sr.

(signature)

DECLARATION OF FRANK MIAO

I am the manager of W L A B INVESTMENT, LLC [WLAB] and I was involved in the purchase of the Subject Property at **2132 Houston Dr Las Vegas, NV**, which is a tri-plex residential rental apartment building. All three rental units are in one building and they are identified as units A, B and C and are under one roof.

I found the property listed on Zillow. Because the Subject Property is a rental property, the landlord and property manager have to provide and maintain a safe, healthy and habitable condition for the tenant. When I inspected on August 10, 2017 Unit A was occupied, but Units B C were on the market for rent. Kenny Lin [Lin] showed me the Subject Property representing that he was the listing agent and that he was also the CEO of Investpro. Later, WLAB hired Lin as the buyer's agent for this transaction. At that time, he told me that Investpro was the property manager for the Subject Property. Later, I found out that Lin is also the manager for the flipping fund which had recruited investors, had purchased this Subject Property, had identified the scope of the renovation, managed the renovation project from soliciting bids, to awarding bids to paying contractors, and was now selling the Subject Property under his supervision and authority. Attached is the promotional website evidencing this fact [Exhibit A], plus the vesting deed when the Subject Property was purchased in September, 2015 had the address for TKNR as 3553 S. Valley View Blvd Las Vegas, NV 89103, which is Investpro's address. [Exhibit B]

Investpro was the property manager and the remodeler of the Subject Property. Investco is also the flipping fund manager; they do the property management, they are directly involved in the renovation, and they are the real estate broker. Investpro makes a 25% profit on each project they renovate and flip, plus the sales commissions to Investpro; the investor makes a 75% profit. Investpro is much more involved than just the normal broker. In addition to selling the property, Investpro finds investors, buys the property from auction, manages the property, identifies the scope of renovation, and manages the renovation project from soliciting bids to awarding bids to paying contractors, along with obtaining the tenants and managing rentals.

In line with it's formula, Investpro bought the Subject Property at a foreclosure auction, found TKNR as the investor, the receipts for the heatpump package unit installation and replacement projects are to Investpro [Exhibit 4], and Investpro managed the renovation, admittedly without using licensed electrical, plumbing and HVAC contractors or having required permits. A licensed electrical contractor and a electrical permit would have required an upgrade of the electrical supply system; note that heatpump system uses 220 volt system but the swamp cooler only needs a 110 volt system. A licensed plumbing contractor and a plumbing permit would have required to remove the water line for the swamp cooler and the natural gas line after the natural gas wall furnace was removed. The HVAC or mechanical permit would have been required to install the heatpump package units and do the load calculations such as weight and wind load for structural evaluation. Specific to the heating and cooling upgrades, when Investpro bought at a bank auction in September, 2015, the Subject Property originally had cooling by swamp coolers and heating by natural gas wall furnaces.

In early March, 2016 Investpro installed one 5 ton heatpump package unit, which does both heating and cooling, on one roof area, but they did not apply for a permit to upgrade the electrical system and there was correspondingly no inspection of the electrical system. [See

Exhibit 4] As part of this process, they dismantled the old natural gas wall furnaces and disconnected the natural supply gas lines, without a permit or inspection or work by a licensed contractor, and then covered with drywall, texture and paint. When the 5 ton heatpump package unit was installed on the roof, apparently they did not do a weight load and a wind load calculation for the roof structure evaluation. Investpro also added larger electrical lines in the ceiling to serve the 5 ton heatpump package unit, without a permit or an inspection done by a licensed electrical contractor. Plus, new air ducts were installed on the roof without permit or inspection. This ducting required being anchored to the roof, which caused new roof leakages. In early 2017, the 5 ton heatpump package unit was too heavy and unstable and caused a lot of noise. The tenant in unit A, Nicholas Quiroz, complained and threatened to call code enforcement. So Investpro installed new two window air conditioning units in Unit A [not by a professional, also without a permit or inspection] and removed the 5 ton one year old heatpump package unit and then installed two new 2 ton heatpump package units on the roof, installed by Air Team, also without a permit or inspection and ran new electrical lines without a permit or an inspection. They opened new big holes in roof when they installed the two new 2 ton units, but again there was no calculation about the weight and wind load calculations and the roof structural evaluation. When they installed the two new 2 ton units there were multiple new roof penetrations for the new air ducts and anchors, which also have resulted in roof leaks. These are the 2 receipts for the repairs attached as Exhibit 4 to Defendants' motion. All these HVAC modifications required an upgrade to electrical system, with a permit and inspection. So all 3 units had air conditioning installed with no permit or inspection of the electrical systems. Plus, the natural gas pipes were removed without a permit or inspection.

I went to the City of Las Vegas and confirmed that there were no permits for Investpro's work on any renovation project, including the plumbing, HVAC, structural or the electrical systems.

During my inspection on August 10, 2017, I pointed out several code violations to Lin such as the smoke alarms were not installed at the right location and some were missing, the outlets near the water faucets in the kitchen, bathroom and laundry room were not GFCI outlets which is required by the UBC electrical code, the CO alarm was missing or not in right location, there was a window broken in one unit, drywall was not complete around the window air conditioning unit installed in Unit A, there were electrical wires exposed and the ceramic floor tiles were cracked, etc. See Exhibit C attached hereto, emails dated August 17 and August 24, 2017. These problems would not pass a city code enforcement inspection. In fact, I told Lin that if tenant called code enforcement at this, the rental unit could be shut down by code enforcement until repaired and corrected. Before WLAB bought the property, WLAB insisted that the code violations that had been identified were repaired and corrected; although they resisted, Investpro did repair part of the code violations that were identified. Investpro had rented to the tenants without meeting the minimum code standards for habitability. WLAB had to spend a lot of money to bring up the Subject Property to code and correct the code violations after the old tenants moved out.

Note that Exhibit 2 is a purchase agreement for a different apartment that WLAB tried to purchase [1917 Yale Street Las Vegas, NV]. This is a different property and is not relevant to the case before the court.

Note that the electrical issues are in unit A of the Subject Property, but Exhibit 4 attached

to Defendants' Motion are invoices for units B & C, including the old 5 ton heatpump unit which they removed in June, 2017 and replaced with the two 2 ton units as I described above. Thus, this does not address the issues raised in WLAB's complaint.

As to Exhibit 3, the waiver of inspection dated September 5, 2017, inspection was waived because I had just inspected it in August, 2017.

At the August 10, 2017 inspection, I could not inspect the dryer vents into the ceiling without destructing the ceiling drywall. WLAB did not waive the inspection; an inspection was conducted on August 10, 2017 with myself and Lin. The complaints outlined in the Complaint were hidden behind drywall.

I note that the Seller's Real Property Disclosure Form [SRPDF] had nothing about the following :

- * Removal of natural gas wall furnace, which occurred with no permit or inspection.
- * Removal of natural gas supply line, which occurred with no permit or inspection.
- * Upgraded electrical system to add additional lines and new power supply with no permit or inspection.
- * Disclosure says there's a problem with cooling, but provides no details about the history or what the problem was.
- * Disclosure says there's a problem with heating and there are no details about the history of the heating system or what the problem was.
- * The two marks about repairs made without permits, but there is no explanation.

Unit A still has no central heat, but uses portable electrical heaters because the related supply gas line was removed.

The renovations by Investpro were not MINOR renovations as argued in their motion. These are major rehabilitation projects. Two bathrooms were completely redone without a permit or inspection. The roof had holes opened. Old swamp coolers and some natural gas furnaces were moved and then hidden by drywall and painted. The HVAC system on the roof was replaced twice, plus plumbing, tile, electrical modifications. These require a permit as set forth in the attached flyers.

I did inspect this Subject Property on August 10, 2017 and SRPDF was dated August 7, 2017. I only performed a non-invasive and non-destructive inspection.

I began investigations in earnest in early July, 2018, after WLAB had bought it, while Investpro was still the property manager and the tenant notified me of an electrical problem in Unit A.

Due to roof structure being damaged, every time it rains the roof leaks. The recent rains in January, 2019 revealed that both bathroom vents were not vented outside, but just into the ceiling attic, which is a violation of the building code. These violations were also hidden behind drywall and could not have been identified without invasive investigation.

The fraud allegations were made as specific as currently known to me at this time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

1/24/2019
(date)


(signature)

EXHIBIT A

EXHIBIT A

Flipping Fund Iv - InvestPro Realty

[Statement]



FLIPPING FUND
INVESTPRO INVESTMENTS I LLC
PRESENT BY INVESTPRO MANAGER LLC



KENNY LIN
Phone: +1 (702) 726-0000
Email: zhong.kenny@gmail.com
中国境内 95013515588 x 88855
联系电话



恆興地產



1. 周期: 1-3 年。
2. 投资门槛: 最少\$5万, 每股\$1000。
2. 用途: 在拉斯维加斯短炒住宅。
3. 回报: 每年先付8%的红利, 按季度付, 然后在所有本金收回后, 纯利润的75%给投资人, 25%给管理公司。
5. 退出: 头12 个月不可退出, 过后可以自行买卖或由公司买回。

截止日期: 2015年12月31日

1. TERM : 1-3 YEARS
2. MINIMUM UNITS: \$50,000 MINIMUM, \$ 1000 PER UNIT.
3. USE OF FUND: FLIPPING RESIDENTIAL PROPERTIES IN LAS VEGAS.
4. RETURNS: 8 % PREFERRED PER ANNUL PAYS EVERY QUARTER, THEN AFTER ALL MONEY RETURNED TO INVESTORS, THE NET PROCEED SPLIT 75% TO INVESTORS AND 25 % TO MANAGER LLC.
5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015



WHAT's FLIPPING FUND?

所谓 | 短炒基金

FLIPPING FUND IS ESTABLISHED BY INVESTPRO INVESTMENTS FOUNDATION. THE FUND WILL BE INVESTED ON PURCHASING VALUE INCREASING REAL ESTATES IN LAS VEGAS. ONCE REACHED THE TERM, THE PROPERTY WILL BE SOLD OUT. PROFITS WILL BE PUT BACK INTO THE FUND FOR INVESTING ANOTHER PROPERTY.

「短炒基金」是由恒

兴投资基金建立的一个投资资金池，用于在拉斯维加斯买入预期升值的房产项目。短期获利后，迅速抛售套现离场，所获利资金再次用于投资其他相似房产项目，以此循环获利。

InvestPro Investment Foundation | 3553 S Valley View Blvd, Las Vegas, NV 89103 | P: +1 (702) 997-3832 | F: +1 (702) 997-3836 | www.investprorealty.net



04

案例分析
SUCCESSFUL PROJECTS

06

已运作项目
PROJECTS LIST

09

短炒周期
FLIPPING TERM

10

资金分配
INVESTMENTS & EXPENSES

11

投资回报
PRO FORMA

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案例分析 SUCCESSFUL PROJECTS

4320 NOLAN LN

LAS VEGAS NV

03/02
2015

102天/DAY

06/12
2015

增值
INCREASE
IN VALUE
\$55,500.00

HOW LONG's THE FLIPPING TERM? 多久 | 短炒周期

134 DAY. WE SET THE FLIPPING TERM AS 130 DAYS. IT IS A ESTIMATED NUMBER BASED ON THE PROPERTIES WE ARE OPERATING NOW. WE AVERAGE THE TERM BETWEEN PURCHASE AND SOLD, THEN PLUS 15 ACQUISITION DAYS. THEREFORE IN 365 DAYS, ALL OF FUNDS WILL BE FLIPPED FOR 2.72 TIMES

「134天」我们将短炒周期设定为134天，这是以我们目前已运作房产项目，从买入至卖出所用天数的平均值（119天）加上购置周期（15天），所得出的一个平均短炒周期数。若全年以365天计，资金将用于短炒2.72次/年

年盈利率

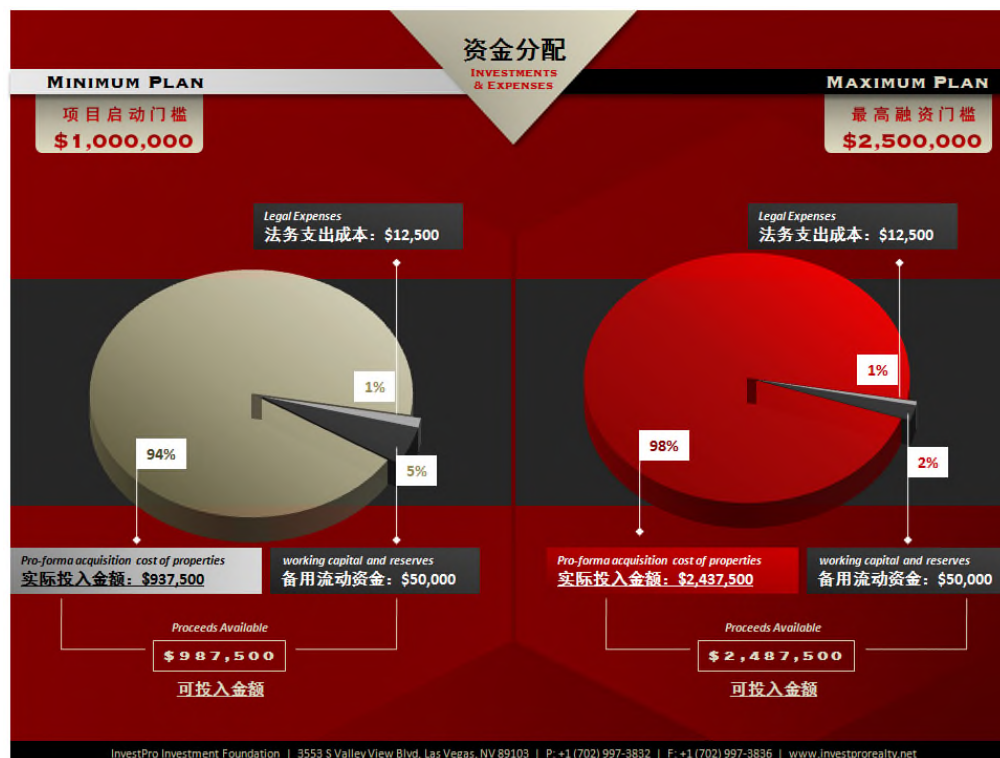
PROFIT PER FLIP
每次利润
8.71 %

FLIPS PER YEAR
年短炒次数
2.72

= 23.69 %

COMPOUND RATE

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投资回报率						
PRO FORMA						
MINIMUM PLAN						
项目启动门槛 \$1,000,000						
可投入金额	年盈利率	资金成长	年固定回报额	基金管理年费	总剩余资本	



相关政策

TERMS & CONDITIONS

1. 周期: 1-3 年。
2. 投资门槛: 最少\$5万, 每股\$1000。
2. 用途: 在拉斯维加斯短炒住宅。
3. 回报: 每年先付8%的红利, 按季度付, 然后在所有本金收回后, 纯利润的75%给投资人, 25%给管理公司。
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CLOSE OUT DATE: DEC. 31,2015

(<http://investprorealty.net/wp/wp-content/uploads/2015/12/13.jpg>)



CONTACT
联系我们



KENNY LIN
Phone: +1 (702) 726-0000
Email: zhong.kenny@gmail.com
中国境内
联系电话 95013515588 x 88855



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在美国留学, 这7条红线千万不能碰!
(<http://investprorealty.net/%e5%9c%a8%e7%be%8e%e5%9b%bd%e7%95%99%e5%ad%a6-%e8%bf%997%e6%9d%a1%e7%ba%a2%e7%ba%bf%e5%8d%83%e4%b8%87%e4%b8%8d%e8%83%bd%e7%a2%b0/>)

在美国买房宜早规划财务, 这三种买家尤其要注意!
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InvestPro Realty
3553 S Valley View Blvd
Las Vegas NV 89103

Las Vegas Website Design (<https://websitecenter.com/design/>) and Hosting (<https://websitecenter.com/hosting/>) By WebsiteCenter.com (<https://www.websitecenter.com>)

Office phone: 702-997-3832
Fax: 702-997-3836
Fax: 866-782-3075
Email: info@investprorealty.net
Hours: Mon – Fri 9:00 AM – 6: 00PM
Closed Saturday & Sunday

EXHIBIT B

EXHIBIT B

3-1

APN 162-01-110-017

RECORDING REQUESTED BY:

WHEN RECORDED MAIL DEED
AND TAX STATEMENT TO:

TKNR INC
3553 South Valley View Boulevard
Las Vegas, NV 89105

Inst #: 20151009-0003684

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$487.05 Ex: #

10/09/2015 03:16:52 PM

Receipt #: 2577116

Requestor:

INVESTPRO REALTY

Recorded By: RYUD Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Trustee Sale No.
NV08000214-15-1

Title Order No. 97104860

TRUSTEE'S DEED UPON SALE

The undersigned Grantor declares:

- 1) The Grantee herein was not the foreclosing Beneficiary.
- 2) The amount of the unpaid debt together with costs was:
- 3) The amount paid by the Grantee at the Trustee sale was:
- 4) The documentary transfer tax is:
- 5) Said property is in the city of: LAS VEGAS

\$291,608.90

\$95,100.00

\$ 487.05

and **MTC Financial Inc. dba Trustee Corps**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **TKNR INC**, herein called "Grantee", the real property in the County of Clark, State of Nevada, described as follows:

LOT 9 IN BLOCK 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

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated April 4, 2008, made to CECILIA HERNANDEZ, AN UNMARRIED WOMAN, AND FILOMENA HERNANDEZ AND PEDRO JIMENEZ, WIFE AND HUSBAND, ALL AS JOINT TENANTS and recorded on April 14, 2008, as Instrument No. 20080414-0001532, of official records in the Office of the Recorder of Clark County, Nevada, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on **September 25, 2015** at the place specified in said Notice, to Grantee who was the

highest bidder therefore, for **\$95,100.00** cash, in lawful money of the United States, which has been paid.

Dated: 9/30/15

TRUSTEE CORP8



By: Miguel Ochoa, Authorized Signatory

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.

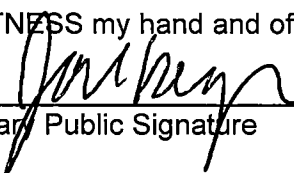
State of CALIFORNIA
County of ORANGE

Jared Degener

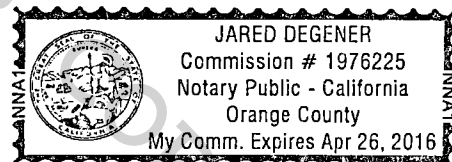
On 9-30-15 before me, _____, a notary public personally appeared MIGUEL OCHOA, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.



Notary Public Signature



**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
☐ Other

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 95,100.00

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

()

c. Transfer Tax Value:

\$ 95,100.00

d. Real Property Transfer Tax Due

\$ 487.05

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

SELLER (GRANTOR) INFORMATION
(REQUIRED)

 Brenda Unruh, Docs Processor
 c/o MTC Financial Inc., dba Trustee

Print Name: Corps

Address: 17100 Gillette Avenue

City: Irvine

State: CA

Zip: 92614

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: TKNR INC

Address: 3553 South Valley View Boulevard

City: Las Vegas

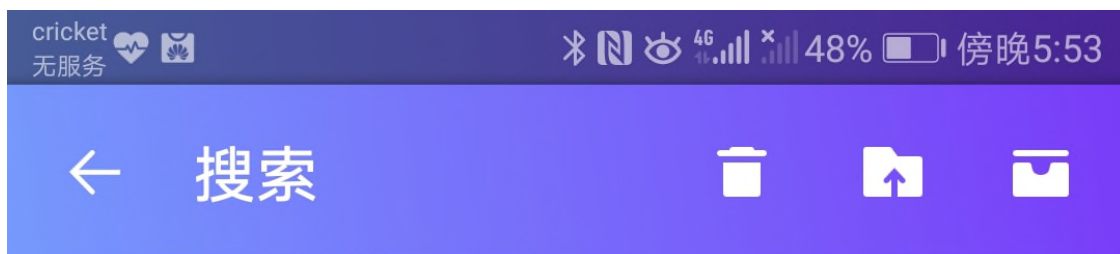
State: NV

Zip: 89105

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT C

EXHIBIT C

**2132 Houston Dr - urgent attention!**

Helen Chen

我

2017/8/24 上午10:35



Hi Frank and Marie,
Unfortunately, listing agent said seller rejected your new request, seller will only agree to repair the following which agreed last time:
Broken window glass at unit #A;
Repair and refinish the inside drywall around the AC at Unit#A;
Repair or replace the broken thermostat at Unit#B;
Change kitchen and bath room outlets (by the sink) to GFI outlets for all units.
(there will be no more credit offered from seller)
For your information, All above repairs should be completed by now.

Please let me know if you would like to move forward or not.
And please note per contract your due diligence will be end by 8/25/17, if you decide

Outlook

BC

Search Mail and People

New | Delete Archive Junk | Sweep Move to Categories

Undo

Folders

Inbox 4624

ae filing 492

Bankruptcy 224

Sent Items

Drafts 119

MarendaCS payments

More

Groups New

(No subject)

FM frank miao <frankmiao@yahoo.com>
Today, 4:58 PM

2132 Houston Dr



Helen Chen

我

2017/8/17 下午5:10



Hi Frank and Marie,
I have send you the disclosures documents
for your signature, it is e-sign, please check.

For the items you requested for repairs, seller
just respond and seller will agree to repair the
following items:

Broken window glass;

Repair and refinish the inside drywall around
the AC;

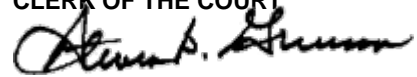
Repair or replace the broken thermostat;

Plus \$300 credit to buyer for any other
repairs.

1316

EXHIBIT D

EXHIBIT D



BENJAMIN B. CHILDS, ESQ.
Nevada Bar # 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 251 0000
Fax 384 1119
ben@benchilds.com
Attorney for Plaintiff

EIGHTH JUDICIAL 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

A-18-785917-C

Case #
Dept #

Department 14

COMPLAINT

=====

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

PLAINTIFF'S ALLEGATIONS OF FACT

A. IDENTITY OF DEFENDANTS

- 1 Defendant TKNR, INC, [hereinafter TKNR] was at all relevant times a
2 California Corporation doing business in Clark County, Nevada.
- 3 2. INVESTPRO LLC was at all relevant time a Nevada Limited Liability
4 Company dba INVESTPRO REALTY [hereinafter Investpro]. Investpro is
5 a real estate brokerage holding Nevada license # B.0144660.llc and a
6 property management company holding Nevada license #
7 PM.0166824.bkr, which licenses are registered to JOYCE A. NICKRANDT
8

1 [herinafter Nickrandt]. Nickrandt is a Nevada resident who, during all time
2 relevant hereto, made direct factual representations as both TKNR's agent
3 and Investpro's agent.

4 3. CHI ON WONG [hereinafter Wong] is a California resident who owns and
5 controls TKNR, INC and is the alter ego of TKNR. TKNR was and is
6 influenced and governed by Wong. There must is such a unity of interest
7 and ownership between Wong and TKNR that one is inseparable from the
8 other. Adherence to the fiction of separate entity between Wong and
9 TKNR would sanction a fraud or promote injustice.

10 4. KENNY ZHONG LIN [hereinafter Lin] is a Nevada resident who, during all
11 time relevant hereto, made direct factual representations as both TKNR's
12 agent and Investpro's Chief Executive Officer and agent.

13 5. The true names of Defendants DOES 1 through 5 and ROE
14 CORPORATIONS I - X, inclusive, are unknown to Plaintiff at this time.
15 Plaintiff sues those Defendants by such fictitious names pursuant to NRCP
16 10 (a). Plaintiffs are informed and believe, and based on that information
17 and belief allege, that each of the Defendants designated as a DOE or
18 ROE is legally responsible for the events and happenings referred to in this
19 complaint, and unlawfully caused the injuries and damages to Plaintiff
20 alleged in this complaint, or who have an interest in the subject property
21 as set forth below. When their true names and capacities of Doe or Roe
22 Defendants are ascertained Plaintiff, if appropriate, will amend his
23 Complaint accordingly to insert the correct name and capacity herein.

24 6. This Court has jurisdiction and authority to issue judgment in this matter
25 per NRS 13.010.

26
27
28 ///

1 B. TRANSACTIONS RESULTING IN THIS LAWSUIT

- 2
- 3 7. That on or about December 15, 2017 TKNR sold Plaintiff a parcel of real
- 4 property with a residential triplex on it, specifically the real property located
- 5 at 2132 Houston Dr Las Vegas, NV, referred to herein as the Subject
- 6 Property. The Subject Property is a residential rental income property.
- 7 8. Investpro was at all relevant times the property manager of TKNR for the
- 8 Subject Property.
- 9 9. Prior to the sale, Investpro did an extensive renovation of the Subject
- 10 Property for TKNR, as both a property manager and as agent for TKNR,
- 11 and was also the real estate broker in the sale, representing both the buyer
- 12 [WLAB] and the seller [TKNR]. In fact, the Seller's Real Property
- 13 Disclosure Form was both prepared and initialed by Lin.
- 14 10. TKNR failed to disclose one or more known condition(s) that materially
- 15 affects the value or use of the Subject Property in an adverse manner, as
- 16 required by NRS Chapter 113, in a particular NRS 113.130. TKNR and it's
- 17 agent Investpro marketed and listed for sale.
- 18 a. TKNR and it's agent Investpro affirmatively stated in a Real Property
- 19 Disclosure Form dated August 2, 2017 that there were "no
- 20 conditions or aspects of the property which materially affect it's value
- 21 or use in an adverse manner", that there were no "previous or
- 22 current moisture conditions and/or water damage, there were no
- 23 problems or defects with the electrical system, there were no
- 24 structural defects, and there was no fungi or mold on the Subject
- 25 Property.
- 26 b. In fact, there was no permit and no inspection by the City of Las
- 27 Vegas for extensive renovation work which TKNR, through it's
- 28 property manager and agent Investpro, had performed. The

1 electrical system load for Apartment A was increased due to the
2 installation of two air conditioning units and required 100 amp
3 service, but the electrical service was not upgraded to 100 amp
4 service from the existing 50 amp service. Failure to upgrade the
5 electrical service caused the fuses to be blown out multiple times
6 during the summer of 2018. The tenant in Apartment A could not
7 use air conditioning in the summer of 2018, causing Apartment A to
8 be uninhabitable until the electrical system was upgraded.

9 c. The high moisture exhaust vapor from washer/dryer combination
10 units of Apartment B and Apartment C of the Subject Property were
11 illegally vented into the attics instead of to the outside of the building.
12 Thus, the insulation in the ceiling of the Subject Property is
13 destroyed based on moisture, and the roof plywood of the Subject
14 Property is damaged based on moisture, the electrical system in the
15 attic is damaged based on moisture, and the ceiling is damages
16 based on moisture, and there is fungus and mold in the attic that was
17 caused by the moisture.

18 d. The air conditioning units were expressly represented by TKNR and
19 it's agent Investpro to have been installed by a licensed contractor.
20 However, these air conditioning units were not installed in
21 compliance with the building code, including that the electrical
22 system was not adequate to run the air conditioning units that were
23 installed. There was no permit and no inspection by the City of Las
24 Vegas building and safety department.

25 11. Plaintiff discovered the multiple defects after closing on the property on
26 December 15, 2017.

27 12. Due to the failure of TKNR and Wong, and Lin and Investpro and Nickrandt
28 to disclose the defects set forth above prior to the sale to Plaintiff, Plaintiff

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

4 13. It has been necessary for Plaintiff to retain the services of an attorney and
5 to incur other court costs to prosecute this action. Defendants should be
6 required to pay attorneys' fees and costs incurred by Plaintiff in this action.
7

8 FIRST CAUSE OF ACTION - RECOVERY UNDER NRS CHAPTER 113
9 [Defendants TKNR and Wong]
10

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

13 15. Plaintiff is entitled to recover from TKNR and Wong treble the amount
14 necessary to repair or replace the defective part of the property, together
15 with court costs and reasonable attorney's fees.
16

17 SECOND CAUSE OF ACTION - CONSTRUCTIVE FRAUD
18 [Defendants Investpro and Nickrandt]
19

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

22 17. WLAB was in a fiduciary or confidential relationship with Investpro and
23 Nickrandt for the purchase of the Subject Property.

24 18. Investpro and Nickrandt's representations set forth above were deceptive
25 or violated the confidence placed in them by WLAB.

26 19. WLAB reasonably relied on Investpro and Nickrandt's deceptive
27 representations set forth above or the expected disclosures from Investpro
28 and Nickrandt which they did not provide.

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

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

THIRD CAUSE OF ACTION - COMMON LAW FRAUD

[Defendants Investpro and Nickrandt and Lin]

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

23. Defendants Investpro and Nickrandt and Lin made misrepresentations of material fact regarding the Subject Property, as set forth above.

24. Defendants Investpro and Nickrandt and Lin had knowledge of the misrepresentations of material fact regarding the Subject Property to WLAB, as set forth above.

25. Defendants Investpro and Nickrandt and Lin intended to defraud WLAB.

26. WLAB reasonably relied on the misrepresentations of material fact regarding the Subject Property made by Defendants Investpro and Nickrandt and Lin.

27. Due to the the misrepresentations of material fact regarding the Subject Property made by Defendants Investpro and Nickrandt and Lin set forth above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be set forth and proven at the time of trial.

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

1 to incur other court costs to prosecute this action. Defendants Investpro
2 and Nickrandt and Lin should be required to pay attorneys' fees and costs
3 incurred by Plaintiff in this action.
4

5 FOURTH CAUSE OF ACTION - FRAUDULENT INDUCEMENT

6 [All Defendants]
7

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

10 30. Defendant TKNR, through it's agents Investpro and Nickrandt and Lin
11 made misrepresentations of material fact regarding the Subject Property,
12 as set forth above.

13 31. Defendants Investpro and Nickrandt and Lin made misrepresentations of
14 material fact regarding the Subject Property, as set forth above.

15 32. Defendant Wong is the alter ego of TKNR.

16 31. Defendants' actions constitute Fraudulent Inducement because :

17 (1) A false representation was made to WLAB as set forth above;

18 (2) Defendants Investpro and Nickrandt and Lin had knowledge or belief
19 that, as set forth above, the representations were false or they had
20 knowledge that they had insufficient basis for making the representation;

21 (3) Defendants TKNR and it's agents, intended to induce WLAB to
22 complete the purchase of the Subject Property;

23 (4) WLAB justifiably relied upon the misrepresentation of TKNR and it's
24 agents; and

25 (5) WLAB suffered damages resulting from such reliance.

26 32. WLAB has been damaged as a result of Shawn's fraudulent inducement.

27 33. Due to the the misrepresentations of material fact regarding the Subject
28 Property made by Defendants set forth above prior to the sale to Plaintiff,

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

4 34. It has been necessary for Plaintiff to retain the services of an attorney and
5 to incur other court costs to prosecute this action. Defendants should be
6 required to pay attorneys' fees and costs incurred by Plaintiff in this action.
7

8 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and
9 severally, as follows:
10

- 11 1. For treble the amount necessary to repair or replace the defective part of
12 the property, which amount is in excess of Fifteen Thousand Dollars
13 (\$15,000), plus prejudgment interest from the date of service of the
14 summons and complaint;
- 15 2. For compensatory damages in an amount in excess of \$ 15,000.00 based
16 on WLAB's proof at trial; and
- 17 3. For exemplary and/or punitive damages in the amount of three times the
18 compensatory damages awarded; and
- 19 2. For costs and disbursements of suit;
- 20 3. For reasonable attorneys' fees;
- 21 4. For such other and further relief as the Court may deem just and proper.
22
23

24 /s/ Benjamin B. Childs

25 BENJAMIN B. CHILDS, ESQ.
26 Nevada Bar No. 3946
27 Attorney for Plaintiff
28

EXHIBIT E

EXHIBIT E

shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

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

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

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

27. **ADDENDUM(S) ATTACHED:** _____

28. **ADDITIONAL TERMS:** _____

Buyer's Acknowledgement of Offer

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

Buyer's Broker: <u>Joyce Nickrandt</u>	Agent's Name: <u>Liwei Helen Chen</u>
Company Name: <u>Investpro Realty</u>	Agent's License Number: <u>S.0175520</u>
Broker's License Number: <u>B0144660</u>	Office Address: <u>3553 VALLEY VIEW BLVD</u>
Phone: <u>702-997-3832</u>	City, State, Zip: <u>LAS VEGAS NV 89103</u>
Fax: <u>702-997-3836</u>	Email: <u>helen0510c@gmail.com</u>

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

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

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

Seller must respond by: 5 (☐AM☒PM) on (month) August, (day) 12, (year) 2017. Unless this

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

Buyer's Name: Marie Zhu
Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ
SELLER(S) INITIALS: CW

Rev. 06/17

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Page 9 of 10

This form presented by Liwei Chen | Investpro Realty | 702-997-3832 | Helen0510C@gmail.com

InstantFORMS

1327

Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☒ Marie Zhu Marie Zhu 08/11/2017 2:23 PM ☐ AM ☐ PM
 Buyer's Signature Buyer's Printed Name Date Time

 Buyer's Signature Buyer's Printed Name Date Time ☐ AM ☐ PM

Seller's Response

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

Seller's Broker: Joyce Nickrandt Agent's Name: Kenny Lin
 Company Name: Investpro Realty Agent's License Number: S.0172460
 Broker's License Number: _____ Office Address: 3553 Valley View Dr
 Phone: 702-997-3832 City, State, Zip: Las Vegas NV 89103
 Fax: 866-782-3075 Email: zhong.kenny@gmail.com

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

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

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

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

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

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

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

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

☒ TKNR Inc 08/11/2017 10:24 PM ☐ AM ☐ PM
 Seller's Signature Seller's Printed Name Date Time

 Seller's Signature Seller's Printed Name Date Time ☐ AM ☐ PM

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ
 Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CN

EXHIBIT F

EXHIBIT F

Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Building Permits

www.ClarkCountyNV.gov/building

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040

Thinking about replacing your water heater or converting your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is a building permit?

A building permit gives you legal permission to start construction of a building project in accordance with approved drawings and specifications. Building permits are required for construction work performed on any portion of a home's structural features, including the roof, frame, walls and foundation. Separate permits may be required for electrical, plumbing and mechanical work related to your project.

What types of home improvement projects

DON'T require building permits?

If your project involves new construction work or demolition of existing construction, you probably need a building permit. Common projects requiring building permits include:

- Attic, garage and basement conversions.
- Room additions, patio covers, sun rooms, carports and garages.

- Playhouses and sheds if the floor area is 120 square feet or more, or plumbing, mechanical or electrical features are included.
- Cutting new windows or doors, or widening existing openings.
- Removing or adding walls.
- Roofing when the roof load is increased.

What types of home improvement projects

DON'T require building permits?

- Painting and wall papering.
- Replacing or repairing floor coverings, cabinets, moldings and counter tops.
- Replacing stucco or drywall if the area replaced does not exceed 30 square feet.
- Replacing existing doors or windows if the openings aren't widened and/or are not part of a fire-rated wall.



Clark County Building Department

If I plan to do the construction work myself on my home, do I still need a building permit?

Yes. And you must own and occupy the home where you plan to do the work. Work on a home that's being leased or rented must be done by a licensed contractor.

application and any required plans for

The Building Department has several standard building designs available on our website to help in permitting common home improvement projects.





Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Mechanical Permits

www.AccessClarkCounty.com

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118
Mon. - Fri, 7 a.m. - 5 p.m.
(702) 455-8010

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029
Mon. - Fri, 6:30 a.m. - 3:30 p.m.
(702) 298-2436

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040
Mon. - Fri, 7 a.m. - 4 p.m.
(702) 397-8087

Thinking about replacing your water heater or converting part of your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Clark County's Department of Development Services can help. Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is a mechanical permit?

Mechanical permits refer to construction work performed on any portion of a home's heating, cooling or exhaust systems. Separate permits may be required for building, electrical, and plumbing work involved with your project.

When can work start?

Work can begin after your permit is issued and you receive your approved plans for the project.

What types of home improvement projects

DO require a mechanical permit?

- Installing or Changing Any Part of a Heating or Cooling System
- Installing, Altering or Repairing Gas Piping Between the Meter and an Appliance

- Installing Bath Fans, Dryer Exhausts, Kitchen Range Exhausts and Other Mechanical Equipment

What types of home improvement projects

DON'T require mechanical permits?

- Using Portable Heaters, Ventilating Equipment, Cooling Units, and Evaporative Coolers
- Replacing Any Component of an Appliance Assembly (As long as no alteration occurs to its original installation or Development Services' original approval.)
- Replacing Compressors of the Same Rating



A CENTURY OF SERVICE

Clark County Development Services Department

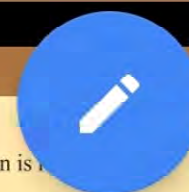
Clark County Development Services Department

If I plan to do the work myself on my home's mechanical system, do I still need a permit?

Yes. To obtain a mechanical permit as an owner/builder, you must own and occupy the home

outside on a cement slab, a site plan is showing the location of the slab.

If your project involves the addition of square footage



← Plumbing Flye... 🔍 🏠 ⋮

Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Plumbing Permits

www.AccessClarkCounty.com

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118
Mon. - Fri, 7 a.m. - 5 p.m.
(702) 455-8010

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029
Mon. - Fri, 6:30 a.m. - 3:30 p.m.
(702) 298-2436

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040
Mon. - Fri, 7 a.m. - 4 p.m.
(702) 397-8087

Thinking about replacing your water heater or converting part of your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Clark County's Department of Development Services can help. Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is a plumbing permit?

Plumbing permits refer to construction work performed on a home's plumbing system. Separate permits may be required for building, electrical and mechanical work related to your project.

What types of home improvement projects

DO require plumbing permits?

- Installing or Relocating Water Heaters or Water Softeners (*Permits now available online.*)
- Replacing Any Parts of Concealed Drains, Waste or Vent Pipes to Stop Leaks
- Relocating or Altering Plumbing in Existing Homes, Including Installation of New Sewers, Water Service or Gas Piping
- Gas Lines for Barbeques and Other Outdoor Appliances
- Replacing Bathtubs With Spas

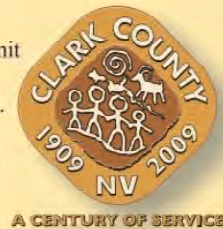
What types of home improvement projects

DON'T require a plumbing permit?

- Replacing Similar Plumbing Fixtures in the Same Location (Provided valves and traps are not replaced or rearranged.)
- Clearing Stoppages or Repairing Leaks in Pipes, Valves or Fixtures (Provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.)

When can work start?

Work can begin after your permit is issued. Emergency water heater installations are allowed. In such cases, you must apply for a plumbing permit the next available business day.



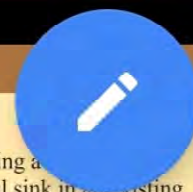
Clark County Development Services Department

Clark County Development Services Department

If I plan to do plumbing work myself on my home, do I still need a plumbing permit?

Yes. To obtain a plumbing permit as an owner/builder, you must own and occupy the home where you plan to

plumbing fixtures, such as converting a bathroom or installing an additional sink in an existing bathroom.



Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Electrical Permits

www.AccessClarkCounty.com

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118
Mon. - Fri, 7 a.m. - 5 p.m.
(702) 455-8010

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029
Mon. - Fri, 6:30 a.m. - 3:30 p.m.
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Thinking about replacing your water heater or converting part of your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Clark County's Department of Development Services can help. Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is an electrical permit?

Electrical permits refer to construction work performed on a home's electrical system. In addition to an electrical permit, separate permits may be required for building, plumbing and mechanical work related to your project.

What types of home improvement projects

DO require an electrical permit?

- Installation or Alteration of Any Permanent Wiring or Electrical Device
- Additional Wiring to Install Indoor or Outdoor Outlets, Light Fixtures or Fans
- Installation of Receptacles for Garage Door Openers or Conversion From Fuse Box to Circuit Breakers
- Electricity for a Spa

What types of home improvement projects

DON'T require electrical permits?

- Replacing Existing Light Fixtures or Fans
- Repairing or Replacing Switches, Contactors or Control Devices
- Replacing Existing Electrical Installations With Installations of Same Type and Rating in Same Location
- Using Portable Motors or Appliances in Approved Outlets (Some portable heating or heating-cooling units may require an electrical permit if they provide minimum heating.)
- Temporary Decorative Lighting (such as holiday lighting)
- Installation of Low-Voltage (50 volts or less) Security Systems, Audio Speakers and Similar Home Systems



Clark County Development Services Department

Clark County Development Services Department

If I plan to do electrical work myself on my home, do I still need an electrical permit?

Yes. To obtain an electrical permit as an owner/builder, you must own and occupy the home where you plan to

If your project involves the addition of..., you will need to submit an electrical permit application as a sub-permit of a building permit application. See our "Single Family Residence & Guest House" permit

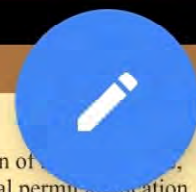


EXHIBIT F

EXHIBIT F

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

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.

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

**DEFENDANTS' OFFER OF JUDGMENT
TO PLAINTIFF WLAB INVESTMENT,
LLC**

TO: W L A B INVESTMENT, LLC, Plaintiff; and

BENJAMIN B. CHILDS, ESQ., Attorney for Plaintiff.

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

1 counsel of record, MICHAEL B. LEE, P.C., hereby offers to allow judgment to be taken against
2 them as provided in Rule 68(b) of the Nevada Rules of Civil Procedure and NRS § 17.115 in the
3 above-entitled action in the amount of Five Thousand Dollars (\$5,000.00), which includes any
4 applicable attorneys' fees, liens, costs, and prejudgment interest.

5 Acceptance by Plaintiff will therefore result in satisfaction of past, present and future
6 damages with respect to Plaintiff's claims in the case against Defendants and will serve to
7 dismiss and bar the bringing of any and all future causes of action against Defendants by Plaintiff
8 arising out of this matter as identified and referenced in the Complaint filed by Plaintiff in this
9 action. If you accept this offer and give written notice thereof within fourteen (14) days, you may
10 file this offer with proof of service of notice of acceptance. In the event this Offer of Judgment is
11 accepted by Plaintiff, Defendants will obtain a dismissal of the claims as provided by N.R.C.P.
12 68(d), rather than to allow judgment to be entered against Defendants. Accordingly, and
13 pursuant to these rules and statutes, judgment against Defendants cannot be entered unless
14 ordered by the District Court. This Offer of Judgment shall be deemed withdrawn if not
15 accepted by the deadline.

16 As to the reasonableness of this offer, the underlying evidentiary supports shows that: (1)
17 Plaintiff's action was not brought in good faith as: the Property was originally constructed in
18 1954; Marie Zhu ("Zhu") executed a residential purchase agreement ("RPA") for the Property
19 waiving her due diligence; Zhu did not do any inspections although she had the right to conduct,
20 non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical,
21 plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any
22 other property or systems, through licensed and bonded contractors or other qualified
23 professionals; Zhu waived the Due Diligence condition under Paragraph 7(C) of the RPA;
24 ignored the recommendation to conduct an inspection under Paragraph 7(D) of the RPA; waived
25 the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical
26 inspection, soil inspection, and structural inspection; failed to inspect the Property sufficiently as
27 to satisfy her use as required by the RPA; had actual knowledge of TKNR's disclosure that "3
28 units has brand new AC installed within 3 months," and further that the "owner never resided in

1 the property and never visited the property”; was also aware that the minor renovations, such as
2 painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures; Zhu
3 agreed that she was not relying upon any representations made by Brokers or Broker’s agent; Zhu
4 agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties;
5 Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow;
6 Zhu waived all claims against Brokers or their agents for defects in the Property and factors
7 related to Zhu’s failure to conduct walk-throughs or inspections; Zhu assumed full responsibility
8 and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed
9 necessary; Nevada Revised Statute (“NRS”) § 113.140 clearly provides that the Seller
10 Disclosures does not constitute a warranty of the Subject Property and that the Buyer still has a
11 duty to exercise reasonable care to protect himself; NRS § 113.140 also provides that the Seller
12 does not have to disclose any defect that he is unaware of; NRS § 113.130 does not require a
13 seller to disclose a defect in residential property of which the seller is not aware; a completed
14 disclosure form does not constitute an express or implied warranty regarding any condition of
15 residential property; Chapters 113 and 645 of Nevada Revised Statutes do not relieve a buyer or
16 prospective buyer of the duty to exercise reasonable care to protect himself or herself; Zhu did
17 not exercise reasonable care in protecting herself by conducting an inspection of the Subject
18 Property or the newly installed HVAC systems even though the Purchase Agreement allowed her
19 to; Plaintiff owned the Property for more than a year since before making any inspections about
20 the Property; Defendants was aware of any issues with any structural, electrical, plumbing,
21 sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property
22 before the time of the sale to Zhu; Defendants were not aware of any issues with any structural,
23 electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues
24 with the Property at the time of the sale to Zhu; Defendants were not aware of any issues with
25 any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or
26 foundation issues with the Property after the sale to Zhu; any alleged conditions were open,
27 obvious, and could have been discovered by a reasonable inspection; Seller disclosed there were
28 issues with the heating and cooling systems with the Property; Seller disclosed that there were

1 construction, modifications, alterations, and/or repairs made without required state, city, or
2 county building permits; Seller disclosed that the Property was constructed before 1977; Seller
3 disclosed that the kitchen cabinets were brand new; Seller disclosed the sprinklers for the
4 landscaping did not work, all pipes were broken; Seller disclosed that the work, other than the
5 mechanical installation, was done by a handyman; and Seller disclosed that he never resided in
6 the property and/or visited it.

7 (2) This the offer of judgment is reasonable in light of the foregoing analysis providing
8 both the factual basis for the claims and the legal authority showing the lack of merit of the
9 action; (3) your refusal to accept the offer of judgment will be in bad faith and unreasonable; and
10 (4) the fees sought are reasonable in light of the demand to resolve this matter prior to the
11 commencement of heavy litigation. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268,
12 274 (1983).

13 This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68, and is
14 not to be construed as an admission in any form that Defendants are liable for any of the
15 allegations made by Plaintiff in the Complaint.

16 DATED this 19 day of November, 2020.

17 MICHAEL B. LEE, P.C.

18 /s/ Michael Lee
19 MICHAEL B. LEE, ESQ. (NSB No.: 10122)
20 1820 E. Sahara Avenue, Suite 110
21 Las Vegas, Nevada 89104
22 P: 702.477.7030
23 F: 702.477.0096
24 mike@mblnv.com
25 *Attorney for Plaintiff*
26
27
28

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 19 day of November, 2020, I placed a copy of the **DEFENDANTS' OFFER OF JUDGMENT TO PLAINTIFF WLAB INVESTMENT, LLC** 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
Attorneys for *Plaintiff*

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

EXHIBIT G

EXHIBIT G

From: mike@mblnv.com
Sent: Thursday, February 4, 2021 2:29 PM
To: 'Reed, Ariana'; 'Michael Matthis'; 'Benjamin B. Childs'
Cc: 'Nikita Burdick'; 'Abigail McGowan'; 'Powell, Diana'
Subject: RE: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Responses below.

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: Thursday, February 4, 2021 2:10 PM
To: 'mike@mblnv.com' <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>; 'Benjamin B. Childs' <ben@benchilds.com>
Cc: 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>
Subject: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Hello,

Please provide an update on the following:

1. How is discovery going?
 - Defendants have taken one deposition, have a deposition scheduled for February 18, 2021, and will likely schedule a deposition for Plaintiff's expert prior to the close of discovery.
 - Defendants have two outstanding requests for production of documents to Plaintiff.
2. Has this matter settled or have the parties scheduled a settlement conference?
 - No settlement. There was a settlement conference scheduled, but the Parties called it off after informal discussions that were not fruitful.
3. Have the parties attended any ADR proceedings?
 - No.
4. What progress toward settlement have the parties made?
 - None.
5. What is the current status of this case?
 - Likely going to trial if this Court does not grant Defendants' motion for summary judgment.
6. How would the parties like to proceed?
 - Defendants may need to move to briefly enlarge discovery if their motion for summary judgment is not granted related to depositions

Your prompt response is greatly appreciated and will serve as the minutes for this status check.

Include any counsel or parties left out of this email in your response.

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

EXHIBIT H

EXHIBIT H

From: Ben Childs <ben@benchilds.com>
Sent: Thursday, February 4, 2021 5:39 PM
To: mike@mblnv.com; 'Reed, Ariana'; 'Michael Matthis'
Cc: 'Nikita Burdick'; 'Abigail McGowan'
Subject: Re: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Please see my responses to Mr. Lee's email response to my statement of the case. I'm just trying to accurately state what happened and I don't appreciate the personal attack on my honesty.

I don't plan to spend a lot of time searching for email correspondence, because I don't think that productive, but Ms. Zhu is in China and I've cooperated fully in making her available. The last email is attached from January 22 and I presented 3 dates and the original February 17 date.

As I recall the one tenant was not able to move and so was in her apartment when the expert visited. The point is that several options have been presented to Defendants. Implying some form of malice or intentional misconduct is ridiculous.

The reason I didn't think a settlement conference would be productive is because an additional defendant [a 3rd Party defendant] had just been added by Defendants and that new defendant has due process rights and should participate in the settlement conference.

Defendants' Summary Judgment motion is highly unlikely to be granted given the state of outstanding discovery and Plaintiff has filed an extensive opposition and countermotion.

The Court is welcome to contact me with any questions.

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, February 4, 2021 5:09 PM
To: Ben Childs <ben@benchilds.com>; 'Reed, Ariana' <dept14lc@clarkcountycourts.us>; 'Michael Matthis'

<matthis@mblnv.com>

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

Subject: RE: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Please see my responses **in highlights** to Mr. Childs' misrepresentations below with the corresponding e-mails / notices showing the misrepresentations.

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: Ben Childs <ben@benchilds.com>

Sent: Thursday, February 4, 2021 4:02 PM

To: Reed, Ariana <dept14lc@clarkcountycourts.us>; 'mike@mblnv.com' <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>

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

Subject: Re: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

I hesitate to respond to this quickly because there are a lot of moving parts in this case. But here goes

1. How is discovery going? Lots of issues with written discovery, which will not be decided quickly because the hearing on Plaintiff's motion to compel and effectively Defendants' countermotion which was set for February 9 was vacated by the DC today under ECDR 2.40 because the entire request, and the entire responses were not set forth in full in the motion/countermotion. This will be like a 100 [page motion, but so be it. I just will take some time to complete, then be set for a new hearing, etc. I want to take a couple of depositions, but want to have complete responses to the written discovery first.

Plaintiff has provided several dates for the deposition Ms. Zhu [co-owner of Plaintiff] who is in China. Her deposition has never been scheduled. **This is incorrect. Mr. Childs was playing games related to Ms. Zhu's deposition (see attached e-mail) originally scheduled for January 13, 2021. I agreed to reset it. It does appear that we served the amended notice for February 17, 2021, but Mr. Childs' e-mail from January 22 confirmed the date. I have just noticed it for February 17, 2021.**

Plaintiff has provided several dates to allow Defendant's expert to revisit the property as he could not go into two of the apartments when he did his initial inspection because one tenant was at work and I believe there was a covid issue with the other one. A follow-up visit has never been scheduled by Defendants. **This is also incorrect and was subject to the pending discovery motion. Plaintiff's PMK admitted that Plaintiff set the date for the inspections and specified that they would all be available, but Defendants' expert did not have access on that date and time. We asked Defendants to pay for the cost of the second inspection, and they refused. This is why the second inspection was never scheduled. The second inspection is likely moot as Plaintiff's PMK admitted that all of the alleged conditions were open and obvious and he was aware of the requirement to get an inspection. This will be subject to the pending motion for summary judgment. Defendants filed a supplement that provided the undisputed testimony illustrating why summary judgment should be granted. / During Plaintiff's PMK's deposition, he admitted that he did not disclose documents, had documents / photographs stolen that he had never produced, and was aware that he set the date for the inspection despite not making the property available. Again, this was subject to the discovery motion. The "covid" excuse is novel and raised for the first time today. Depending on what happens with the MSJ, there will be a motion for spoliation from Defendants.**

2. Has this matter settled or have the parties scheduled a settlement conference?
No. I thought the settlement conference which was scheduled for January 8 should be vacated until the new party, which Defendant added by way of motion and the order was filed December 2, 2020. To date the cross-claim has not been filed despite the December 2, 2020 Order. Again, this is misleading. Mr. Childs and I discussed that a settlement conference would not be productive, see attached e-mail and notice to Angela McBride vacating the settlement conference. As to the potential third party, Plaintiff filed an amended pleading (which Defendants stipulated to despite the lack of the same courtesy by Plaintiff) after Defendants received an Order to amend their responsive pleading. Defendants filed a dispositive motion to the Second Amended Complaint that is pending resolution in lieu of filing the responsive pleading.
3. Have the parties attended any ADR proceedings?
No, but once discovery is completed it is probably a good idea if the new 3rd party defendant is added or the claim against the 3rd party defendant is abandoned.
4. What progress toward settlement have the parties made?
Little. Both parties appear to be in entrenched positions.
5. What is the current status of this case?
Set for trial in April. Counsel recognizes the reality of trials proceeding on schedule due to the backlog.
6. How would the parties like to proceed?
Given the discovery issues, likely an extension of discovery for 60 days to allow completion. Agreed.

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

Important Notice: Privileged and/or confidential information, including attorney-client communication may be contained in this message. This message is intended only for the individual directed. Any dissemination, transmission, distribution, copying or other use, or taking any action in reliance on this message by persons or entities other than the intended recipient is prohibited and illegal. If you receive this message in error, please delete. Nothing herein is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

From: Reed, Ariana <dept14lc@clarkcountycourts.us>
Sent: Thursday, February 4, 2021 2:09 PM
To: 'mike@mblnv.com' <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>; Ben Childs <ben@benchilds.com>
Cc: 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>
Subject: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Hello,

Please provide an update on the following:

1. How is discovery going?
2. Has this matter settled or have the parties scheduled a settlement conference?
3. Have the parties attended any ADR proceedings?
4. What progress toward settlement have the parties made?
5. What is the current status of this case?
6. How would the parties like to proceed?

Your prompt response is greatly appreciated and will serve as the minutes for this status check.

Include any counsel or parties left out of this email in your response.

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

EXHIBIT I

EXHIBIT I

FINANCIAL INFORMA...

Defendant TKNR Inc Total Financial Assessment 766.00 Total Payments and Credits 766.00 Balance Due as of 04/06/2021 **0.00** 01/09/2019 Transaction Assessment 543.0001/09/2019 Efile Payment Receipt # 2019-01636-CCCLK TKNR Inc (543.00)03/19/2019 Transaction Assessment 223.0003/19/2019 Efile Payment Receipt # 2019-17299-CCCLK TKNR Inc (223.00)

Plaintiff W L A B Investment LLC Total Financial Assessment 561.00 Total Payments and Credits 561.00 Balance Due as of 04/06/2021 **0.00** 12/12/2018 Transaction Assessment 273.5012/12/2018 Efile Payment Receipt # 2018-81817-CCCLK W L A B Investment LLC (273.50)12/26/2018 Transaction Assessment 3.5012/26/2018 Efile Payment Receipt # 2018-84435-CCCLK W L A B Investment LLC (3.50)01/28/2019 Transaction Assessment 3.5001/28/2019 Efile Payment Receipt # 2019-05638-CCCLK W L A B Investment LLC (3.50)03/04/2019 Transaction Assessment 3.5003/04/2019 Efile Payment Receipt # 2019-13541-CCCLK W L A B Investment LLC (3.50)03/29/2019 Transaction Assessment 3.5003/29/2019 Efile Payment Receipt # 2019-19498-CCCLK W L A B Investment LLC (3.50)04/29/2019 Transaction Assessment 3.5004/29/2019 Efile Payment Receipt # 2019-26133-CCCLK W L A B Investment LLC (3.50)06/04/2019 Transaction Assessment 3.5006/04/2019 Efile Payment Receipt # 2019-33809-CCCLK W L A B Investment LLC (3.50)06/05/2019 Transaction Assessment 3.5006/05/2019 Efile Payment Receipt # 2019-34173-CCCLK W L A B Investment LLC (3.50)07/11/2019 Transaction Assessment 3.5007/11/2019 Efile Payment Receipt # 2019-42139-CCCLK W L A B Investment LLC (3.50)06/16/2020 Transaction Assessment 3.5006/16/2020 Efile Payment Receipt # 2020-31837-CCCLK W L A B Investment LLC (3.50)10/19/2020 Transaction Assessment 3.5010/19/2020 Efile Payment Receipt # 2020-58886-CCCLK W L A B Investment LLC (3.50)11/16/2020 Transaction Assessment 3.5011/16/2020 Efile Payment Receipt # 2020-64945-CCCLK W L A B Investment LLC (3.50)11/20/2020 Transaction Assessment 3.5011/20/2020 Efile Payment Receipt # 2020-65934-CCCLK W L A B Investment LLC (3.50)11/23/2020 Transaction Assessment 3.5011/23/2020 Efile Payment Receipt # 2020-66309-CCCLK W L A B Investment LLC (3.50)12/15/2020 Transaction Assessment 200.0012/15/2020 Efile Payment Receipt # 2020-70608-CCCLK W L A B Investment LLC (200.00)12/29/2020 Transaction Assessment 3.5012/29/2020 Efile Payment Receipt # 2020-73001-CCCLK W L A B Investment LLC (3.50)01/06/2021 Transaction Assessment 3.5001/06/2021 Efile Payment Receipt # 2021-00756-CCCLK W L A B Investment LLC (3.50)01/20/2021 Transaction Assessment 3.5001/20/2021 Efile Payment Receipt # 2021-03724-CCCLK W L A B Investment LLC (3.50)02/10/2021 Transaction Assessment 3.5002/10/2021 Efile Payment Receipt # 2021-08154-CCCLK W L A B Investment LLC (3.50)02/11/2021 Transaction Assessment 3.5002/11/2021 Efile Payment Receipt # 2021-08275-CCCLK W L A B Investment LLC (3.50)02/12/2021 Transaction Assessment 3.5002/12/2021 Efile Payment Receipt # 2021-08648-CCCLK W L A B Investment LLC (3.50)02/16/2021 Transaction Assessment 3.5002/16/2021 Efile Payment Receipt # 2021-09258-CCCLK W L A B Investment LLC (3.50)02/24/2021 Transaction Assessment 3.5002/24/2021 Efile Payment Receipt # 2021-11016-CCCLK W L A B Investment LLC (3.50)03/04/2021 Transaction Assessment 3.5003/04/2021 Efile Payment Receipt # 2021-12911-CCCLK W L A B Investment LLC (3.50)03/04/2021 Transaction Assessment 3.5003/04/2021 Efile Payment Receipt # 2021-12954-CCCLK W L A B Investment LLC (3.50)03/05/2021 Transaction Assessment 3.5003/05/2021 Efile Payment Receipt # 2021-12993-CCCLK W L A B Investment LLC (3.50)03/10/2021 Transaction Assessment 3.5003/10/2021 Efile Payment Receipt # 2021-14087-CCCLK W L A B Investment LLC (3.50)

EXHIBIT J

EXHIBIT J



Litigation
SERVICES

3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1433649	1/25/2021	697915
Job Date	Case No.	
1/12/2021	A-18-785917-C	
Case Name		
WLAB Investment, LLC vs. TKNR, Inc.		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
PMK for WLAB Investment, LLC Frank Miao

2,967.67
TOTAL DUE >>> \$2,967.67

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

AFTER 2/24/2021 PAY \$3,264.44

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1433649
Invoice Date : 1/25/2021
Total Due : \$2,967.67
AFTER 2/24/2021 PAY \$3,264.44

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 697915
BU ID : LV-CR
Case No. : A-18-785917-C
Case Name : WLAB Investment, LLC vs. TKNR, Inc.

1353



Litigation
SERVICES

3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1445682	3/9/2021	733675
Job Date	Case No.	
3/8/2021	A-18-785917-C	
Case Name		
WLAB Investment, LLC vs. TKNR, Inc.		
Payment Terms		
Net 30		

Statement for the Record:

Nonappearance of Amin Sani

465.00

TOTAL DUE >>>

\$465.00

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

AFTER 4/8/2021 PAY

\$511.50

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1445682
Invoice Date : 3/9/2021
Total Due : \$465.00
AFTER 4/8/2021 PAY \$511.50

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 733675
BU ID : LV-CR
Case No. : A-18-785917-C
Case Name : WLAB Investment, LLC vs. TKNR, Inc.

1355

INVOICE

1 of 1

**Litigation**
SERVICES3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.comMichael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No.	Invoice Date	Job No.
1442656	2/24/2021	728351
Job Date	Case No.	
2/22/2021		
Case Name		
Payment Terms		
Net 30		

^ Evidentiary Hearing

223.56

TOTAL DUE >>>**\$223.56**

AFTER 3/26/2021 PAY

\$245.92

Description: Print x 4, assembled in binders with exhibits tabs

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755*Please detach bottom portion and return with payment.*Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104Invoice No. : 1442656
Invoice Date : 2/24/2021
Total Due : \$223.56
AFTER 3/26/2021 PAY \$245.92Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**Job No. : 728351
BU ID : LV-TRIAL
Case No. :
Case Name :

1357

INVOICE

1 of 1

**Litigation**
SERVICES3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.comMichael Matthis, Esq
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No.	Invoice Date	Job No.
1444355	3/3/2021	713607
Job Date	Case No.	
2/22/2021		
Case Name		
Animal Care Clinic, Inc. vs. Gama, Michaela		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
Michaela Gama

884.10

TOTAL DUE >>>**\$884.10**Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

AFTER 4/2/2021 PAY

\$972.51

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755*Please detach bottom portion and return with payment.*Michael Matthis, Esq
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104Invoice No. : 1444355
Invoice Date : 3/3/2021
Total Due : \$884.10
AFTER 4/2/2021 PAY \$972.51Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**Job No. : 713607
BU ID : LV-CR
Case No. :
Case Name : Animal Care Clinic, Inc. vs. Gama, Michaela**1359**



Litigation
SERVICES

3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1444451	3/3/2021	713619
Job Date	Case No.	
2/24/2021		
Case Name		
Animal Care Clinic, Inc. vs. Gama, Michaela		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
Nancy Smith

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

780.30
TOTAL DUE >>> \$780.30

AFTER 4/2/2021 PAY \$858.33

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1444451
Invoice Date : 3/3/2021
Total Due : \$780.30
AFTER 4/2/2021 PAY \$858.33

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 713619
BU ID : LV-CR
Case No. :
Case Name : Animal Care Clinic, Inc. vs. Gama, Michaela

1361



Litigation
SERVICES

3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1444460	3/3/2021	713613
Job Date	Case No.	
2/23/2021		
Case Name		
Animal Care Clinic, Inc. vs. Gama, Michaela		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Michelle Montoya

658.05

TOTAL DUE >>>

\$658.05

AFTER 4/2/2021 PAY

\$723.86

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1444460
Invoice Date : 3/3/2021
Total Due : \$658.05
AFTER 4/2/2021 PAY \$723.86

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 713613
BU ID : LV-CR
Case No. :
Case Name : Animal Care Clinic, Inc. vs. Gama, Michaela

1363

Exhibit K

Exhibit K

INVESTPRO REALTY
3553 S VALLEY VIEW BLVD
LAS VEGAS, NV 89103

WELLS FARGO BANK, N.A.
CALIFORNIA
WELLSFARGO.COM
16-24/1220
16-24/1220

21582

10/23/2020

PAY TO THE
ORDER OF

Neil D Opfer

Five thousand and 00/100*****

\$ **5,000.00

Neil D Opfer

DOLLARS

VOID AFTER 90 DAYS

MEMO

expert materials for Dr. Opfer.-consulting fee retain

INVESTPRO REALTY

10/23/2020

Neil D Opfer

21582

Date
10/23/2020

Type
Bill

Reference

Original Amount
5,000.00

Balance Due
5,000.00

Payment
5,000.00
5,000.00

Check Amount

Office Checking - 683 expert materials for Dr. Opfer.-consulting fee retainer

5,000.00

LMP100 M/P CHECK

IN THE SUPREME COURT OF NEVADA

BENJAMIN B. CHILDS;

Petitioner,

vs.

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

Respondent,

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
KENNETHZHONG LIN aka WHONG
K. LIN aka CHONG KENNY LIN aka
ZHONG LIN, an individual, and LIWE
HELEN CHEN aka HELEN CHEN, an
individual and YANQIU ZHANG, an
individual and INVESTPRO LLC dba
INVESTPROREALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and
JOYCE A. NICKRANDT, an individual,
and INVESTPROINVESTMENTS LLC,
a Nevada Limited Liability Company,
and INVESTPROMANAGER LLC, a
Nevada Limited Liability Company and
JOYCE A. NICKDRANDT, an
individual and does 1through 15 and roe
corporation I-XXX;

Real Party in Interest.

CASE NO.: 82967

DC Case No.: A-18-785917-C
Dept. No.: XIV

DC Judge: Hon. Adriana Escobar

Appeal from the Eighth Judicial District Court of the State of Nevada in and for
the County of Clark

The Honorable Adriana Escobar, District Judge

APPENDIX VOLUME VII

////

**APPENDIX
VOLUME VII**

CHRONOLOGICAL INDEX

<u>Document Name</u>	<u>Date Filed</u>	<u>Vol.</u>	<u>Page</u>
Amended Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment	04/07/2021	VII	1367-1409
Minute Order Granting Benjamin Childs' Motion to Withdraw as Attorney for Plaintiff / Counterdefendant	04/07/2021	VII	1410-1411
Transcript of March 11, 2021 Proceedings	04/15/2021	VII	1412-1450

Heather S. Smith

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 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
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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.

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
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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.

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?
10 12. . . A. . Yes. . He didn't go to anything I didn't
11 13 inspect during 2017 too.
12 14. . . Q. . So he inspected the same areas you
13 15 inspected?
14 16. . . A. . Yes, yes.

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

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

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

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

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

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

28 22. . . Q. . And then the second line down, the first
29 sentence begins, "Items complained about in the Sani
30 report were open and obvious in the roof area, attic
31 area, and on the exterior/interior of the property."
32 Page 318

* * *

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.

29 *Squatters or Tenants Could Have Damaged the Property*

30 51. Mr. Miao admitted that multiple third parties could have potentially damaged the
31 Property. The Property has a historic problem with squatters during the time that Plaintiff owned
32 it:

33 ·12· · · Q· ·Do you generally have a squatter problem
34 ·13 with the property?

35 ·14· · · A· ·Yes· As a matter of fact, today I just
36 ·15 saw the one text message that said one -- some
37 ·16 people go to my apartment.

38 *Id.* at 110:12-16. He also admitted that tenants could have damaged the Property while they

1 were occupying it:

2 .4. . . Q. . Okay. . So the tenant in this context would
3 .5 have damaged the unit at the time that you owned it;
4 .6 is that fair?
5 .7. . . A. . Maybe. . Yes.
6 .8. . . Q. . Okay. . So some of the -- so the damage
7 .9 that was to the water heater system, could the
8 10 tenant have damaged that as well?
9 11. . . A. . Yes.
10 12. . . Q. . And then he could have damaged the cooler
11 13 pump and the valve as well; is that correct?
12 14. . . A. . Yes.
13 15. . . Q. . Okay. . Then on 122, these are all issues
14 16 that the tenant could have damaged; is that correct?
15 17. . . A. . Yes.
16 18. . . Q. . And then the same through for 145; is that
17 19 right?
18 20. . . A. . Yes.

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

13 *No Evidence That Defendants Knew of Alleged Conditions*

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

17 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at
18 253:17-19.

19 54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
20 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no
21 evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at
22 301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues
23 with the duct work when they owned the Property. *Id.* at 314:5-19. He also recognized the
24 deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to
25 when TKNR owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 –
26 322:3-6.

27 55. Mr. Miao recognized that a 63-year-old property could have issues that were not
28 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.

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
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. 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

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

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

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

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

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

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

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

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

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

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

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

27 ¹ The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the frivolous nature
28 of the pleading since Mr. Miao requested TKNR to install these for Plaintiff.

1 well as possible asbestos.

2 26. Mr. Miao noted that there were cracks in the ceramic floor tiles and visible cracks
3 in the concrete foundation, which were open and obvious.

4 27. Mr. Miao admitted that he could also have seen the dryer vent during his
5 inspection.

6 28. Mr. Miao admitted that he could have followed up on the issues identified in the
7 SRPDF that included the HVAC and the permits.

8 29. Similarly, Mr. Miao should have contacted the local building department as part
9 of his due diligence.

10 30. Plaintiff was also on notice of the potential for mold and the requirement to get a
11 mold inspection.

12 31. Despite actual knowledge of these issues, Plaintiff did not elect to have a
13 professional inspection done.

14 32. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to
15 protect itself by getting an inspection.

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

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

19 35. Plaintiff failed to differentiate between conditions prior to when TKNR owned the
20 Property, while it owned it, and those afterwards.

21 36. No dispute exists that TKNR did not need permits for the interior work it had
22 done to the Property.

23 37. Plaintiff has always been trying to lease the Property despite not doing any of the
24 repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are
25 underlying conditions with the Property.

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

1 it does not tell prospective tenants about them.

2 39. Mr. Miao admitted that multiple third parties could have potentially damaged the
3 Property.

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

6 41. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
7 moisture conditions. Additionally, he also admitted that there is no evidence that Defendants
8 knew about the alleged issues with the plumbing system. He also admitted that he did not know
9 if Defendants knew about the alleged issues with the duct work when they owned the Property.
10 He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between
11 conditions prior to when TKNR owned the Property, while it owned it, and those afterwards.

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

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

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

22 45. Plaintiff was encouraged to inspect the property, and they did not do it. It was a
23 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff
24 was strongly encouraged to conduct the inspection, and they did not want to.

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

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

otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.

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

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

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

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

1 50. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent
2 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
3 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
4 of escrow, and the information regarding Property was reasonably accessible to the buyer.
5 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d
6 104, 111 (Nev. 2018).

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

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

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

1 disposition).

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

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

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

21 57. “On its own, the court may order an attorney, law firm, or party to show cause
22 why conduct specifically described in the order has not violated Rule 11(b).” *Id.* at 11(c)(3). “A
23 sanction imposed under this rule must be limited to what suffices to deter repetition of the
24 conduct or comparable conduct by others similarly situated. The sanction may include
25 nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and
26 warranted for effective deterrence, an order directing payment to the movant of part or all of the
27 reasonable attorney fees and other expenses directly resulting from the violation.” *Id.* at
28 11(c)(4).

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

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

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

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

27 *Id.* “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any
28 credible evidence at trial.’” *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)

1 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

2 77. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The
3 findings of fact are incorporated by reference.

4 78. Plaintiff's claim is clearly frivolous: (1) where the pleading was not "well
5 grounded in fact and is warranted by existing law or a good faith argument for the extension,
6 modification or reversal of existing law", and (2) Plaintiff's attorney continued to make frivolous
7 claims. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff
8 and its counsel, which includes an award attorneys' fees to Defendants.

9 79. Alternatively, the elements of an abuse of process claim are: "(1) an ulterior
10 purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of
11 the legal process not proper in the regular conduct of the proceeding." *Posadas v. City of Reno*,
12 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). Abuse of process can arise from both civil and
13 criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice,
14 want of probable cause, and termination in favor of the person initiating or instituting
15 proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit*
16 *Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts
17 § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse
18 of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

19 80. Under either Rule 11, Plaintiff brought and maintained this action without
20 reasonable ground. NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law illustrate
21 that Plaintiff brought or maintained this claim without reasonable grounds, which justifies an
22 award of attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

23 81. The court intends to award to the Defendants the reasonable expenses, including
24 attorneys' fees and costs, incurred for defending this lawsuit under Rule 11. This sanction is
25 limited to what suffices to deter repetition of the conduct or comparable conduct by others
26 similarly situated.

27 Based on the foregoing, the Court GRANTS Defendants Motion, DENIES the
28 Counterclaim, and GRANTS attorneys' fees and costs to Defendants pursuant to Nevada Rule of

Civil Procedure 11.

IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that the Motion is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that the Countermotion, including the 56(f) Countermotion, is **DENIED**. This is a 2018 case. Discovery ended October 30, 2020. This Court will not agree to enlarge discovery.

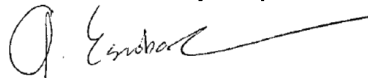
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that Defendants are awarded attorneys' fees and costs pursuant to Rule 11. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this is a final order related to the claims and counterclaim. This Court directs entry of a final judgment of all claims.

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

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

Dated this 7th day of April, 2021



THE HON. ADRIANA ESCOBAR
DISTRICT COURT JUDGE

158 436 3E2D 40F2
Adriana Escobar
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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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)

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

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18 BENJAMIN CHILDS

ben@benchilds.com

19 Nikita Burdick

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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

Location : District Court Civil/Criminal Help

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

Case Type: **Other Real Property**
Date Filed: **12/11/2018**
Location: **Department 14**
Cross-Reference Case Number: **A785917**
Supreme Court No.: **82835**
83051

Defendant	Chen, Liwe Helen <i>Also Known As</i> Chen, Helen	Lead Attorneys Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Cheng, Man Chau	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Investpro Investments I LLC	Nikita R. Pierce <i>Retained</i> 702-481-9207(W)
Defendant	Investpro LLC <i>Doing Business As</i> Investpro Realty	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Investpro Manager LLC	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Lin, Zhong Kenny <i>Also Known As</i> Lin, Chong Kenny <i>Also Known As</i> Lin, Ken Zhong <i>Also Known As</i> Lin, Kenneth Zhong <i>Also Known As</i> Lin, Kenny Zhong <i>Also Known As</i> Lin, Whong K <i>Also Known As</i> Lin, Zhong	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Nickrandt, Joyce A	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	TKNR Inc	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Wong, Chi On <i>Also Known As</i> Wong, Chi Kuen	Michael B. Lee <i>Retained</i> 702-477-7030(W)
Defendant	Zhang, Yan Qiu	Michael B. Lee <i>Retained</i> 702-477-7030(W)

Plaintiff W L A B Investment LLC**Steven L. Day**
Retained
7023093333(W)

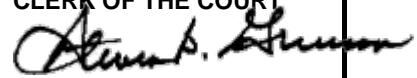
EVENTS & ORDERS OF THE COURT

04/07/2021 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Escobar, Adriana)
*Benjamin Childs' Motion to Withdraw as Attorney for Plaintiff/Counterdefendant***Minutes**

04/07/2021 3:00 AM

- Plaintiff's Counsel's Motion to Withdraw as Attorney for Plaintiff (Motion) came on for Chambers Calendar before Department 14 of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on April 7, 2021. Upon thorough review of the pleadings, this Court enters the following order: Attorney Benjamin B. Childs seeks to withdraw as counsel of record for Plaintiff W L A B Investment, LLC. On December 15, 2020, Defendants filed their Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment. On March 4, 2021, Mr. Childs filed a Motion to Withdraw as Counsel for Plaintiff. On March 10, 2021, Attorney Steven L. Day, Esq. filed a Substitution of Attorneys, substituting himself as counsel of record for Plaintiff in place and stead Mr. Childs. On March 11, the Court heard Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment. Mr. Day appeared on behalf of Plaintiff. On March 30, 2021, this Court issued an Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment. On April 7, 2021, this Court issued an Amended Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, disposing of this matter. In this Order, the Court awarded Defendants attorney fees and costs pursuant to NRCP 11. For good cause showing pursuant to EDCR 7.40(b)(2), RPC 1.16(b), and SCR 46, this Court hereby GRANTS the Motion. This Court notes the following: This matter is closed. However, although this Court awarded Defendants attorney fees and costs under NRCP 11, this Court has not made a final determination regarding the amount of attorney fees and costs Defendants are entitled to. Given that Mr. Childs brought the instant action on behalf of Plaintiff, which was the basis of this Court's award of attorney fees and costs under NRCP 11, Mr. Childs is still within the jurisdiction of this Court until this matter is fully resolved. Mr. Childs must be present for remaining motion practice, if any, on this issue, regardless, of the Court's granting of this Motion. Counsel for Plaintiff is directed to prepare a proposed order that lists all future deadlines and hearings, and includes Plaintiff's last known physical and/or mailing address, email, and phone number. 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 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: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

THURSDAY, MARCH 11, 2021

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

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

SETTLEMENT

APPEARANCES:

FOR THE PLAINTIFF: STEVEN L. DAY, ESQ.

FOR THE DEFENDANTS: MICHAEL B. LEE, ESQ.

TRANSCRIBED BY: JD REPORTING, INC.

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

2 * * * * *

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

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

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

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

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

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

19 MR. LEE: Thank you, Your Honor.

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

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

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

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

10 THE COURT: Mr. Lee.

11 MR. LEE: Yes?

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

13 MR. LEE: Oh, I apologize.

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

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

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

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

1 inspections, which he did.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 MR. LEE: Yes, Your Honor.

12 THE COURT: Thank you.

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

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

21 MR. LEE: Okay. Great.

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

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

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

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

2 THE COURT: That's okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Looking at paragraph 25, it reads,

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

1 an adverse manner.

2 This is not true based on his undisputed facts.

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

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

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

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

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

17 C, sewer line.

18 D, heating systems.

19 E, cooling systems.

20 F, smoke detectors.

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

23 H, structural issues.

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

1 J, roof and HVAC.

2 K, mold, slash, fungus.

3 And then L.

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

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

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

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

9 MR. LEE: Yeah.

10 THE COURT: Okay.

11 MR. LEE: Yeah.

12 Flooring, land, slash, foundation.

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

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

1 directly without his attorney's approval.

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

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

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

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

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

1 case.

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

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

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

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

25 10, fraudulent conveyance;

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

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

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

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

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

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

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

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

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

7 Go on, Counsel. Mr. Day.

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

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

14 MR. DAY: Judge, I certainly will.

15 THE COURT: Okay. Thank you.

16 MR. DAY: Is that better?

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

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

1 factual issues in the case.

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

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

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

10 THE COURT: That's better.

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

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

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

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

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

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

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

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

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

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

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

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

9 Mr. Lee, please.

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

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

16 MR. LEE: Yes.

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

20 Go on.

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

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

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

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

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

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

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

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

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

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

23 THE COURT: I have a couple of questions.

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

1 understand what you mean by that.

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

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

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

15 THE COURT: But, Mr. Day.

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

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

25 Is there legally a basis for not allowing something

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

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

5 THE COURT: Right.

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

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

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

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

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

12 THE COURT: Mr. Lee.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 testimony of the plaintiff in this case.

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

8 Thank you.

9 MR. DAY: Your Honor.

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

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

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

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

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

4 THE COURT: Mr. Lee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and will also entertain the Rule 11 sanctions.

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

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

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

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

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

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

9 MR. MIAO: Excuse me.

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

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

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

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

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

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

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

13 MR. MIAO: Excuse me.

14 THE COURT: Yes? Who's --

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

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

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

20 THE COURT: Excuse me.

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

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

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

2 MR. MIAO: Twenty-second.

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

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

9 MR. MIAO: But --

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

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

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

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

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

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

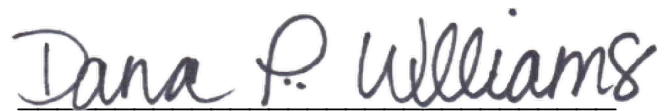
25 And ask them to not submit it twice. Because if they

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

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

4 -oOo-

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

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10 Dana L. Williams
11 Transcriber
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IN THE SUPREME COURT OF NEVADA

BENJAMIN B. CHILDS;

Petitioner,

vs.

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

Respondent,

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
KENNETHZHONG LIN aka WHONG
K. LIN aka CHONG KENNY LIN aka
ZHONG LIN, an individual, and LIWE
HELEN CHEN aka HELEN CHEN, an
individual and YANQIU ZHANG, an
individual and INVESTPRO LLC dba
INVESTPROREALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and
JOYCE A. NICKRANDT, an individual,
and INVESTPROINVESTMENTS LLC,
a Nevada Limited Liability Company,
and INVESTPROMANAGER LLC, a
Nevada Limited Liability Company and
JOYCE A.NICKDRANDT, an
individual and does 1through 15 and roe
corporation I-XXX;

Real Party in Interest.

CASE NO.: 82967

DC Case No.: A-18-785917-C

Dept. No.: XIV

DC Judge: Hon. Adriana Escobar

Appeal from the Eighth Judicial District Court of the State of Nevada in and for
the County of Clark

The Honorable Adriana Escobar, District Judge

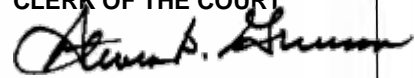
APPENDIX VOLUME VIII

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**APPENDIX
VOLUME VIII**

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

WLAB INVESTMENT, LLC,
Plaintiff,

vs.

TKNR INC., a California Corporation; CHI
ON WONG aka CHI KUEN WONG;
KENNY ZHONG LIN, aka KEN ZHONG
LIN aka KENNETH ZHONG LIN aka
CHING KENNY LIN aka ZHONG LIN;
LIWE HELEN CHEN aka HELEN CHEN;
YAN QIU ZHANG; INVESTPRO LLC dba
INVESTPRO REALTY, a Nevada Limited
Liability Company; MAN CHAU CHENG;
JOYCE A NICKRANDT; INVESTPRO
INVESTMENTS LLC, a Nevada Limited
Liability Company; INVESTPRO
MANAGER LLC, a Nevada Limited
Liability Company; JOYCE A NICKRANDT;
and DOES 1 through 15 and ROE
Corporations 1-30,

Defendants.

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

HEARING REQUESTED

**PLAINTIFF'S MOTION TO
RECONSIDER**

COMES NOW Plaintiff WLAB INVESTMENT, LLC, by and through its attorneys,
DAY & NANCE, and submits, pursuant to EDCR 2.24, the following Motion for
Reconsideration of this Court's ruling on Defendants' Motion for Summary Judgment. This

1 Motion is made and based upon all of the pleadings and papers on file herein, together with
2 the Points and Authorities, the Affidavit and deposition testimony of Frank Miao, the
3 Exhibits attached hereto and any oral argument this Court may entertain at the time of the
4 hearing of this matter.

5 DATED this 16th day of April, 2021.

6 **DAY & NANCE**

7
8 By:  13472

9 Steven Day, Esq.
10 Nevada Bar No. 3708
11 1060 Wigwam Parkway
12 Henderson, NV 89074
13 702-309-3333 – Phone
702-309-1085 – Fax
Attorneys for Plaintiff

14 **NOTICE OF MOTION**

15 TO: ALL PARTIES IN INTEREST AND THEIR ATTORNEYS OF RECORD:

16 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the
17 undersigned will bring Plaintiff WLAB Investment, LLC' s Motion to Reconsider on for
18 hearing on the _____ day of _____, 2021, before the above entitled
19 court, located at 200 Lewis Ave., Las Vegas, Nevada, at the hour of _____ .m., or as soon
20 thereafter as counsel may be heard.

21 DATED this 16th day of April, 2021.

22 **DAY & NANCE**

23
24 By:  13472

25 Steven Day, Esq.
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Attorneys for Plaintiff

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SUMMARY OF RELEVANT FACTS

In the case at bar, Defendants submit that Plaintiff waived his right to have the subject property inspected and in so doing waived his right to observe defects which would have been open and obvious upon inspection. Plaintiff argues that he did not waive his right to inspection and that he in fact inspect the subject property himself and with Defendant Kenny Lin on multiple occasions. (See affidavit of Frank Miao attached hereto as Exhibit "1", ¶ 2) Defendants submit throughout their motion for summary judgment that Plaintiff waived its right to inspect the subject property. However, as can be seen on page 4 of both the original and amended Residential Purchase Agreements, Plaintiff did not waive their right to inspect. (See Exhibit "1", ¶ 3). Residential Purchase Agreement and 2nd Residential Purchase Agreement, p. 4, attached hereto as Exhibit "8"). Nowhere in either Residential Purchase Agreement does Plaintiff waive its right to an inspection. Plaintiff waived due diligence in the second Residential Purchase Agreement as Plaintiff had already inspected the property during August and was ready to close the transaction. It is Plaintiff's contention that Defendant had intentionally covered up numerous substantial defects with the property so as to sell the property to an unsuspecting buyer such as the Plaintiff in this case. Plaintiff submits that there are numerous issues of fact as to what Defendants knew concerning the subject property and were obligated to disclose.

Frank Miao is a member of WLAB Investment, LLC with his wife, Marie Zhu who is also a member of WLAB Investment, LLC. (See Exhibit "1", ¶ 2) Mr. Miao, with his wife and through various business entities, owned at the time of this transaction 7 apartments in Las Vegas and more than 10 properties in California. (See Frank Miao deposition, p. 138, attached hereto as Exhibit "2"). Mr. Miao and his wife purchased the apartments as part of their retirement plan. (See Exhibit "1", ¶ 2) Mr. Miao has a PhD in chemical engineering.

1 (See Exhibit “2”, p. 33) His background was designing and building plants. (See Exhibit “2”,
2 p. 33) Over his career, he has worked for Westinghouse, Siemens, the Gas Research
3 Institute, ASEA Brown Boveri, one of the world’s largest power generation equipment
4 companies. (See Exhibit “2”, p. 34-37) In addition to designing and building plants, he was
5 involved in the construction and renovation of his houses and apartments. (See Exhibit “2”,
6 p. 45-46)
7

8 Mr. Miao became aware of the subject property for sale via Zillow. (See Exhibit “1”, ¶
9 3). During the inspection, he inspected the property with Mr. Kenny Lin during the
10 afternoon of August 10, 2017. (See Exhibit “1”, ¶ 3). Mr. Miao asked Mr. Lin about a small
11 crack in the outside sidewalk. (See Exhibit “1”, ¶ 3). Mr. Lin said that they had purchased
12 the property through an auction but that the property had been entirely rehabilitated. (See
13 Exhibit “1”, ¶ 3). Mr. Miao checked out Mr. Lin’s company, InvestPro. (See Exhibit “1”, ¶ 3).
14 InvestPro reportedly focused on the customer and further represented that their vendors
15 were licensed and professional who complete cleaning, painting and or make repair when
16 necessary which Mr. Miao liked. (See Exhibit “1”, ¶ 3). InvestPro was according to Lin one
17 of the largest realtors in Chinatown. (See Exhibit “1”, ¶ 3). After inspecting the property
18 with Mr. Lin and based upon the representations of Mr. Lin, Mr. Miao told his wife to go
19 ahead and sign the purchase agreement after the August 10, 2017 inspection. (See Exhibit
20 “1”, ¶ 3). Ms. Marie Zhu e-signed the Agreement on August 11, 2017 with the help of Kenny
21 Lin and Le Wei Chen from InvestPro who were the buyer’s agents. (See Exhibit “1”, ¶ 3)
22 (August 11, 2017 Resident Purchase Agreement attached as Exhibit “8” to Plaintiff’s Motion
23 for Reconsideration). The form had previously been completely prepared by the InvestPro
24 agents. (See Exhibit “1”, ¶ 3). During the inspection, Mr. Miao informed Mr. Lin that the
25 units needed to have proper GFCI outlets and that smoke, combustible gas and CO detectors
26 needed to be installed since they were required by law. (See Exhibit “1”, ¶ 3). When Ms.
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1 Marie Zhu signed the second Residential Purchase Agreement on September 5, 2017, due
2 diligence was waived as Mr. Miao had already completed inspections of the subject property.
3 (September 5, 2017 Residential Purchase Agreement attached as Exhibit “8” to Plaintiff’s
4 Motion for Reconsideration).

5 After the Residential Purchase Agreement was e-signed, Mr. Miao visited and
6 inspected the triplex additional times prior to closing. (See Exhibit “1”, ¶ 4). Ceramic tile
7 had been laid in the kitchen, living room, hallway and bathrooms. (See Exhibit “1”, ¶ 4).
8 Laminated wood flooring had been placed in all the bedrooms. (See Exhibit “1”, ¶ 4). Mr.
9 Miao did not notice any issues with the flooring except for a few small cracks in the ceramic
10 tile in Unit C. (See Exhibit “1”, ¶ 4). The floor was not buckling in any of the units. (See
11 Exhibit “1”, ¶ 4). Mr. Miao also did not notice any cracking in the walls inside the triplex
12 during his inspections. (See Exhibit “1”, ¶ 4). The units did look as that they had been
13 recently renovated. (See Exhibit “1”, ¶ 4). At no time during Mr. Miao’s initial inspection of
14 the triplex did Mr. Lin report that there were significant issues with the foundation and
15 earth movement or that the sewer line was broken causing sewer water backup. (See Exhibit
16 “1”, ¶ 4).

17 When considering the purchase of the subject triplex, Mr. Miao asked Kenny Lin to
18 be their buyer’s agent. (See Exhibit “1”, ¶ 5). After the Residential Purchase Agreement was
19 e-signed, Mr. Miao found out Mr. Lin had assigned another agent in his office, Helen Chen,
20 to represent Plaintiff WLAB Investment. (See Exhibit “1”, ¶ 5). It was Lin’s and InvestPro’s
21 handyman who had rehabilitated the triplex by covering up the many issues with the
22 building. (See Exhibit “1”, ¶ 5). In hindsight, understanding that Lin knew too much about
23 the undisclosed problems with the building, he probably wanted nothing to do with
24 representing Mr. Miao’s company. (See Exhibit “1”, ¶ 5).

1 After WLAB purchased the 2132 Houston Drive property, Mr. Miao retained
2 InvestPro as the property manager as they had been for the seller since they got their triplex
3 in 2015. (See Exhibit "1", ¶ 6). Mr. Miao went to the InvestPro Christmas party during
4 December, 2017. (See Exhibit "1", ¶ 6). At the party, Lin explained to Mr. Miao that they
5 were buying properties in auctions, then rehabilitate and "flipping" the properties and
6 making large amounts of money. (See Exhibit "1", ¶ 6). A number of Lin's investors were
7 present during the party and also confirmed that they were making a lot of money. (See
8 Exhibit "1", ¶ 6). Lin explained that he puts investors together to buy properties for the
9 purpose of flipping the properties. (See Exhibit "1", ¶ 6). Lin invited Mr. Miao to joint his
10 "flipping fund." (See Exhibit "1", ¶ 6). Lin explained that Mr. Miao needed only invest some
11 money and that InvestPro would do everything from buying the properties to remodeling
12 and flipping them. (See Exhibit "1", ¶ 6). He described it like a mutual fund where he could
13 get a very good return. (See Exhibit "1", ¶ 6). Lin also mentioned that the 2132 Houston
14 Drive property was one of the projects in the "flipping fund." (See Exhibit "1", ¶ 6).
15 Investors did not need to know anything about the properties. (See Exhibit "1", ¶ 6). They
16 simply invested money and Investpro handled the rest like a mutual fund. (See Exhibit "1",
17 ¶ 6). The mutual fund was also referenced in InvestPro advertisements in local newspapers.
18 (See Exhibit "1", ¶ 6).

21 During approximately June of 2018, the tenant in unit A reported that the fuse to
22 Unit A kept burning out. (See Exhibit "1", ¶ 7). The tenant reported the issue to InvestPro,
23 the property manager. (See Exhibit "1", ¶ 7). InvestPro sent their handyman to fix the
24 problem. (See Exhibit "1", ¶ 7). The handyman's fix was apparently to disconnect some of
25 the other circuits to the fuse which result in the tenant not being able to use all outlets. (See
26 Exhibit "1", ¶ 7). After complaining to Mr. Miao about the problem, Mr. Miao hired a
27 licensed electrical contractor to look at the issue. (See Exhibit "1", ¶ 7). At that time, the
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1 contractor discovered that InvestPro's handyman had disconnected circuits from the fuse.
2 (See Exhibit "1", ¶ 7). The contractor also learned that when the window ACs were installed,
3 Defendants had piggybacked the AC circuit onto other circuits causing an overload on the
4 fuse without the required permit. (See Exhibit "1", ¶ 7). The electrical panel further did not
5 have sufficient electrical wattage to power the unit with the addition of the AC units. (See
6 Exhibit "1", ¶ 7). InvestPro's handyman is not a licensed professional as InvestPro had
7 represented in their website. (See Exhibit "1", ¶ 7). None of this was disclosed by Lin to Mr.
8 Miao prior to the purchase of the triplex. (See Exhibit "1", ¶ 7). Mr. Miao approached Lin
9 with the contractor's bid asking for \$10,000.00 to fix the electrical problem. (See Exhibit
10 "1", ¶ 7). Lin said that it was Mr. Miao's problem. (See Exhibit "1", ¶ 7). Mr. Miao ended up
11 paying for the repair. (See Exhibit "1", ¶ 7).
12

13 Around October of 2018, water was dripping from unit C's ceiling during hot sunny
14 days. (See Exhibit "1", ¶ 8). The ceiling was opened up which revealed that Defendants had
15 installed a dryer duct dumping high moisture exhaust gas into the attic instead of venting to
16 outside of the building which was required by law. (See Exhibit "1", ¶ 8). Mr. Miao also
17 found that the air conditioning ductwork inside the ceiling was not insulated which is also
18 unlawful. (See Exhibit "1", ¶ 8). Later, Mr. Miao discovered that when Defendants replaced
19 swamp cooler with AC, they left the uninsulated swamp cooler duct in the attic. (See Exhibit
20 "1", ¶ 8). When the highly moist gas from the dryer exhaust cooled with cool air coming
21 from the uninsulated AC duct, condensation occurred causing water dropping onto the unit
22 C ceiling. (See Exhibit "1", ¶ 8). The wet insulation in the attic was black and no longer
23 working. (See Exhibit "1", ¶ 8). Mr. Miao hired LVAC to put in new insulated ducting and
24 hired Home Depot to reinsulate the attic. (See Exhibit "1", ¶ 8). Mr. Miao found that Unit B
25 had the same issue with the dryer vent dumping into the attic. (See Exhibit "1", ¶ 8). In Unit
26 A, the dryer vent dumped into the wall between two studs and also eventually dumped into
27
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1 the attic. (See Exhibit “1”, ¶ 8). None of this was reported by Lin prior to Plaintiff closing on
2 the triplex. (See Exhibit “1”, ¶ 8).

3 During the last several months, Mr. Miao has become aware of the condition of the
4 foundation. (See Exhibit “1”, ¶ 9). On February 16, 2021, the flooring in one of the
5 bedrooms in Unit B was pulled up. (See Exhibit “1”, ¶ 9). The laminate wood flooring
6 installed by Kenny Lin/InvestPro’s handyman had been buckling which prompted Mr. Miao
7 to pull up the floor. (See Exhibit “1”, ¶ 9). Upon pulling up the floor, it was observed that
8 the foundation had severely deteriorated and had been covered by laminate flooring so the
9 foundation defects would be concealed. (See Exhibit “1”, ¶ 9). The photographs attached to
10 Plaintiff’s Motion for Reconsideration as Exhibit “3” were taken by Mr. Miao and accurately
11 reflect the condition of the foundation on February 16, 2021. (See Exhibit “1”, ¶ 9). Upon
12 seeing the condition of the foundation, it explained the severe cracks in the walls that had
13 been appearing through Defendants’ pre-sale renovations. (See Exhibit “1”, ¶ 9). At the
14 time of the pre-purchase inspections of the triplex, there was no serious cracking in the
15 walls. (See Exhibit “1”, ¶ 9). The walls had been covered the plaster and wall coverings to
16 hide the cracks and other wall defects. (See Exhibit “1”, ¶ 9). After closing, cracks started
17 developing again. (See Exhibit “1”, ¶ 9). The photographs of the wall cracks attached to
18 Plaintiff’s Motion for Reconsideration as Exhibit “4” were taken by Mr. Miao. (See Exhibit
19 “1”, ¶ 9).

22 Before the tenant in Unit C moved out August of 2020, he complained of slow
23 drainage issues with the unit, particularly in the kitchen and bathroom. (See Exhibit “1”, ¶
24 10). The tenants in units B and C had complained about drainage issues as early as May or
25 June of 2020. (See Exhibit “1”, ¶ 10). When Nicholas Quioz, the tenant in Unit A, moved
26 out, he explained to Mr. Miao that he had moved into the unit during April of 2017. (See
27 Exhibit “1”, ¶ 10). He reported to InvestPro that sewage water had overflowed into Unit A.
28

1 (See Exhibit “1”, ¶ 10). He reported that InvestPro had spent several weeks trying to open
2 the sewer line. (See Exhibit “1”, ¶ 10). The handyman working on the sewer line explained
3 to Mr. Quioz that the sewer line was broken. (See Exhibit “1”, ¶ 10). Attached to Plaintiff’s
4 Motion for Reconsideration as Exhibit “7” is a photograph taken by Mr. Miao of sewage
5 backed up into Unit C’s bathtub. (See Exhibit “1”, ¶ 10). Lin said nothing about a broken
6 sewer line prior to or after closing. (See Exhibit “1”, ¶ 10).
7

8 That during the week of March 8, 2021, a next-door neighbor explained to Mr. Miao
9 that he had been a tenant of the building during 2016 or 2017. (See Exhibit “1”, ¶ 11). After
10 he moved in, the floor buckled, and sewage backed up. (See Exhibit “1”, ¶ 11). He called
11 InvestPro who did nothing about the problem, so he moved out. (See Exhibit “1”, ¶ 11).
12

13 The property purchased by WLAB Investments was one of the homes purchased by
14 Lin’s flipping fund. (See Exhibit “1”, ¶ 12). TKNR, Inc. who was the seller of the property
15 and which constituted a group of investors who had been put together by Lin and InvestPro.
16 (See Exhibit “1”, ¶ 12). In the disclosure made by the seller attached to Defendants’ Motion
17 for Summary Judgment, the seller states that they have never visited the property. (See
18 Exhibit “1”, ¶ 12). This is because the property was one of Mr. Lin’s flipping fund properties.
19 (See Exhibit “1”, ¶ 12). Lin handled everything including taking his share of the profit from
20 the sale. (See Exhibit “1”, ¶ 12). It was Lin/InvestPro’s handyman who made the repairs to
21 the subject property. (See Exhibit “1”, ¶ 12). Lin was aware that the building was cracking.
22 (See Exhibit “1”, ¶ 12). More importantly, Lin was aware of the condition of the foundation
23 as it was InvestPro’s handyman who covered it up. (See Exhibit “1”, ¶ 12). This is why Lin
24 did not want to represent both the buyer and the seller in this transaction as he was aware of
25 the many undisclosed problems with the property. (See Exhibit “1”, ¶ 12).
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1 Concerning the condition of the foundation, Lin and InvestPro were more than aware
2 of what was going on. (See Exhibit “1”, ¶ 13). Mr. Miao had an opportunity to review a
3 number of the handyman receipts which have been produced in the litigation one of which
4 acknowledges that the handyman “remove 2 rooms laminate and level concrete.” (DEF 23)
5 This took place on April 19, 2017. (See Exhibit “1”, ¶ 13). When the flooring began buckling
6 again, Mr. Miao pulled the wood laminate up only to find the condition of the foundation
7 that the handyman had covered to be extremely poor rendering the entire triplex
8 structurally unsound. (See Exhibit “1”, ¶ 13). The condition of the floor was also consistent
9 with the recent reports of tenants that the sewer line was broken resulting in sewage water
10 leakage backing up under the foundation. (See Exhibit “1”, ¶ 13). As reported by
11 Defendants’ expert Neil Opfer, the triplex sits on expansive clay which swells up when wet
12 and then compresses when dry. (See Exhibit “1”, ¶ 13). These conditions cause earth
13 movements resulting in foundation and wall cracking. (See Exhibit “1”, ¶ 13).

14 Mr. Miao has a PhD in chemical engineering. (See Exhibit “1”, ¶ 14). Because sewage
15 gases are so dangerous, Mr. Miao removed all tenants from the property immediately and
16 has not leased units to anyone else. (See Exhibit “1”, ¶ 14). Sewage gas is a complex mixture
17 of toxic and nontoxic gases produced by the decomposition of organic household sewer
18 water. (See Exhibit “1”, ¶ 14). The gases may include hydrogen sulfide, ammonia, methane,
19 esters, carbon monoxide, sulfur dioxide and nitrogen oxides. (See Exhibit “1”, ¶ 14). Sewer
20 gases are of concern due to health effects and potential for creating fire or explosions. (See
21 Exhibit “1”, ¶ 14). Exposure to sewer gas can happen if the gas seeps in via a leaking
22 plumbing drain, vent pipe or even through cracks in a building’s foundation. (See Exhibit
23 “1”, ¶ 14). At higher concentrations (> 300 ppm) hydrogen sulfide can cause loss of
24 consciousness and death. Very high concentrations (> 1000 ppm) can result in immediate
25 collapse, occurring after a single breath. (See Exhibit “1”, ¶ 14). Carbon monoxide is a
26
27
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1 colorless, odorless, and tasteless toxic and flammable gas. (See Exhibit "1", ¶ 14). At
2 concentrations above 150 to 200 ppm, disorientation, unconsciousness and death are
3 possible. (See Exhibit "1", ¶ 14). Sewer gas can contain methane, hydrogen sulfide and
4 carbon monoxide all of which are highly flammable and potentially explosive substances.
5 (See Exhibit "1", ¶ 14).
6

7 As a result of having a broken sewer line and significant issues with the foundation,
8 as stated, Mr. Miao has refused to lease triplex units to other tenants. (See Exhibit "1", ¶
9 15). What concerns Mr. Miao is that Lin knowingly put a tenant in the Triplex knowing that
10 the sewage line was broken and presented an extreme health and safety risk to tenants. (See
11 Exhibit "1", ¶ 15). Lin also sold the property to Mr. Miao's company without disclosing the
12 condition of the foundation and sewer line. (See Exhibit "1", ¶ 15). Lin's knowledge of the
13 broken sewer line explains other actions prior to Plaintiff purchasing the triplex. (See
14 Exhibit "1", ¶ 15). During one of his inspections of the subject property with Lin by his side,
15 Mr. Miao noticed that the units did not have smoke, CO or combustible gas detectors. (See
16 Exhibit "1", ¶ 15). Mr. Miao reminded Lin that this was against the county law and asked
17 him to install detectors in each of the units. (See Exhibit "1", ¶ 15). Lin had CO and smoke
18 detectors installed. (See Exhibit "1", ¶ 15). However, after Plaintiff's purchase of the triplex,
19 Mr. Miao noticed that Linn had removed the CO and combustible gas detectors. (See
20 Exhibit "1", ¶ 15). Lin has obviously concerned the CO detectors would sound the alarm
21 knowing that the sewer line was broken, and the foundation cracked. (See Exhibit "1", ¶ 15).
22 Sewage gas seeps into the bedrooms through the cracked foundation. (See Exhibit "1", ¶ 15).
23
24

25 In going through the amended order, Mr. Miao noticed a number of factual
26 representations that he submits are at issue in the case. (See Exhibit "1", ¶ 16).

27 (a) p. 2, ¶ 1. "2132 Houston Drive, Las Vegas, NV 89104 ("Property") was
28 originally constructed in 1954." *On November 18, 1994, Cecilia Hernandez, with her*

1 family, bought the triplex for \$117,000.00. They leased the property out for rental income.
2 Before or during their ownership, the sewage line broke leaking sewage water under the
3 foundation. The soil has expansive clays. As Defendants' expert Opfer wrote in his report:

4 The ongoing groundwater condition can impact ground movement particularly
5 with the presence of expansive clays." The point of this discussion is that this
6 then impacts the performance of the walls and concrete floor slabs as to
7 cracking to a significant degree. Cracked floor tile can be replaced in one year
8 only to have the same issues appear again in the next year or year after that as
9 an example. Standard construction materials such as stucco, drywall, floor
10 tile, and concrete will all tend to crack when subjected to these forces. Again,
11 cracking in these materials is seen all over the Las Vegas Valley.

12 (See Opfer report, pp. 9-10).

13 Most likely, clay pipe was used for the sewer system connection. . . . It is a
14 well-known fact that vitrified clay pipe is relatively weak and can be easily
15 penetrated by tree roots.

16 (See Opfer report, p. 14).

17 According to Opfer, "the issue with expansive clay is that it can swell up (expand) in the
18 presence of water and then compress when it dries out. Note that expansive clays have
19 created residential-foundation problems in many areas." The expansive clay soil with
20 water leaks from a broken sewage line led to earth under the foundation moving and
21 cracking the foundation. The earth movement broke more sewer line and lead to more
22 water leakage causing more slab cracks. The more tenants they had in the apartments, the
23 more sewage water generated and leaked under the foundation causing more foundation
24 cracks and broken sewage line. The Hernandez family used the property as collateral for
25 a \$291,000.00 loan to fix the problems. However, the loan was not sufficient to fix the
26 problems with the property. The tenants moved out, so the owners did not have rental
27 income to make the mortgage payment. The bank found out the triplex units could not be
28 rented out to tenants because the units were dangerous because of the foundation and
sewage gas. The sewage line needed to be rebuilt along with the foundation and

1 everything else. This is why on September 10, 2015, the bank foreclosed and started the
2 auction at \$52,000.00 (the land value) in spite of their \$291,000.00 loan. Kenny Lin's
3 flipping fund, with TKNR as the buyer, won the auction on 10/9/2015 and listed the triplex
4 for sale three months later at \$188,000.00 on 1/9/2016. Lin/InvestPro knew of the
5 apartment major defects and won the apartment at a very deep discount of market value.
6 Lin/InvestPro rehabilitated the property though they did not fix the foundation or sewage
7 problems. They just had the unlicensed InvestPro handyman cover major defects up and
8 put the property back on the market for \$188,000.00 to make a huge flipping profit.

10 (b) p. 3, ¶ 4. "Ms. Zhu waived the Due Diligence condition." Under
11 Paragraph 7(D), "Buyer is deemed to have waived the right to that inspection and Seller's
12 liability for the cost of all repairs that inspection would have reasonably identified had it
13 been conducted, except as otherwise provided by law." *It was Helen Chen and Kenny Lin*
14 *from InvestPro who prepared the purchase agreement and checked the box for home*
15 *inspection by Buyer and waiving other inspection. Plaintiff did not waive right to inspect*
16 *as evident in both the August 11, 2017 and September 14, 2017 Purchase Agreements. In*
17 *fact, Mr. Miao inspected the property with Kenny Lin on August 10, 2017, before the*
18 *Purchase Agreement was e-signed on August 11, 2017, pointing out various issues with the*
19 *Triplex that needed to be fixed before closing. As stated, Mr. Miao could not have*
20 *uncovered the various defects in the property that are at issue as they were covered up by*
21 *Lin, acting on behalf of Defendant TKNR. The defects were serious and would have only*
22 *been revealed during an inspection that allowed destructive opening up of the unit as this*
23 *purchase agreement did not allow. Further, Mr. Miao's understanding of the law is that*
24 *an inspection by a licensed inspector is not required for multi-family rental properties and*
25 *that Lin is not relieved of his responsibility to disclose known conditions which affect the*
26 *value of the property.*

1 (c) p. 3, ¶ 5. "Ms. Zhu also waived the energy audit, pest inspection, roof
2 inspection, septic lid removal inspection, mechanical inspection, soil inspection and
3 structural inspection." *As stated, Mr. Miao inspected the subject property on several*
4 *occasions. No non-destructive inspection would have uncovered the serious cracking and*
5 *foundations issue in the triplex. Further, this property is not on septic. The waiver checks*
6 *in the Purchase Agreement were prepared by InvestPro without notifying Mr. Miao.*

7
8 (d) p. 3, ¶ 6. "Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt
9 (collectively, "Broker" or "Broker Defendants") had "no responsibility to assist in the
10 payment of any repair, correction or deferred maintenance on the Property which may have
11 been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by
12 one party." *These individuals are the actual sellers of the property. They are the true*
13 *sellers behind alternations and "flipping. Attached as Exhibit "5" to Plaintiff's Motion is the*
14 *Flipping Fund's web page found by Mr. Miao. InvestPro's web page identifies InvestPro as*
15 *a participant in the Property purchases and not just from a realtor standpoint. The second*
16 *page of the website talks about splitting profits with the manager LLC. Lin and his*
17 *company, InvestPpro, put the deal together, sold units to investors, for a 75/25 split at the*
18 *end. It was InvestPro's Kenny Lin who participated at the auction and bought the subject*
19 *property. It was InvestPro's Kenny Lin who hired the InvestPro handyman to*
20 *"rehabilitate" the property. It was InvestPro's handyman who discovered that the sewer*
21 *line was broken. Not only did Lin push representation for the buyer to another InvestPro*
22 *realtor but at no time did Lin actually tell Mr. Miao that he had an interest in the subject*
23 *property; i.e., he was the seller.*

24
25
26 (e) p. 3, ¶ 7. "On August 2, 2017, TKNR submitted Seller's Real Property
27 Disclosure Form ("SRPDF" or "Seller's Disclosures") timely indicating all known conditions
28 of the Subject Property." *Mr. Miao did not meet Lin until August 10, 2017, at the time of*

1 *Mr. Miao's inspection of the Property. There was no communication prior to August 10*
2 *with Lin or anyone from InvestPro. Mr. Miao did not decide to go through with the*
3 *purchase of the Property until August 11, 2017. There is nothing in Seller's disclosures*
4 *referencing and broken sewer line or the structurally unsound foundation caused by earth*
5 *movements. Sellers were aware of these conditions as Kenny Lin, their representative,*
6 *covered them up.*

7
8 (f) p. 3, ¶ 7. "Despite these disclosures, Plaintiff chose not to inspect the
9 Subject Property, request additional information and/or conduct any reasonable inquires."
10 *During Mr. Miao's inspection of the property with Kenny Lin, Mr. Miao requested*
11 *information about repairs. Kenny Lin informed Mr. Miao that after they won the auction,*
12 *they did a complete rehabilitation of the property. Because of Lin's representations prior*
13 *to closing, Mr. Miao believed that Investpro had fixed all defects during rehabilitation.*

14
15 (g) p. 4, ¶ 10. "This is the second time that Ms. Zhu waived inspections for
16 the Property despite the language in the 2nd RPA that strongly advised to get an inspection
17 done." *Mr. Miao inspected the property with Kenny Lin on August 10, 2017. The original*
18 *Residential Purchase Agreement was e-signed the day after on August 11, 2017, after the*
19 *agreement had been prepared completely by Helen Chen and Kenny Lin. The Agreement*
20 *itself does not state that the buyer is waiving the home inspection. Again, the triplex had*
21 *already been inspected by Frank Miao with Kenny Lin at his side by the time the initial*
22 *Agreement had been e-signed by Ms. Zhu. The buyer cannot waive an inspection that has*
23 *already been completed. Mr. Miao inspected the property again after the initial Purchase*
24 *Agreement was signed. At no time did Mr. Miao or Ms. Zhu waive the right to inspect.*
25 *Again, both the first and second Purchase Agreements were completed by InvestPro agents*
26 *allegedly representing Plaintiff at the time of the transaction.*
27
28

1 (h) p. 4, ¶ 10. “Notably, although Ms. Zhu had not initialed the “Failure to
2 Cancel or Resolve Objections” provision in the RPA, she initialed the corresponding
3 provision in the 2nd RPA.” *WLAB inspected the property with Kenny Lin on August 10,*
4 *2017.*

5 (i) p. 4, ¶ 11. “Although Ms. Zhu had actual knowledge of the Seller’s
6 Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still
7 never did any professional inspections.” *Frank Miao did inspection with Kenny Kin and*
8 *put out correction items.*

9 (j) p. 5, ¶ 15. “Plaintiff was a sophisticated buyer who understood the
10 necessity of getting the properties inspected.” *Plaintiff did inspect the property on August*
11 *10, 2017, with Mr. Lin. The major defects were covered up and Lin had lied to Mr. Miao*
12 *about the rehabilitation.*

13 (k) p. 5, ¶ 17. “As to Paragraph 7(A), Mr. Miao specified that he believe that
14 his inspection and conversations with the tenant constituted the action necessary to deem
15 the Property as satisfactory for Plaintiff’s purchase.” *Due to defendant Kenny Lin lying to*
16 *Mr. Miao and covering up major foundation and structural defects by putting laminate*
17 *wood flooring and ceramic tile over the major defect, Mr. Miao could not discovery these*
18 *hidden defects during inspection without destructive inspection which the purchase*
19 *agreement did not allow.*

20 (l) p. 5, ¶ 18. “. . . Plaintiff had access to inspect the entire property and
21 conduct non-invasive, non-destructive inspections: . . .” *The serious foundational,*
22 *structural and sewage line issues, which were covered up with laminate wood and ceramic*
23 *floor tile, would have only been discovered with a destructive open up inspection.*

24 (m) p. 6, ¶ 19. “Prior to the purchase, Mr. Miao was always aware that the
25 Seller “strongly recommended that buyer retain licensed Nevada professionals to conduct
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1 inspections.” *Kenny Lin said nothing about retaining a licensed inspector. He knew that*
2 *Mr. Miao was inspecting the building. Mr. Lin was also aware that whether the inspector*
3 *was licensed or not, he had covered up the significant defects in the property which could*
4 *not have been discovered without pulling up the floors. After Defendants purchased the*
5 *property at auction, this property was listed more than three times from January 9, 2016*
6 *to August 10, 2017. Each time, the property was removed from escrow which meant*
7 *Sellers had to go back to the drawing board and make a better effort to cover up the*
8 *significant issues with the property. Defendants did not actually fix the defects. They*
9 *simply covered them up.*

11 (n) p. 6, ¶ 20. “Plaintiff was also aware of the language in the RPA under
12 Paragraph 7(D) that limited potential damages that could have been discovered by an
13 inspection.” *The key issue is Defendants did unlawful things and covered up problems*
14 *with the property. They put making money above tenant and investor safety.*

16 (o) p. 7, ¶ 22. “Based on his own belief, he does not believe that a
17 professional inspection is necessary for multi-tenant residential properties.” *Mr. Miao is*
18 *wondering if summary judgment was granted because the Court believes that professional*
19 *licensed inspections are required. Mr. Miao is a professional. He knows building and*
20 *apartments very well. Mr. Miao is not aware of any legal requirement that a buyer is*
21 *required to retain a licensed inspector before purchasing an apartment, in this case, a*
22 *triplex. For multi-tenant residential properties in Las Vegas involving many thousands of*
23 *units, it is virtually impossible to inspect each and every unit in 14 days which is why law*
24 *requires work on rental units to be done by licensed contractors followed by inspection and*
25 *permitting by city building and safety departments.*

27 (p) p. 8, ¶ 26. “During that time, he admitted that he noticed some issues
28 with the Property that were not up to code, finishing issues, GFCI outlets, and electrical

1 issues.” *As stated, Mr. Miao instructed Kenny Lin to put smoke and CO detectors in the*
2 *units only to find out that after the purchase, Lin had removed the CO detectors after they*
3 *were installed. Defendants had hidden some GFCI required outlets by covering up or*
4 *installing non-functioning GFCI outlets without using a licensed electrician which was*
5 *dangerous for the tenants. Defendants did not want to use a licensed electrician because a*
6 *licensed electrician would have asked to pull permits. The city inspector may have found*
7 *out about the defects and shut down the apartment.*

9 (q) p. 8, ¶ 28. “Additionally, Mr. Miao noted that there were cracks in the
10 ceramic floor tiles, *Id.* at 249: 22-25, and he was aware of visible cracks in the concrete
11 foundation, *Id.* at 269: 13-22 (aware of slab cracks), which were open and obvious.” *Mr.*
12 *Miao noticed a few cracks in the ceramic floor tiles in Unit C living room. Mr. Miao was*
13 *not able to see the foundation as it was covered with newly installed flooring. It was at*
14 *this point Lin explained to Mr. Miao that they had rehabilitated the entire triplex.*

16 (r) p. 9, ¶ 31. As to SRPDF, Plaintiff was aware that TKNR was an investor
17 who had not resided in the Property, and there were issues with the heating systems, cooling
18 systems, and that there was work done without permits and all the work was done by a
19 handyman other than the HVAC installation.” *When Mr. Miao inspected the property the*
20 *Defendant Lin, Lin explained that InvestPro had rehabilitated the property. There was no*
21 *defect found at the time of the inspection that would have raised any concern.*

23 (s) p. 9, ¶ 32. “Despite these disclosures, Mr. Miao never followed up.”
24 *There were no defects observed at the time of the inspection. They were all covered up.*

25 (t) p. 9, ¶ 33. “However, Mr. Miao also admitted that he could have
26 followed up on the issues identified in the SRPDF that included the HVAC and the permits.”
27 *SRPDF only disclosed that there was a new air conditioner but never mentioned that the*
28 *air conditioners replaced swamp coolers. Mr. Miao later learned after a leak in one of the*

1 units that the ducting had not been changed from the swamp cooler to air conditioning.
2 This was only learned after opening up the ceiling.

3 (u) p. 10, ¶ 34. "Similarly, Mr. Miao was aware that he should have contacted
4 the local building department as part of his due diligence." *There was no reason to contact*
5 *the building department as Sellers did not disclose any activity that would have required a*
6 *permit. Specifically, they disclosed a new kitchen cabinet in each unit, brand new AC*
7 *installed and three bedrooms were redone. There was no mentioned that the air*
8 *conditioning units were replacing swamp coolers which required new electrical and*
9 *plumbing which would have required a permit. If the AC units were replacing AC units,*
10 *permits would not need to be pulled. Based on the information provided by Lin and in*
11 *Sellers' disclosures, Mr. Miao was not aware of any activity that would have required a*
12 *permit. It was also learned after the walls were opened that Defendants had not properly*
13 *wired the AC units leaving wires exposed and presenting a potential fire danger.*

14 (v) p. 10, ¶ 35. "Plaintiff was on notice of the potential for mold and the
15 requirement to get a mold inspection." *This is a rental property. By law, the seller must*
16 *provide a safe, habitable apartment to the tenants. No tenant will check mold and have*
17 *professional mold inspection. Further, mold testing usually requires a destructive*
18 *inspection to verify in ceiling and behind walls.*

19 (w) p. 11, ¶ 37. "Disclosure of unknown defects not required. Form does not
20 constitute warranty duty of buyer and prospective buyer to exercise reasonable care." *Mr.*
21 *Miao's issue with Sellers' disclosures is that they failed to disclose defects that they were*
22 *aware of. The Handyman's invoice for patching the concrete underscores that the Sellers*
23 *were aware of the condition of the foundation when they sold the triplex and failed to*
24 *disclose to Plaintiff.*

1 (x) p. 12, ¶ 39. "The alleged defects identified by both parties' experts could
2 have been discovered at the time of the original purchase." *Again, the foundation, wall*
3 *cracks, AC wiring and ducting, dryer venting, were all under flooring or within the*
4 *ceilings and walls of the units. These defects would have only been uncovered with*
5 *prohibitive destructive open up inspection.*
6

7 (y) p. 13, ¶ 43. "Additionally, Mr. Miao accompanied Defendants' expert
8 during his inspection." *Defendants' expert did not show all of the pictures taken which*
9 *reflect new cracks.*

10 (z) p. 12, ¶ 44. "Mr. Miao agreed with Defendants' expert that the alleged
11 conditions identified by Plaintiff's expert were "Open and obvious":" *Mr. Miao was not*
12 *shown all of the photographs during his deposition. There were many more new cracks*
13 *observed than in 2017 at the time of Mr. Miao's inspection. The new cracks were hidden by*
14 *coating materials, dry wall, joint compounds and new floors.*
15

16 (aa) p. 13, ¶ 45. "He also agreed with Defendants' expert's finding that there
17 was no noticeable sagging in the roof." *The roof leak was not caused by sagging. It was*
18 *caused by a broken seal on the roof.*

19 (bb) p., ¶ 46. "Incredibly, Mr. Miao also recognized the deficiency in
20 Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR
21 owned the Property, while it owned it and those afterwards." *New cracks appeared after*
22 *Defendants hid the original cracking. When Mr. Miao inspected the property with Lin,*
23 *there was not nearly as much cracking as there is now. Defendants hid most of the cracks*
24 *and defects. There were dryers and washers installed in the units in 2017 were vented to*
25 *the attic. The vents ran through the walls. The venting cause moisture in the attic which*
26 *resulted in the ceilings being opened for find the leaks. It was discovered at that time,*
27
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1 after the ceilings were opened, that the dryer had been vented to the attic. Lin at no time
2 explained how the dryers had been vented.

3 (cc) p. 13, ¶ 47. “No dispute exists that TKNR did not need permits for the
4 interior work it had done to the Property.” Mr. Miao ultimately learned that the AC units
5 had replaced swamp coolers and that the ducting had not been changed to allow for AC
6 units until after the ceiling was opened up. The new plumbing and electrical for the new
7 AC units would have had to be inspected. Again, Mr. Miao did not know that the new AC
8 units did not replace other AC units. Because these units are for lease, the work should
9 have been performed by licensed contractors which is why the work was not done by
10 Defendants as it should have been. One unit had a window AC unit the installation of
11 which should have been performed by a licensed contractor with permit and inspection by
12 the city.
13

14 (dd) p. 14, ¶ 48. “Since the date it purchased the Property, Plaintiff has always
15 been trying to lease it. . . . According to Mr. Miao, the landlord must provide safe housing
16 for the tenant.” Lin and his company InvestPro were the property managers for the
17 property after Plaintiff’s purchase. Lin knowingly leased the property to tenants knowing
18 that the property was unsafe. Once Mr. Miao learned of the foundation and sewage line
19 defects, he removed all tenants until they are fixed.
20

21 (ee) p. 15, ¶ 49. “Moreover, Plaintiff does not provide any notice to the
22 tenants about its expert’s report or this litigation.” Since purchasing the property, Mr.
23 Miao has made many repairs as they are discovered with licensed contractors.
24 Specifically, once Mr. Miao found out about the foundation and sewer line defects, he
25 asked the tenants to move out immediately.
26

27 (ff) p. 15, ¶ 50. “This illustrates the lack of merit of Plaintiff’s claim, proven
28 that it has done nothing to correct the allegedly deficient conditions that are clearly not so

1 dangerous as it does not tell prospective tenants about them.” *Mr. Miao has repaired many*
2 *defects with licensed contractors. It is only with the discovery of the foundation and sewer*
3 *line defects that Mr. Miao had discontinued attempted to repair the triplex.*

4 (gg) p. 15-16, ¶ 51. “Mr. Miao admitted that multiple third parties could have
5 potentially damaged the Property.” *The major cracks in the walls and floors were not done*
6 *by third parties. The major defects were not done by third parties.*

7 (hh) p. 16, ¶ 52. “Plaintiff’s case is based on speculation that Defendants knew
8 about the alleged conditions in the Property; however, Mr. Miao admitted that there is no
9 evidence that shows Defendants knew about them.” *As stated, Mr. Miao believes there is*
10 *substantial evidence that Defendants knew about the defects.*

11 (ii) p. 17, ¶ 55. “Mr. Miao also recognized that a 63-year-old property could
12 have issues that were not caused by Defendants.” *It is not the fact that Defendants didn’t*
13 *cause the foundation or sewer issues, it is the fact that they did not disclose and hid these*
14 *issues when they sold the property to Mr. Miao’s company.*

15 (jj) p. 17, ¶ 56. “Plaintiff did not identify any discovery illustrating a
16 genuine issue of material fact that Defendants knew of the alleged issues with the Property
17 that they had not already disclosed on Seller’s Disclosures.” *Numerous photographs of*
18 *cracking floors and walls were produced in discovery which reflected cracks not present at*
19 *the time of Mr. Miao’s inspection. Additionally, the floor continues to buckle and as it did,*
20 *the floor was pulled up which revealed foundation damage as previous mentioned.*

21 (kk) p. 17, ¶ 58. “The Flipping Fund had nothing to do with Plaintiff’s
22 decision to purchase the Property.” *The subject triplex was one of the Flipping Fund*
23 *projects. As stated by Lin, the property was purchased at auction and renovated. The*
24 *Flipping Fund had everything to do with the alleged rehabilitation of the property as that*
25 *is what they do, buy, rehabilitate (cover up in this case) and sell for a large profit.*

1 (ll) p. 17, ¶ 59. "Initially, Mr. Miao contacted contractors to bid the
2 potential cost of repair for the Property and determined that it would have been
3 \$102,873.00. . . . However, Plaintiff's expert opined that the cost of repair would have been
4 \$600,000.00, although he did not provide an itemized cost of repair." *Initially, the cost of*
5 *repair to fix the electrical and ductwork inside the ceiling was \$102,873.00. However, by*
6 *the time Plaintiff's expert inspected the property, much more was known about the*
7 *property and, therefore, the cost of repair was much higher.*

9 (mm) p. 18, ¶ 60. "He denied, under the penalty of perjury, that he never
10 made an offer to settle this matter for \$10,000.00." *This statement completely*
11 *misrepresents what actually transpired. After Plaintiff purchased the property, the fuses*
12 *to the AC units kept burning out. Mr. Miao hired an electrician to figure out what the*
13 *problem was. It was learning that when Defendants installed the air conditioners, there*
14 *was not sufficient room in the electrical box to wire the air conditioners. Therefore,*
15 *Defendants' handyman piggy-backed the AC wiring onto another fuse which caused the*
16 *fuse to overload and fail. The electrician estimated the cost of repair to be \$10,000.00.*
17 *Since the electrical problem was Defendants' doing, Mr. Miao approached Lin about*
18 *paying \$10,000.00 to repair the electrical. Mr. Miao believes this offer to resolve the*
19 *electrical issue was prior to a lawsuit being filed. The condition of the wiring was not open*
20 *and obvious as suggested in paragraph 62 of the order as the wiring was hidden behind*
21 *the wall. The wall had to be opened up to discover the electrical issue.*

24 (nn) p. 24, ¶ 62. "Additionally, he specified that he noted issues with the
25 electrical system and items not up to code at the time that he did his inspection and/or that
26 any issues with the electrical system were "open and obvious" that a reasonable, professional
27 inspection could have discovered in 2017." *Defendants did not disclose electrical system*
28 *changes. They are not "open and obvious" as they were hidden behind the wall. As stated,*

1 *when Defendants changed out the swamp cooler for an air conditioner, they simply piggy-*
2 *backed the AC wiring on already existing wiring on the fuse which caused the fuse to*
3 *overload and burn out. The electrical panel was insufficient to handle the load which*
4 *required re-wiring by a licensed electrician. Further, when the AC unit was added,*
5 *additional electrical wiring was required which required a permit and inspection.*

6
7 (oo) p. 25, ¶ 63. “Additionally, he specified that he noted issues with the
8 plumbing system were “open and obvious” that a reasonable, profession inspection could
9 have discovered in 2017.” *Mr. Miao learned of the septic issue when the tenants left the*
10 *property and reported issues with the sewage. Sewage had backed up in one of the tubs*
11 *which was discovered after the tenant left. Residue from the sewage backup was found in*
12 *the tub (See Exhibit “7”). Mr. Miao further learned from the tenant in Unit A and the*
13 *former tenant that the sewage issue was something Defendants were aware of as they had*
14 *previously investigated the problem.*

15
16 (pp) p. 25, ¶ 64. “As to 31(c), Mr. Miao admitted that the Seller’s Disclosures
17 did disclose the use of a handyman, the lack of permits, and issues with the sprinklers.
18 Additionally, he specified that he noted issues with the sewer system were “open and
19 obvious” that a reasonable, professional inspection could have discovered in 2017.” *There is*
20 *no sprinkler system. The sewer issue was not open and obvious and could not have been*
21 *discovered with a typical professional inspection. Defendants were aware of the issue and*
22 *had an obligation to report the sewer problem to Plaintiff.*

23
24 (qq) p. 25, ¶ 65. The order suggests that the conditions were open and
25 obvious. *Defendants were aware of these issues and failed to disclose. These issues were*
26 *not “open and obvious.” They were discovered after Mr. Miao opened walls, ceilings and*
27 *floor coverings.*

1 (rr) p. 25, ¶ 66. "As to 31(e), Mr. Miao admitted that the Seller's Disclosures
2 did disclose issues with the heating and cooling systems, the use of a handyman, and the
3 lack of permits." *A licensed professional inspection cannot and would not discover all of*
4 *these defects. The issue with the AC wiring behind the wall was not visible without doing*
5 *some destructive investigation. At no time did Defendants disclose that their handyman*
6 *was not licensed, which is unlawful.*
7

8 (ss) p. 26, ¶ 67. "As to 31(f), this allegation illustrates the prior knowledge
9 that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to
10 obtain a professional inspection of the Property prior to purchasing it." *31(f) refers to the*
11 *fact that smoke detectors were missing at the time of the inspection. This allegation says*
12 *nothing about the serious problems with the Property that Defendants had covered up and*
13 *that were not readily detectible at the time of Mr. Miao's inspection. Obviously, Mr. Miao*
14 *did not see the foundation damage at the time of the inspection as it was covered by wood*
15 *laminate and ceramic flooring. The order implies that an inspection done by a*
16 *"professional inspector" would have noticed that serious foundation damage without*
17 *pulling up the flooring. Mr. Miao was also not aware that the HVAC system had been*
18 *changed three times until the receipts were disclosed in this case. Mr. Miao was not aware*
19 *of the shoddy and illegal electrical work that had been done and which was hidden behind*
20 *the walls. It took a tenant complaining about a fuse and the subsequent retention of a*
21 *licensed electrician to go into the wall to discover what Defendants had done. It was a*
22 *tenant and former tenant reporting about the sewage problems as well as sewage*
23 *remnants in a bathtub for Mr. Miao to become aware of that problem. It took a leaking*
24 *ceiling and opening of the ceiling before Mr. Miao became aware that Defendants had*
25 *vented the dryer exhaust to the attic and that Defendants had not properly changed out the*
26 *swamp cooler ducting for insulated air conditioning ducting. Walls had been covered so*
27
28

1 as the time of the inspection by Mr. Miao, very few if any cracks in the walls were
2 observed. However, as the foundation and walls shifted over time, the cracks in the walls
3 reappeared revealing what Defendants had covered up. To suggest that the discovery of
4 missing smoke detectors is somehow indicative of the extent of Mr. Miao's knowledge at
5 the time of the inspection is ridiculous.

6
7 (tt) p. 26, ¶ 68. "Notably, Mr. Miao admitted that no evidence showed that
8 Defendants were aware of any of these issues." *The issues were created by the Defendants,*
9 *so they obviously had knowledge.*

10 (uu) p. 26, ¶ 69. "Mr. Miao admitted that there was visible cracking on the
11 foundation, walls, and the tiles that were open and obvious at the time that Plaintiff
12 purchased the Property in 2017." *Mr. Miao did not see visible cracking on the foundation*
13 *at the time of his inspections as the foundation was covered with flooring during the*
14 *August 2017 inspections.*

15
16 (vv) p. 26, ¶ 70. "Mr. Miao admitted that he should have followed up related
17 to the permit issue prior to Plaintiff purchasing the Property." *It's as if Defendants are*
18 *suggesting that Plaintiff should have put more effort into uncovering Defendants'*
19 *deceptions. In other words, you knew that the work was done by an unlicensed*
20 *handyman. You should have assumed that the work was not done correctly or pursuant to*
21 *the law. Defendant failed to disclose anything of substance like the fact that the wiring*
22 *was improperly done when the AC units were put in. Defendant failed to disclose anything*
23 *about the dryer exhaust venting to the attic, the improper ducting after the air*
24 *conditioners were put in or that the wall coverings and flooring were covering up*
25 *significant issues with the walls and foundation. Defendants suggest that had an*
26 *inspection been done, Mr. Miao would have noticed all the problems. However, as stated,*
27 *Defendants had covered up the problems.*
28

1 (ww) p. 26, ¶ 71. “Additionally, he specified that he noted issues were “open
2 and obvious” that a reasonable, professional inspection could have discovered in 2017.” *Mr.*
3 *Miao did not see visible cracking in the foundation at the time of his inspections. Again,*
4 *Defendants had covered the problems with the foundation with flooring. The only way*
5 *Mr. Miao would have been aware of the significant issues with the foundation is if Lin told*
6 *him or if he was allowed to perform a destructive inspection which the Purchase*
7 *Agreement did not allow. Mr. Miao also did not observe wall cracks as they had been*
8 *covered up at the time of the inspections. Defendants were aware of the foundation and*
9 *wall cracks as they had covered them up. Mr. Miao was not aware that the HVAC system*
10 *had been changed out three times until the receipts were produced during discovery. The*
11 *roof leak was caused by the failure to seal the roof. The leak had nothing to do with*
12 *sagging.*

13
14
15 (xx) p. 27, ¶ 72. ““Mr. Miao admitted that there was visible cracking on the
16 foundation, walls, and the tiles that were open and obvious at the time that Plaintiff
17 purchased the Property in 2017. . . . Notably, Mr. Miao admitted that no evidence showed
18 that Defendants were aware of any of these issues and also admitted that squatters and
19 tenants could have damaged the Property.” *Squatters and tenants could not have caused*
20 *the foundation and walls to crack. Even if squatters and tenants did cause the damage,*
21 *Defendants were aware of the damage and covered it up.*

22
23 (yy) p. 27, ¶ 73. “As to the Broker Defendants, Ms. Zhu agreed that she was
24 not relying upon any representations made by Brokers or Broker’s agent.” *Regardless of the*
25 *inspections by Mr. Miao and what he discovered during his inspection, Defendants should*
26 *have warned Mr. Miao and Ms. Zhu about serious conditions which they covered up. Mr.*
27 *Miao was relying upon his broker to tell him about conditions which could not be seen with*
28 *a routine inspection. Mr. Miao believes his agents should have told him about the fact that*

1 *they were also financially tied to the sellers in that they were the Flipping Fund, they had*
2 *put the investors together, they had a financial interest in monies made from the*
3 *transaction and that it was their handyman who had made the purported repairs.*

4 (zz) p. 28, ¶ 74. Mr. Miao walked the property with Defendants' expert, Neil
5 Opfer. *By the time Mr. Miao walked the property with Mr. Opfer, numerous cracks had*
6 *appeared in the walls which were not visible at the time of Mr. Miao's inspection on August*
7 *10, 2017.*

9 (aaa) p. 28, ¶ 75. "Mr. Miao agreed with Professor Opfer that the alleged
10 conditions identified by Plaintiff's alleged expert were open and obvious." *Mr. Miao does*
11 *not agree that the conditions which ultimately appeared in the roof and interior and*
12 *exterior walls were open and obvious at the time of his pre-purchase inspection.*

13 (bbb) p. 28, ¶ 76. "Mr. Miao agreed with Professor Opfer that Plaintiff's
14 expert did not do any destructive testing, so the same alleged conditions that the alleged
15 expert notes, would have been made by an inspector at the time of the purchase." *The*
16 *conditions complained of were not visible at the time of the 2017 inspection as they had*
17 *been covered up by Defendants.*

18
19 **Lin's Affidavit**

20 Mr. Lin, in his declaration attached to Defendants' Motion for Summary Judgment,
21 states in ¶ 2 that he submitted seller disclosures on August 2, 2017. Mr. Miao had not even
22 met Mr. Lin before August 10, 2017. (See Exhibit "1", ¶ 17). Mr. Miao first met Mr. Lin on
23 August 10, 2017, at the time of his inspection of the subject property. (See Exhibit "1", ¶ 17).
24 In ¶¶ 3 and 7, Lin states that he told Mr. Miao and Ms. Zhu to get an inspection of the
25 Property. At no time did Lin tell Mr. Miao that he needed to get an inspection of the
26 Property as Mr. Miao had already inspected the property with Lin. (See Exhibit "1", ¶ 17).
27 Mr. Lin was also the seller's agent so after the initial signing of the Residential Purchase
28

1 Agreement Mr. Miao only communicated with Ms. Chen, the buyer's agent. (See Exhibit "1",
2 ¶ 17). In ¶ 4, Lin says that Mr. Miao did not inspect the property. (See Exhibit "1", ¶ 17).
3 Again, Mr. Miao inspected the Property on several occasions, the first time with Lin present
4 on August 10, 2017. (See Exhibit "1", ¶ 17). Mr. Lin stated to Mr. Miao that they had entirely
5 rehabilitated the Property including the walls and floors. (See Exhibit "1", ¶ 17). In ¶ 5, Lin
6 states that the rehabilitation done on the Property did not involve opening walls. They had
7 to open the walls to install the window AC units. (See Exhibit "1", ¶ 17). Lin further states
8 that on multiple occasions he disclosed the work on the HVAC units to Mr. Miao. (See
9 Exhibit "1", ¶ 17). Mr. Miao was aware that the HVAC units had been recently put in but he
10 was not aware that the AC units were replacing a swamp cooler. (See Exhibit "1", ¶ 17). Lin
11 did not disclose the installation of the HVAC units to Mr. Miao. (See Exhibit "1", ¶ 17). In ¶
12 8, Lin states that TKNR did not reside or visit the property implying that Defendants knew
13 very little about the property. TKNR, Lin and InvestPro were all related. (See Exhibit "1", ¶
14 17). TKNR was part of Mr. Lin's flipping fund. (See Exhibit "1", ¶ 17). Lin put the investor's
15 together and purchased the property. (See Exhibit "1", ¶ 17). It was Lin and his handyman
16 who performed the rehabilitation of the Property. (See Exhibit "1", ¶ 17). In ¶ 10, Lin states
17 that original settlement demand was \$10,000.00. (See Exhibit "1", ¶ 17). There were no
18 demands made to Defendants after the lawsuit was filed. (See Exhibit "1", ¶ 17). Mr. Miao
19 had approached Lin about the electrical issues he discovered in the wall relating to the
20 installation of the air conditioners. (See Exhibit "1", ¶ 17). Mr. Miao asked Lin to pay the
21 anticipated costs of repairing the electrical wiring which was approximately \$10,000.00.
22 (See Exhibit "1", ¶ 17).
23
24
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1 **A. Defendants were required to submit admissible facts in support of their**
2 **Motion for Summary Judgment.**

3 Evidence introduced in support of or in opposition to a motion for summary
4 judgment must be based upon admissible evidence. *Collins v. Union Federal Savings and*
5 *Loan Association*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983); *Beyene v. Coleman Security*
6 *Services, Inc.*, 854 F.2d 1179, 1181, 1182 (9th Cir. 1988); *Henry Prods. V. Tarmu*, 114 Nev.
7 1017, 1019, 967 P.2d 444, 445 (1998). Authentication is a condition precedent to
8 admissibility requiring all evidence presented in support of a motion for summary judgment
9 to be authenticated. *Thomas v. BAC Home Loans Servicing, LP*, 373 P.3d 967, 2011 WL
10 6743044, 2 (2011); NRS 52.015. A trial court can only consider admissible evidence in
11 ruling on a motion for summary judgment. *Romero v. Nevada Department of Corrections*,
12 2013 WL 6206705, p. 3 (U.S. Dist. Nev. 2013); *Orr v. Bank of America, NT & SA*, 285 F.3d
13 764, 773 (9th Cir., 2002).

15 Defendants reference the Residential Purchase Agreement without laying any
16 foundation for the Agreement. Defendants simply attach the Agreement to their motion and
17 continually reference this hearsay document without laying any foundation for the
18 admissibility of the document. On page 4 of Defendants motion, they again reference a
19 hearsay document, the 2nd Residential Purchase Agreement, without providing any
20 foundation with admissible evidence for the document. Defendants' entire motion for
21 summary judgment is based on hearsay documents. Statements made in Defendants'
22 Motion for Summary Judgment with respect to these unauthenticated documents is nothing
23 more than arguments of counsel.

25 On page 4 of Defendants' motion, Defendants attach and discuss an email from Chen
26 to Ms. Zhu again without providing any foundation for the email. The email in and of itself
27 is nothing more than inadmissible hearsay. On page 5, Defendants refer to the addendum to
28

1 Exhibit E, the new Residential Purchase Agreement dated September 5, 2017, and again fail
2 to provide any foundation. There is not one iota of sworn statements or affidavits
3 authenticating anything in Defendants' original brief supporting their Motion for Summary
4 Judgment. The Opfer report is referred to on Page 6. Again, the report is a hearsay
5 document completely lacking any foundation. The report is not a sworn statement.
6 Defendants refer to various entries in the report, all of which constitute inadmissible
7 evidence without any foundation. The order granting Defendants' Motion for Summary
8 Judgment contains Findings of Fact in paragraphs 1 through 11 which were not supported by
9 any admissible evidence. The findings contained in these paragraphs were nothing more
10 than arguments of counsel in Defendants' Motion for Summary Judgment. Defendants did
11 not present anything admissible until they submitted their Reply to Plaintiff's Opposition
12 when they referenced Mr. Miao's deposition testimony.
13

14
15 It is axiomatic that the party moving for summary judgment has the burden of
16 demonstrating clearly that there are no genuine issues of material fact to be determined.
17 *City of Boulder City v. State*, 106 Nev. 390, 793 P.2d 845 (1990). Once the movant has
18 made a prima facie demonstration of no issues of fact, the party opposing summary
19 judgment has the burden of coming forward with evidence in the form of specific facts to
20 show the existence of a material fact. A failure to do so requires the court to enter judgment
21 as a matter of law. NRCP 56(e); *Dredge Corp. v. Husite Co.*, 78 Nev. 69, 369 P.2d 676
22 (1962); *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 852 P.2d 588 (1992). The moving party
23 has the initial burden of identifying the portions of the materials on file that it believes
24 demonstrate the absence of a genuine issue of material fact. *Id.*; *T.W. Elec. Serv., Inc. v.*
25 *Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (C.A.9, 1987). Arguably, Plaintiff was not
26 required to submit any admissible facts in response to Defendants' motion as Defendants'
27 had not referenced one original admissible fact in their initial brief.
28

1 Based upon Defendants' failure to submit any admissible evidence in their opening
2 brief to Motion for Summary Judgment, Plaintiff respectfully requests an order
3 reconsidering the granting of Defendants' Motion for Summary Judgment.

4 **B. Numerous factual issues exist as to what Defendants knew, what they**
5 **attempted to cover up and what they were required to disclose.**

6 In ¶ 7 of the Amended Order dated April 7, 2021, the Court cites *Mackintosh v. Jack*
7 *Matthews and Company*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993), as standing for the
8 proposition that nondisclosures by Sellers are not actionable when the property is sold "as
9 is." However, like Nevada, most states do not shield sellers with "as is" clauses who have
10 fraudulently misrepresented the condition of property or who have intentionally concealed
11 known defects. *Mackintosh v. Jack Matthews and Company*, 109 Nev. 628, 632, 855 P.2d
12 549, 552 (1993).

14 Other Courts have followed this rule and recognized that an "as is"
15 provision in a contract for the sale of realty does not preclude an action
16 by the buyer for nondisclosure. *See, e.g., Rayner v. Wise Realty Co.*, 504
17 So.2d 1361 (Fla. Dist. Ct. App. 1987) (holding "as is" clause does not bar a
18 claim for nondisclosure against real estate agency that failed to inform
19 buyer of damage to home from prior termite infestation); *Silva v.*
20 *Stevens*, 156 Vt. 94, 589 A.2d 852 (1991) (finding a seller of a home has a
21 duty to speak based on superior knowledge of material facts and he
22 knows them not to be within reach of the diligent attention, observation,
23 and judgment of the purchaser); *Stemple v. Dobson*, 184 W. Va. 317, 400
24 S.E.2d 561 (1990) ("as is" clause does not relieve vendor of the
25 obligation to disclose a condition that substantially affects the value or
26 habitability of property which was known to the vendor, and unknown to
27 the buyer, and would not be disclosed by reasonable inspection.)

28 *Id.* at 633, 553. Even in cases not involving "as is" clauses, actions for fraud will arise from
nondisclosure when the seller has knowledge of material facts that are not available to the
buyer. *Epperson v. Roloff*, 102 Nev. 206, 213, 719 P.2d 799, 804 (1986) The Nevada Supreme
Court in *Epperson* further submitted that a defendant may be liable for misrepresentation
even when the Defendant did not make an express misrepresentation but instead made

1 representations which were misleading because they partially suppressed or concealed
2 information. *Id.*

3 The Court, in ¶ 9, references NRS 113.130-140 stating that the seller does not have a
4 duty to disclose defects of which it is unaware. That is the point of this case. Plaintiff contends
5 that there were numerous defects in the property that Defendants were aware of which they
6 not only had a duty to disclose but that they covered up so Plaintiff could not find the defects
7 prior to closing. Whether or not any of this is true is for a jury to decide. Specifically, what
8 did Defendants know, what did Defendants cover up and what were Defendants required to
9 disclose? Plaintiff would further submit that what an inspection by Mr. Miao or anyone else
10 would have uncovered considering what Defendants were hiding is also at issue and should
11 be decided by a jury.
12

13 After purchasing the subject property, Defendants obviously realized they were stuck
14 with a property that should have been condemned. Because they were in the business of
15 “flipping” properties, certain things had to be done to hide the dilapidated condition of the
16 triplex before it could be sold. The foundation to the triplex was structurally unsound. As
17 can be seen from the photographs in Exhibit “3”, Defendants attempted to patch the
18 foundation so that flooring could be laid to hide the condition of the foundation. As per the
19 purchase agreement, Mr. Miao could inspect the property so long as it did not involve “non-
20 invasive/non-destructive” inspections. See ¶ 7(A) of Residential Purchase Agreement
21 attached hereto as Exhibit “5”. In other words, Mr. Miao was not allowed to pull up sections
22 of the floor or pull-down wall coverings to see what Defendants were hiding in the floor and
23 walls.
24
25
26
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28

1 In the Seller's Real Property Disclosure Form attached hereto as Exhibit "6",
2 Defendants checked "no" to the following:

3 1(a) Previous or current moisture conditions and/or water damage? (*This*
4 *property has had a history of sewage backup and a broken sewer line that has left the*
5 *foundation to the property inundated with raw sewage and water.*)

6
7 1(b) Any structural defect? (*A trier of fact would have to look no further than*
8 *photographs of the foundation taken within the last 30 days by Mr. Miao after pulling up*
9 *the buckled floor installed by Defendants' handyman to ascertain the condition of the*
10 *foundation.*)

11 1(c) Any construction, modification, alterations, or repairs made without required
12 state, city or county building permits? (*Defendants checked "no" initially and then thought*
13 *better of it after considering all of the changes they had made to the property to cover up*
14 *building defects. Defendants' description of what was done without a license was*
15 *installing kitchen cabinets and three AC units. Defendants further state "all work done by*
16 *owner's handyman, owner never reside in the property and never visited the property."*
17 *Defendants were obviously trying to cover up what they had done to the property with this*
18 *incredibly suspicious statement. Even though their "handyman" patched the foundation,*
19 *laid laminate flooring through-out all three units, painted, put up wall coverings, installed*
20 *a dryer duct to the attic and installed two air conditioner units, Defendants wanted the*
21 *buyer to believe that they "never visited the property" and "never reside in the property" as*
22 *if to lay foundation for deniability when it was discovered what they were hiding – in*
23 *other words, blame it on the handyman. Defendants apparently wanted the buyer to*
24 *believe that they purchased a triplex without ever seeing or visiting the property.*)

25
26
27 2(b) Any foundation sliding, settling, movement, upheaval, or earth stability
28 problems that have occurred on the property? (*See photographs in Exhibit "3"*)

1 2(c) Any drainage, flooding, water seepage, or high water table? (*Defendants*
2 *checked this box “no” with the knowledge that sewage had been backing up as a result of a*
3 *broken sewer line.*)

4 6(a) Any substances, materials, or products which may be an environmental hazard
5 such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage
6 tanks, contaminated water or soil on the property? (*Defendants were aware that the sewer*
7 *line was broken causing sewage to backup under the foundation and into the plumbing.*)

8
9 As can be seen from Defendants’ disclosures, Defendants not only failed to make
10 necessary disclosures concerning the serious condition of the property, they made material
11 misrepresentations when they checked “no” to conditions found in the triplex.

12 Summary Judgment must be rendered if there is no genuine issue as to any material
13 fact and the moving party is entitled to judgment as a matter of law. *Id.*; NRCP 56(c); *See*
14 *also Bird v. Casa Royal W.*, 97 Nev. 67, 624 P.2d 17 (1981); *Montgomery v. Ponderosa*
15 *Construction, Inc.*, 101 Nev. 416, 705 P.2d 652 (1985); *Pegasus v. Reno Newspapers, Inc.*,
16 118 Nev. 706, 57 P.3d 82 (2002). Plaintiff has identified numerous factual issues in its’
17 opposition and in this motion for reconsideration, especially the recent discovery of the
18 condition of the triplex foundation, which would preclude summary judgment in this case.
19 As stated, those issues go to what Defendants knew, what Defendants attempted to hide and
20 what disclosures should Defendants have made prior to closing as compared with the
21 disclosures they actually made.
22
23

24 **C. Plaintiff’s pleadings are not worthy of Rule 11 sanctions.**

25 In this case, the Plaintiff, an LLC, was represented by counsel, Mr. Benjamin Childs.
26 In signing the pleadings, Mr. Childs was representing to the Court that Plaintiff’s claims
27 were warranted by existing law and were not frivolous and that the factual contentions had
28 evidentiary support and would likely have evidentiary support after a reasonable

1 opportunity for further discovery. (*See* NRCP 11(b)(2)(3)). Rule 11 further requires that any
2 motion for sanctions be made “separately from another other motion and must describe the
3 specific conduct that allegedly violates Rule 11(b).” NRCP 11(c)(2). Finally, a rule 11
4 sanction should only be imposed “to deter repetition of the conduct or comparable conduct
5 by other similarly situated.” NRCP 11(c)(4). There are further limitations on monetary
6 sanctions as the court is ordered in this case “against a represented party for violating Rule
7 11(b)(2). In awarding sanctions to Defendants, The Court has implied that Plaintiff’s action
8 is frivolous in that “the pleading was not “well grounded in fact and is warranted by existing
9 law or a good faith argument for the extension, modification or reversal of existing law” and
10 “Plaintiff’s attorney continued to make frivolous claims.” *See* Amended Order dated April 7,
11 2021, ¶ 78. The Court accordingly awarded sanctions: “Sanctions are warranted against
12 Plaintiff and its counsel, which includes an award attorneys’ fees to Defendants.” Amended
13 Order, ¶ 78. Since Steven Day was Plaintiff’s counsel at the time of the hearing having
14 substituted in for Mr. Childs the day prior to the hearing, the Order seems to include Mr.
15 Day and his firm for simply arguing (advocating) on behalf of the Plaintiff. It would be
16 breaking new ground if an attorney were sanctioned for simply arguing a motion after
17 making an appearance the day before and otherwise advocating for a client. Mr. Day asks
18 the Court for clarification if he and his firm and to be included in the sanctions. NRCP
19 11(c)(5)(A) seems to preclude the court from awarding monetary sanctions against the
20 Plaintiff based upon the Court’s justification for sanctions.
21
22
23

24 As stated in this motion, Plaintiff’s case is based on its belief that it was fraudulently
25 induced in buying a triplex that should have been condemned. Plaintiff’s argument is that
26 Defendants hid evidence of which it was aware and of which it had an obligation to disclose
27 to Plaintiff.
28

1 Plaintiff's causes of action include fraud, breach of contract, breach of fiduciary duty
2 and violations of NRS chapters 645 and 113. NRS 113.130(b) requires the seller to disclose
3 defects of which the seller is aware:

4 1. Except as otherwise provided in subsection 2:

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

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

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

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

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

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

22 NRS 113.140 (1) does not impose a requirement on a seller to disclose a defect of which the
23 seller is not aware. Determination of whether a seller was aware of a defect which would
24 trigger the statutory duty to disclose "is a question of fact to be decided by the trier of fact."
25 *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007).

26 Defendants' disclosure was essentially that the property was purchased at auction and
27 it has been completely rehabilitated. Plaintiff has discussed Defendants' disclosure above
28 which says nothing about defective wiring, dryer venting, ductwork, foundation, wall cracking
and sewer. Plaintiff's position is that Defendants were aware of these conditions and failed to

1 disclose as required by NRS 113.130. Further, whether or not Defendants were aware of these
2 defects and, therefore, required to disclose is a question of fact.

3 Plaintiff has causes of action for constructive fraud, common law fraud, fraudulent
4 inducement and fraudulent concealment. Constructive fraud does not require fraudulent
5 intent or in other words, the fraud was committed without regard to motive. It is the breach
6 of some legal or equitable duty which, irrespective of moral guilt, the law declares as
7 fraudulent because of its tendency to deceive others. The duty arises out of a fiduciary or
8 confidential relationship. *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). Plaintiff
9 submits that the duty arises out of Defendants Lin and InvestPro's duty to Plaintiff as its
10 agent. Plaintiff alleges that InvestPro had a duty to let Plaintiff know that it was part of the
11 deal; i.e., it put Sellers' deal together, brought the investors into the deal and was going to
12 receive 25% of the profit from the deal at closing. Lin and InvestPro had a duty to let Plaintiff
13 know about hidden defects in the subject property that were hidden because of the efforts of
14 Defendants. There is nothing frivolous about this claim, if true. It is up to a trier of fact to
15 determine the truth of Plaintiff's factual allegations.

16
17
18 As the court is aware, the elements of fraud are a false statement made with the intent
19 of inducing another's reliance and damages resulting from that reliance. *Nelson* at 225, 426.
20 Plaintiff has presented facts which create issues as to truth of Defendants' representations at
21 the time of the transactions, Plaintiff's reliance upon those representations and damages.
22 Plaintiff further claims that Defendants intended to induce Plaintiff to purchase the subject
23 property and that the fraudulently concealed known defects.

24
25 Plaintiff has a cause of action for breach of fiduciary duty against InvestPro, Lin,
26 Nickrandt and Chen. Real estate agents occupy a fiduciary relationship to their clients.
27 *Hamby v. St. Paul Mercury Indemn. Co.*, 217 F.2d 78 (4th Cir., 1954). Clearly a fiduciary
28 relationship exists between Plaintiff and InvestPro, Chen, Lin, etc. If Defendants committed

1 fraudulent acts against Plaintiff which induced Plaintiff to buy the subject property, Plaintiff
2 is entitled to judgment against these Defendants. Factual issues exist as to whether
3 Defendants breached their obvious fiduciary duty to Plaintiff.

4 Plaintiff has a cause of action under NRS 645.252(1)(a) which is a duty, as a licensee
5 acting as an agent in a real estate transaction, to disclose material and relevant facts relating
6 to the subject property. Plaintiff obviously submits that Defendants InvestPro, Lin, Chen,
7 etc., violated this particular statute. This is up to the trier of fact to decide. This is not a
8 frivolous claim.

9
10 Plaintiff's claims as argued above are not frivolous and certainly not worthy of Rule 11
11 sanctions. Plaintiff would ask the Court to reconsider its Rule 11 sanctions against Plaintiff
12 and counsel.

13 CONCLUSION

14
15 There are obvious factual issues to be considered by a jury. Those factual issues
16 include:

17 1. What did Defendants know with respect to the condition of the property at the
18 time of the subject real estate transaction?

19 2. Did Defendants attempt to cover-up the condition of the property by installing
20 laminate flooring and wall coverings throughout the complex, by failing to disclose serious
21 structural issues and by making representations that did not accurately reflect the status of
22 the property at the time of sale?

23
24 3. Were the conditions of the property and Defendants' knowledge of the
25 conditions such that Defendants had a duty to disclose those conditions to Plaintiff at the
26 time of the transaction?

1 Based on the foregoing, Plaintiff respectfully asks this Court to reconsider the
2 granting of Defendants' Motion for Summary Judgment. Plaintiff and counsel further ask
3 the Court to reconsider its Rule 11 sanctions order.

4 DATED this 16th day of April, 2021.

5 **DAY & NANCE**

6
7 By:  13472

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Attorneys for Plaintiff

13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5(b), on the 16th day of April, 2021, service of this MOTION TO
15 RECONSIDER was made upon each of the parties listed below, via electronic service
16 through the Eighth Judicial District Court's Odyssey E-File and Serve system:

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27
28 
An Employee of Day & Nance

EXHIBIT “1”

AFFIDAVIT OF FRANK MIAO

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

FRANK MIAO, being first duly sworn upon his oath, deposes and says:

1. That affiant is a member of WLAB Investment, LLC, the Plaintiff in Nevada Eighth Judicial District Court Case No. A-18-785917-C styled *WLAB Investment, LLC v. TKNR, Inc., et al.*

2. That affiant is a member of WLAB Investment, LLC, with his wife, Marie Zhu who is also a member of WLAB Investment, LLC. Their intent was to purchase the subject property as part of their retirement plan. This property along with other properties affiant has purchased over time in Southern California and Southern Nevada was meant to provide retirement income.

3. Affiant became aware of the subject property for sale via Zillow. During the inspection, affiant inspected the property with Mr. Kenny Lin during the afternoon of August 10, 2017. Affiant asked Mr. Lin about a small crack in the outside sidewalk. Mr. Lin said that they had purchased the property through an auction but that the property had been entirely rehabilitated. Affiant checked out Mr. Lin's company, InvestPro. InvestPro reportedly focused on the customer and further represented that their vendors were licensed and professional who complete cleaning, painting and or make repair when necessary which affiant liked. InvestPro was according to Lin one of the largest realtors in Chinatown. After inspecting the property with Mr. Lin and based upon the representations of Mr. Lin, affiant told his wife to go ahead and sign the purchase agreement after the August 10, 2017 inspection. Ms. Marie Zhu e-signed the Agreement

on August 11, 2017 with the help of Kenny Lin and Le Wei Chen from InvestPro who were the buyer's agents. (August 11, 2017 Resident Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion for Reconsideration). The form had been previously completely prepared by the InvestPro agents. In the August 11, 2017 Residential Purchase Agreement, there is no waiver of due diligence. Affiant had inspected the Property with Lin. During the inspection, affiant informed Mr. Lin that the units needed to have proper GFCI outlets and that smoke, combustible gas and CO detectors needed to be installed since they were required by law. When Ms. Marie Zhu signed the second Residential Purchase Agreement on September 5, 2017, due diligence was waived as affiant had already completed inspections of the subject property. (September 5, 2017 Residential Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion for Reconsideration).

4. After the Residential Purchase Agreement was e-signed, affiant visited and inspected the triplex additional times prior to closing. Ceramic tile had been laid in the kitchen, living room, hallway and bathrooms. Laminated wood flooring had been placed in all the bedrooms. Affiant did not notice any issues with the flooring except for a few small cracks in the ceramic tile in Unit C. The floor was not buckling in any of the units. Affiant also did not notice any cracking in the walls inside the triplex during his inspections. The units did look as that they had been recently renovated. At no time during affiant's initial inspection of the triplex did Mr. Lin report that there were significant issues with the foundation and earth movement or that the sewer line was broken causing sewer water backup.

5. When considering the purchase of the subject triplex, affiant asked Kenny Lin to be their buyer's agent. After the Residential Purchase Agreement was e-signed, affiant found out Mr. Lin had assigned another agent in his office, Helen Chen, to

represent Plaintiff WLAB Investment. It was Lin's and InvestPro's handyman who had rehabilitated the triplex by covering up the many issues with the building. In hindsight, understanding that Lin knew too much about the undisclosed problems with the building, he probably wanted nothing to do with representing affiant's company.

6. After WLAB purchased the 2132 Houston Drive property, affiant retained InvestPro as the property manager as they had been for the seller since they got this triplex in 2015. Affiant went to the InvestPro Christmas party during December, 2017. At the party, Lin explained to affiant that they were buying properties in auctions, then rehabilitate and "flipping" the properties and making large amounts of money. A number of Lin's investors were present during the party and also confirmed that they were making a lot of money. Lin explained that he puts investors together to buy properties for the purpose of flipping the properties. Lin invited affiant to joint his "flipping fund." Lin explained that affiant needed only invest some money and that InvestPro would do everything from buying the properties to remodeling and flipping them. He described it like a mutual fund where he could get a very good return. Lin also mentioned that the 2132 Houston Drive property was one of the projects in the "flipping fund." Investors did not need to know anything about the properties. They simply invested money and Investpro handled the rest like a mutual fund. The mutual fund was also referenced in InvestPro advertisements in local newspapers.

7. During approximately June of 2018, the tenant in unit A reported that the fuse to Unit A kept burning out. The tenant reported the issue to InvestPro, the property manager. InvestPro sent their handyman to fix the problem. The handyman's fix was apparently to disconnect some of the other circuits to the fuse which result in the tenant not being able to use all outlets. After complaining to affiant about the problem, affiant

hired a licensed electrical contractor to look at the issue. At that time, the contractor discovered that InvestPro's handyman had disconnected circuits from the fuse. The contractor also learned that when the window ACs were installed, Defendants had piggybacked the AC circuit onto other circuits causing an overload on the fuse without the required permit. The electrical panel further did not have sufficient electrical wattage to power the unit with the addition of the AC units. InvestPro's handyman is not a licensed professional as InvestPro had represented in their website. None of this was disclosed by Lin to affiant prior to the purchase of the triplex. Affiant approached Lin with the contractor's bid asking for \$10,000.00 to fix the electrical problem. Lin said that it was affiant's problem. Affiant ended up paying for the repair.

8. Around October of 2018, water was dripping from unit C's ceiling during hot sunny days. The ceiling was opened up which revealed that Defendants had installed a dryer duct dumping high moisture exhaust gas into the attic instead of venting to outside of the building which was required by law. Affiant also found that the air conditioning ductwork inside the ceiling was not insulated which is also unlawful. Later, affiant discovered that when Defendants replaced swamp cooler with AC, they left the uninsulated swamp cooler duct in the attic. When the highly moist gas from the dryer exhaust cooled with cool air coming from the uninsulated AC duct, condensation occurred causing water dropping onto the unit C ceiling. The wet insulation in the attic was black and no longer working. Affiant hired LVAC to put in new insulated ducting and hired Home Depot to reinsulate the attic. Affiant found that Unit B had the same issue with the dryer vent dumping into the attic. In Unit A, the dryer vent dumped into the wall between two studs and also eventually dumped into the attic. None of this was reported by Linn prior to Plaintiff closing on the triplex.

9. During the last several months, affiant has become aware of the condition of the foundation. On February 16, 2021, the flooring in one of the bedrooms in Unit B was pulled up. The laminate wood flooring installed by Kenny Lin/InvestPro's handman had been buckling which prompted affiant to pull up the floor. Upon pulling up the floor, it was observed that the foundation had severely deteriorated and had been covered by laminate flooring so the foundation defects would be concealed. The photographs attached to Plaintiff's Motion for Reconsideration as Exhibit "3" were taken by affiant and accurately reflect the condition of the foundation on February 16, 2021. Upon seeing the condition of the foundation, it explained the severe cracks in the walls that had been appearing through Defendants' pre-sale renovations. At the time of the pre-purchase inspections of the triplex, there was no serious cracking in the walls. The walls had been covered the plaster and wall coverings to hide the cracks and other wall defects. After closing, cracks started developing again. The photographs of the wall cracks attached to Plaintiff's Motion for Reconsideration as Exhibit "4" were taken by affiant.

10. Before the tenant in Unit C moved out August of 2020, he complained of slow drainage issues with the unit, particularly in the kitchen and bathroom. The tenants in units B and C had complained about drainage issues as early as May or June of 2020. When Nicholas Quioz, the tenant in Unit A, moved out, he explained to affiant that he had moved into the unit during April of 2017. He reported to InvestPro that sewage water had overflowed into Unit A. He reported that InvestPro had spent several weeks trying to open the sewer line. The handyman working on the sewer line explained to Mr. Quioz that the sewer line was broken. Attached to Plaintiff's Motion for Reconsideration as Exhibit "6" is a photograph taken by affiant of sewage backed up into Unit C's bathtub. Lin said nothing about a broken sewer line prior to or after closing.

11. That during the week of March 8, 2021, a next-door neighbor explained to affiant that he had been a tenant of the building during 2016 or 2017. After he moved in, the floor buckled and sewage backed up. He called InvestPro who did nothing about the problem so he moved out.

12. The property purchased by WLAB Investments was one of the homes purchased by Lin's flipping fund. TKNR, Inc. who was the seller of the property and which constituted a group of investors who had been put together by Lin and InvestPro. In the disclosure made by the seller attached to Defendants' Motion for Summary Judgment, the seller states that they have never visited the property. This is because the property was one of Mr. Lin's flipping fund properties. Lin handled everything including taking his share of the profit from the sale. It was Lin/InvestPro's handyman who made the repairs to the subject property. Lin was aware that the building was cracking. More importantly, Linn was aware of the condition of the foundation as it was InvestPro's handyman who covered it up. This is why Lin did not want to represent both the buyer and the seller in this transaction as he was aware of the many undisclosed problems with the property.

13. Concerning the condition of the foundation, Lin and InvestPro were more than aware of what was going on. Affiant had an opportunity to review a number of the handyman receipts which have been produced in the litigation one of which acknowledges that the handyman "remove 2 rooms laminate and level concrete." (DEF 23) This took place on April 19, 2017. When the flooring began buckling again, affiant pulled the wood laminate up only to find the condition of the foundation that the handyman had covered to be extremely poor rendering the entire triplex structurally unsound. The condition of the floor was also consistent with the recent reports of tenants that the sewer line was

broken resulting in sewage water leakage backing up under the foundation. As reported by Defendants' expert Neil Opfer, the triplex sits on expansive clay which swells up when wet and then compresses when dry. These conditions cause earth movements resulting in foundation and wall cracking.

14. Affiant has a PhD in chemical engineering. Because sewage gases are so dangerous, affiant removed all tenants from the property immediately and has not leased units to anyone else. Sewage gas is a complex mixture of toxic and nontoxic gases produced by the decomposition of organic household sewer water. The gases may include hydrogen sulfide, ammonia, methane, esters, carbon monoxide, sulfur dioxide and nitrogen oxides. Sewer gases are of concern due to health effects and potential for creating fire or explosions. Exposure to sewer gas can happen if the gas seeps in via a leaking plumbing drain, vent pipe or even through cracks in a building's foundation. At higher concentrations (> 300 ppm) hydrogen sulfide can cause loss of consciousness and death. Very high concentrations (> 1000 ppm) can result in immediate collapse, occurring after a single breath. Carbon monoxide is a colorless, odorless, and tasteless toxic and flammable gas. At concentrations above 150 to 200 ppm, disorientation, unconsciousness and death are possible. Sewer gas can contain methane, hydrogen sulfide and carbon monoxide all of which are highly flammable and potentially explosive substances.

15. As a result of having a broken sewer line and significant issues with the foundation, as stated, affiant has refused to lease triplex units to other tenants. What concerns affiant is that Lin knowingly put a tenant in the Triplex knowing that the sewage line was broken and presented an extreme health and safety risk to tenants. Lin also sold the property to affiant's company without disclosing the condition of the foundation and

sewer line. Lin's knowledge of the broken sewer line explains other actions prior to Plaintiff purchasing the triplex. During one of his inspections of the subject property with Lin by his side, affiant noticed that the units did not have smoke, CO or combustible gas detectors. Affiant reminded Lin that this was against the county law and asked him to install detectors in each of the units. Lin had CO and smoke detectors installed. However, after Plaintiff's purchase of the triplex, affiant noticed that Linn had removed the CO and combustible gas detectors. Lin has obviously concerned the CO detectors would sound the alarm knowing that the sewer line was broken and the foundation cracked. Sewage gas seeps into the bedrooms through the cracked foundation.

16. In going through the amended order, affiant noticed a number of factual representations that he submits are at issue in the case.

(a) p. 2, ¶ 1. "2132 Houston Drive, Las Vegas, NV 89104 ("Property") was originally constructed in 1954." *On November 18, 1994, Cecilia Hernandez, with her family, bought the triplex for \$117,000.00. They leased the property out for rental income. Before or during their ownership, the sewage line broke leaking sewage water under the foundation. The soil has expansive clays. As Defendants' expert Opfer wrote in his report:*

The ongoing groundwater condition can impact ground movement particularly with the presence of expansive clays." The point of this discussion is that this then impacts the performance of the walls and concrete floor slabs as to cracking to a significant degree. Cracked floor tile can be replaced in one year only to have the same issues appear again in the next year or year after that as an example. Standard construction materials such as stucco, drywall, floor tile, and concrete will all tend to crack when subjected to these forces. Again, cracking in these materials is seen all over the Las Vegas Valley.

(See Opfer report, pp. 9-10).

Most likely, clay pipe was used for the sewer system connection. . . . It is a well-known fact that vitrified clay pipe is relatively weak and can be easily penetrated by tree roots.

(See Opfer report, p. 14).

According to Opfer, “the issue with expansive clay is that it can swell up (expand) in the presence of water and then compress when it dries out. Note that expansive clays have created residential-foundation problems in many areas.” The expansive clay soil with water leaks from a broken sewage line led to earth under the foundation moving and cracking the foundation. The earth movement broke more sewer line and lead to more water leakage causing more slab cracks. The more tenants they had in the apartments, the more sewage water generated and leaked under the foundation causing more foundation cracks and broken sewage line. The Hernandez family used the property as collateral for a \$291,000.00 loan to fix the problems. However, the loan was not sufficient to fix the problems with the property. The tenants moved out so the owners did not have rental income to make the mortgage payment. The bank found out the triplex units could not be rented out to tenants because the units were dangerous because of the foundation and sewage gas. The sewage line needed to be rebuilt along with the foundation and everything else. This is why on September 10, 2015, the bank foreclosed and started the auction at \$52,000.00 (the land value) in spite of their \$291,000.00 loan. Kenny Lin’s flipping fund, with TKNR as the buyer, won the auction on 10/9/2015 and listed the triplex for sale three months later at \$188,000.00 on 1/9/2016. Lin/InvestPro knew of the apartment major defects and won the apartment at a very deep discount of market value. Lin/InvestPro rehabilitated the property though they did not fix the foundation or sewage problems. They just had the unlicensed InvestPro

handyman cover major defects up and put the property back on the market for \$188,000.00 to make a huge flipping profit.

(b) p. 3, ¶ 4. “Ms. Zhu waived the Due Diligence condition.” Under Paragraph 7(D), “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.” *It was Helen Chen and Kenny Lin from InvestPro who prepared the purchase agreement and checked the box for home inspection by Buyer and waiving other inspection. Plaintiff did not waive right to inspect as evident in both the August 11, 2017 and September 14, 2017 Purchase Agreements. In fact, affiant inspected the property with Kenny Lin on August 10, 2017, before the Purchase Agreement was e-signed on August 11, 2017, pointing out various issues with the Triplex that needed to be fixed before closing. As stated, affiant could not have uncovered the various defects in the property that are at issue as they were covered up by Lin, acting on behalf of Defendant TKNR. The defects were serious and would have only been revealed during an inspection that allowed destructive opening up of the unit as this purchase agreement did not allow. Further, affiant’s understanding of the law is that an inspection by a licensed inspector is not required for multi-family rental properties and that Lin is not relieved of his responsibility to disclose known conditions which affect the value of the property.*

(c) p. 3, ¶ 5. “Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection and structural inspection.” *As stated, affiant inspected the subject property on several occasions. No non-destructive inspection would have uncovered the serious cracking and foundations issue in the triplex. Further, this property is not on septic. The waiver*

checks in the Purchase Agreement were prepared by InvestPro without notifying affiant.

(d) p. 3, ¶ 6. *“Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, “Broker” 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.” These individuals are the actual sellers of the property. They are the true sellers behind alternations and “flipping. Attached as Exhibit “5” to Plaintiff’s Motion is the Flipping Fund’s web page found by affiant. InvestPro’s web page identifies InvestPro as a participant in the Property purchases and not just from a realtor standpoint. The second page of the website talks about splitting profits with the manager LLC. Lin and his company, InvesPpro, put the deal together, sold units to investors, for a 75/25 split at the end. It was InvestPro’s Kenny Lin who participated at the auction and bought the subject property. It was InvestPro’s Kenny Lin who hired the InvestPro handyman to “rehabilitate” the property. It was InvestPro’s handyman who discovered that the sewer line was broken. Not only did Lin push representation for the buyer to another InvestPro realtor but at no time did Lin actually tell affiant that he had an interest in the subject property; i.e., he was the seller.*

(e) p. 3, ¶ 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.” Affiant did not meet Lin until August 10, 2017, at the time of affiant’s inspection of the Property. There was no communication prior to August 10 with Lin or anyone from InvestPro. Affiant did not decide to go through with the purchase of the Property until August 11, 2017. There is nothing in Seller’s*

disclosures referencing and broken sewer line or the structurally unsound foundation caused by earth movements. Sellers were aware of these conditions as Kenny Lin, their representative, covered them up.

(f) p. 3, ¶ 7. *“Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquires.” During affiant’s inspection of the property with Kenny Lin, affiant requested information about repairs. Kenny Lin informed affiant that after they won the auction, they did a complete rehabilitation of the property. Because of Lin’s representations prior to closing, affiant believed that Investpro had fixed all defects during rehabilitation.*

(g) p. 4, ¶ 10. *“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.” Affiant inspected the property with Kenny Lin on August 10, 2017. The original Residential Purchase Agreement was e-signed the day after on August 11, 2017, after the agreement had been prepared completely by Helen Chen and Kenny Lin. The Agreement itself does not state that the buyer is waiving the home inspection. Again, the triplex had already been inspected by Frank Miao with Kenny Lin at his side by the time the initial Agreement had been e-signed by Ms. Zhu. The buyer cannot waive an inspection that has already been completed. Affiant inspected the property again after the initial Purchase Agreement was signed. At no time did affiant or Ms. Zhu waive the right to inspect. Again, both the first and second Purchase Agreements were completed by InvestPro agents allegedly representing Plaintiff at the time of the transaction.*

(h) p. 4, ¶ 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.” *WLAB inspected the property with Kenny Lin on August 10, 2017.*

(i) p. 4, ¶ 11. “Although Ms. Zhu had actual knowledge of the Sller’s Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections.” *Frank Miao did inspection with Kenny Kin and put out correction items.*

(j) p. 5, ¶ 15. “Plaintiff was a sophisticated buyer who understood the necessity of getting the properties inspected.” *Plaintiff did inspect the property on August 10, 2017, with Mr. Lin. The major defects were covered up and Lin had lied to affiant about the rehabilitation.*

(k) p. 5, ¶ 17. “As to Paragraph 7(A), Mr. Miao specified that he believe that his inspection and conversations with the tenant constituted the action necessary to deem the Property as satisfactory for Plaintiff’s purchase.” *Due to defendant Kenny Lin lying to affiant and covering up major foundation and structural defects by putting laminate wood flooring and ceramic tile over the major defect, affiant could not discovery these hidden defects during inspection without destructive inspection which the purchase agreement did not allow.*

(l) p. 5, ¶ 18. “. . . Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections: . . .” *The serious foundational, structural and sewage line issues, which were covered up with laminate wood and ceramic floor tile, would have only been discovered with a destructive open up inspection.*

(m) p. 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.” *Kenny Lin said nothing about retaining a licensed inspector. He knew that affiant was inspecting the building. Mr. Lin was also aware that whether the inspector was licensed or not, he had covered up the significant defects in the property which could not have been discovered without pulling up the floors. After Defendants purchased the property at auction, this property was listed more than three times from January 9, 2016 to August 10, 2017. Each time, the property was removed from escrow which meant Sellers had to go back to the drawing board and make a better effort to cover up the significant issues with the property. Defendants did not actually fix the defects. They simply covered them up.*

(n) p. 6, ¶ 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.” *The key issue is Defendants did unlawful things and covered up problems with the property. They put making money above tenant and investor safety.*

(o) p. 7, ¶ 22. “Based on his own belief, he does not believe that a professional inspection is necessary for multi-tenant residential properties.” *Affiant is wondering if summary judgment was granted because the Court believes that professional licensed inspections are required. Affiant is a professional. He knows building and apartments very well. Affiant is not aware of any legal requirement that a buyer is required to retain a licensed inspector before purchasing an apartment, in this case, a triplex. For multi-tenant residential properties in Las Vegas involving many thousands of units, it is virtually impossible to inspect each and every unit in 14 days*

which is why law requires work on rental units to be done by licensed contractors followed by inspection and permitting by city building and safety departments.

(p) p. 8, ¶ 26. “During that time, he admitted that he noticed some issues with the Property that were not up to code, finishing issues, GFCI outlets, and electrical issues.” *As stated, affiant instructed Kenny Lin to put smoke and CO detectors in the units only to find out that after the purchase, Lin had removed the CO detectors after they were installed. Defendants had hidden some GFCI required outlets by covering up or installing non-functioning GFCI outlets without using a licensed electrician which was dangerous for the tenants. Defendants did not want to use a licensed electrician because a licensed electrician would have asked to pull permits. The city inspector may have found out about the defects and shut down the apartment.*

(q) p. 8, ¶ 28. “Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, *Id.* at 249: 22-25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269: 13-22 (aware of slab cracks), which were open and obvious.” *Affiant noticed a few cracks in the ceramic floor tiles in Unit C living room. Affiant was not able to see the foundation as it was covered with newly installed flooring. It was at this point with Lin explained to affiant that they had rehabilitated the entire triplex.*

(r) p. 9, ¶ 31. 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 and all the work was done by a handyman other than the HVAC installation.” *When affiant inspected the property the Defendant Lin, Lin explained that Investpro had rehabilitated the*

property. There was no defect found at the time of the inspection that would have raised any concern.

(s) p. 9, ¶ 32. “Despite these disclosures, Mr. Miao never followed up.” *There were no defects observed at the time of the inspection. They were all covered up.*

(t) p. 9, ¶ 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.” *SRPDF only disclosed that there was a new air conditioner but never mentioned that the air conditioners replaced swamp coolers. Affiant later learned after a leak in one of the units that the ducting had not been changed from the swamp cooler to air conditioning. This was only learned after opening up the ceiling.*

(u) p. 10, ¶ 34. “Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence.” *There was no reason to contact the building department as Sellers did not disclose any activity that would have required a permit. Specifically, they disclosed a new kitchen cabinet in each unit, brand new AC installed and three bedrooms were redone. There was no mentioned that the air conditioning units were replacing swamp coolers which required new electrical and plumbing which would have required a permit. If the AC units were replacing AC units, permits would not need to be pulled. Based on the information provided by Lin and in Sellers’ disclosures, affiant was not aware of any activity that would have required a permit. It was also learned after the walls were opened that Defendants had not properly wired the AC units leaving wires exposed and presenting a potential fire danger.*

(v) p. 10, ¶ 35. “Plaintiff was on notice of the potential for mold and the requirement to get a mold inspection.” *This is a rental property. By law, the seller must*

provide a safe, habitable apartment to the tenants. No tenant will check mold and have professional mold inspection. Further, mold testing usually requires a destructive inspection to verify in ceiling and behind walls.

(w) p. 11, ¶ 37. “Disclosure of unknown defects not required. Form does not constitute warranty duty of buyer and prospective buyer to exercise reasonable care.” *Affiant’s issue with Sellers’ disclosures is that they failed to disclose defects that they were aware of. The Handyman’s invoice for patching the concrete underscores that the Sellers were aware of the condition of the foundation when they sold the triplex and failed to disclose to affiant.*

(x) p. 12, ¶ 39. “The alleged defects identified by both parties’ experts could have been discovered at the time of the original purchase.” *Again, the foundation, wall cracks, AC wiring and ducting, dryer venting, were all under flooring or within the ceilings and walls of the units. These defects would have only been uncovered with prohibitive destructive open up inspection.*

(y) p. 13, ¶ 43. “Additionally, Mr. Miao accompanied Defendants’ expert during his inspection.” *Defendants’ expert did not show all of the pictures taken which reflect new cracks.*

(z) p. 12, ¶ 44. “Mr. Miao agreed with Defendants’ expert that the alleged conditions identified by Plaintiff’s expert were “Open and obvious:” *Affiant was not shown all of the photographs during his deposition. There were many more new cracks observed than in 2017 at the time of affiant’s inspection. The new cracks were hidden by coating materials, dry wall, joint compounds and new floors.*

(aa) p. 13, ¶ 45. “He also agreed with Defendants’ expert’s finding that there was no noticeable sagging in the roof.” *The rook leak was not caused by sagging. It was caused by a broken seal on the roof.*

(bb) p., ¶ 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.” *New cracks appears after Defendants hid the original cracking. When affiant inspected the property with Lin, there was not nearly as much cracking as there is now. Defendants hid most of the cracks and defects. There were dryers and washers installed in the units in 2017 were vented to the attic. The vents ran through the walls. The venting cause moisture in the attic which resulted in the ceilings being opened for find the leaks. It was discovered at that time, after the ceilings were opened, that the dryer had been vented to the attic. Lin at no time explained how the dryers had been vented.*

(cc) p. 13, ¶ 47. “No dispute exists that TKNR did not need permits for the interior work it had done to the Property.” *Affiant ultimately learned that the AC units had replaced swamp coolers and that the ducting had not been changed to allow for AC units until after the ceiling was opened up. The new plumbing and electrical for the new AC units would have had to be inspected. Again, affiant did not know that the new AC units did not replace other AC units. Because these units are for lease, the work should have been performed by licensed contractors which is why the work was not done by Defendants as it should have been. One unit had a window AC unit the installation of which should have been performed by a licensed contractor with permit and inspection by the city.*

(dd) p. 14, ¶ 48. “Since the date it purchased the Property, Plaintiff has always been trying to lease it. . . . According to Mr. Miao, the landlord must provide safe housing for the tenant.” *Lin and his company InvestPro were the property managers for the property after Plaintiff’s purchase. Lin knowingly leased the property to tenants knowing that the property was unsafe. Once affiant learned of the foundation and sewage line defects, he removed all tenants until they are fixed.*

(ee) p. 15, ¶ 49. “Moreover, Plaintiff does not provide any notice to the tenants about its expert’s report or this litigation.” *Since purchasing the property, affiant has made many repairs as they are discovered with licensed contractors. Specifically, once affiant found out about the foundation and sewer line defects, he asked the tenants to move out immediately.*

(ff) p. 15, ¶ 50. “This illustrates the lack of merit of Plaintiff’s claim, 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.” *Affiant has repaired many defects with licensed contractors. It is only with the discovery of the foundation and sewer line defects that affiant had discontinued attempted to repair the triplex.*

(gg) p. 15-16, ¶ 51. “Mr. Miao admitted that multiple third parties could have potentially damaged the Property.” *The major cracks in the walls and floors were not done by third parties. The major defects were not done by third parties.*

(hh) p. 16, ¶ 52. “Plaintiff’s case is based on speculation 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.” *As stated, affiant believes there is substantial evidence that Defendants knew about the defects.*

(ii) p. 17, ¶ 55. “Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants.” *It is not the fact that Defendants didn’t cause the foundation or sewer issues, it is the fact that they did not disclose and hid these issues when they sold the property to affiant’s company.*

(jj) p. 17, ¶ 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.” *Numerous photographs of cracking floors and walls were produced in discovery which reflected cracks not present at the time of affiant’s inspection. Additionally, the floor continues to buckle and as it did, the floor was pulled up which revealed foundation damage as previous mentioned.*

(kk) p. 17, ¶ 58. “The Flipping Fund had nothing to do with Plaintiff’s decision to purchase the Property.” *The subject triplex was one of the Flipping Fund projects. As stated by Lin, the property was purchased at auction and renovated. The Flipping Fund had everything to do with the alleged rehabilitation of the property as that is what they do, buy, rehabilitate (cover up in this case) and sell for a large profit.*

(ll) p. 17, ¶ 59. “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. . . . However, Plaintiff’s expert opined that the cost of repair would have been \$600,000.00, although he did not provide an itemized cost of repair.” *Initially, the cost of repair to fix the electrical and ductwork inside the ceiling was \$102,873.00. However, by the time Plaintiff’s expert inspected the property, much more was known about the property and, therefore, the cost of repair was much higher.*

(mm) p. 18, ¶ 60. “He denied, under the penalty of perjury, that he never made an offer to settle this matter for \$10,000.00.” *This statement completely*

misrepresents what actually transpired. After Plaintiff purchased the property, the fuses to the AC units kept burning out. Affiant hired an electrician to figure out what the problem was. It was learning that when Defendants installed the air conditioners, there was not sufficient room in the electrical box to wire the air conditioners. Therefore, Defendants' handyman piggy-backed the AC wiring onto another fuse which caused the fuse to overload and fail. The electrician estimated the cost of repair to be \$10,000.00. Since the electrical problem was Defendants' doing, affiant approached Lin about paying \$10,000.00 to repair the electrical. Affiant believes this offer to resolve the electrical issue was prior to a lawsuit being filed. The condition of the wiring was not open and obvious as suggested in paragraph 62 of the order as the wiring was hidden behind the wall. The wall had to be opened up to discovery the electrical issue.

(nn) p. 24, ¶ 62. “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.” *Defendants did not disclose electrical system changes. They are not “open and obvious” as they were hidden behind the wall. As stated, when Defendants changed out the swamp cooler for an air conditioner, they simply piggy-backed the AC wiring on already existing wiring on the fuse which caused the fuse to overload and burn out. The electrical panel was insufficient to handle the load which required re-wiring by a licensed electrician. Further, when the AC unit was added, additional electrical wiring was required which required a permit and inspection.*

(oo) p. 25, ¶ 63. “Additionally, he specified that he noted issues with the plumbing system were “open and obvious” that a reasonable, profession inspection could

have discovered in 2017.” *Affiant learned of the septic issue when the tenants left the property and reported issues with the sewage. Sewage had backed up in one of the tubs which was discovered after the tenant left. Residue from the sewage backup was found in the tub. Affiant further learned from the tenant in Unit A and the former tenant that the sewage issue was something Defendants were aware of as they had previously investigated the problem.*

(pp) p. 25, ¶ 64. “As to 31(c), Mr. Miao admitted that the Seller’s Disclosures did disclose 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.” *There is no sprinkler system. The sewer issue was not open and obvious and could not have been discovered with a typical professional inspection. Defendants were aware of the issue and had an obligation to report the sewer problem to Plaintiff.*

(qq) p. 25, ¶ 65. The order suggests that the conditions were open and obvious. *Defendants were aware of these issues and failed to disclose. These issues were not “open and obvious.” They were discovered after affiant opened walls and ceilings and floor coverings.*

(rr) p. 25, ¶ 66. “As to 31(e), 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.” *A licensed professional inspection cannot and would not discover all of these defects. The issue with the AC wiring behind the wall was not visible without doing some destructive investigation. At no time did Defendants disclose that their handman was not licensed which is unlawful.*

(ss) p. 26, ¶ 67. “As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it.” *31(f) refers to the fact that smoke detectors were missing at the time of the inspection. This allegation says nothing about the serious problems with the Property that Defendants had covered up and that were not readily detectable at the time of affiant’s inspection. Obviously, affiant did not see the foundation damage at the time of the inspection as it was covered by wood laminate and ceramic flooring. The order implies that an inspection done by a “professional inspector” would have noticed that serious foundation damage without pulling up the flooring. Affiant was also not aware that the HVAC system had been changed three times until the receipts were disclosed in this case. Affiant was not aware of the shoddy and illegal electrical work that had been done and which was hidden behind the walls. It took a tenant complaining about a fuse and the subsequent retention of a licensed electrician to go into the wall to discover what Defendants had done. It was a tenant and former tenant reporting about the sewage problems as well as sewage remnants in a bathtub for affiant to become aware of that problem. It took a leaking ceiling and opening the ceiling before affiant became aware that Defendants had vented the dryer exhaust to the attic and that Defendants had not properly changed out the swamp cooler ducting for insulated air conditioning ducting. Walls had been covered so as the time of the inspection by affiant, very few if any cracks in the walls were observed. However, as the foundation and walls shifted over time, the cracks in the walls reappeared revealing what Defendants had covered up. To suggest that the discovery of missing smoke detectors is somehow indicative of the extent of affiant’s knowledge at the time of the inspection is ridiculous.*

only way affiant would have been aware of the significant issues with the foundation is if Lin told him or if he was allowed to perform a destructive inspection which the Purchase Agreement did not allow. Affiant also did not observe wall cracks as they had been covered up at the time of the inspections. Defendants were aware of the foundation and wall cracks as they had covered them up. Affiant was not aware that the HVAC system had been changed out three times until the receipts were produced during discovery. The roof leak was caused by the failure to seal the roof. The leak had nothing to do with sagging.

(xx) p. 27, ¶ 72. “Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. . . . Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues and also admitted that squatters and tenants could have damaged the Property.” *Squatters and tenants could not have caused the foundation and walls to crack. Even if squatters and tenants did cause the damage, Defendants were aware of the damage and covered it up.*

(yy) p. 27, ¶ 73. “As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker’s agent.” *Regardless of the inspections by affiant and what affiant discovered during his inspection, Defendants should have warned affiant and Ms. Zhu about serious conditions which they covered up. Affiant was relying upon his broker to tell him about conditions which could not be seen with a routine inspection. Affiant believes his agents should have told him about the fact that they were also financially tied to the sellers in that they were the Flipping Fund, they had put the investors together, they had a*

financial interest in monies made from the transaction and that it was their handyman who had made the purported repairs.

(zz) p. 28, ¶ 74. Mr. Miao walked the property with Defendants' expert, Neil Opfer. *By the time affiant walked the property with Mr. Opfer, numerous cracks had appeared in the walls which were not visible at the time of affiant's inspection on August 10, 2017.*

(aaa) p. 28, ¶ 75. "Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious." *Affiant does not agree that the conditions which ultimately appeared in the roof and interior and exterior walls were open and obvious at the time of his pre-purchase inspection.*

(bbb) p. 28, ¶ 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 notes, would have been made by an inspector at the time of the purchase." *The conditions complained of were not visible at the time of the 2017 inspection as they had been covered up by Defendants.*

17. Mr. Lin, in his declaration attached to Defendants' Motion for Summary Judgment, states in ¶ 2 that he submitted seller disclosures on August 2, 2017. Affiant had not even met Mr. Lin before August 10, 2017. Affiant first met Mr. Lin on August 10, 2017, at the time of his inspection of the subject property. In ¶¶ 3 and 7, Lin states that he told affiant and Ms. Zhu to get an inspection of the Property. At no time did Lin tell affiant that affiant needed to get an inspection of the Property as affiant had already inspected the property with Lin. Mr. Lin was also the seller's agent so after the initial signing of the Residential Purchase Agreement affiant only communicated with Ms. Chen, the buyer's agent. In ¶ 4, Lin says that affiant did not inspect the property. Again, affiant

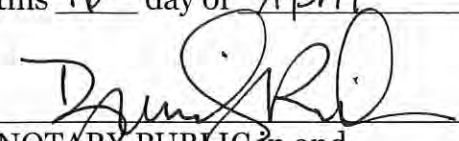
inspected the Property on several occasions, the first time with Lin present on August 10, 2017. Mr. Lin stated to affiant that they had entirely rehabilitated the Property including the walls and floors. In ¶ 5, Lin states that the rehabilitation done on the Property did not involve opening walls. They had to open the walls to install the window AC units. Lin further states that on multiple occasions he disclosed the work on the HVAC units to affiant. Affiant was aware that the HVAC units had been recently put in but he was not aware that the AC units were replacing a swamp cooler. Lin did not disclose the installation of the HVAC units to affiant. In ¶ 8, Lin states that TKNR did not reside or visit the property implying that Defendants knew very little about the property. TKNR, Lin and InvestPro were all related. TKNR was part of Mr. Lin's flipping fund. Lin put the investor's together and purchased the property. It was Lin and his handyman who performed the rehabilitation of the Property. In ¶ 10, Lin states that original settlement demand was \$10,000.00. There were no demands made to Defendants after the lawsuit was filed. Affiant had approached Lin about the electrical issues he discovered the wall relating to the installation of the air conditioners. Affiant asked Lin to pay the anticipated costs of repairing the electrical wiring which was approximately \$10,000.00.

FURTHER AFFIANT SAYETH NAUGHT.



FRANK MIAO

SUBSCRIBED AND SWORN to before me
this 16 day of April, 2021.



NOTARY PUBLIC in and
for said County and State.

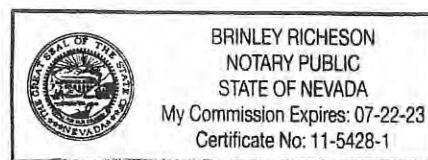


EXHIBIT “2”

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 DEPOSITION OF FRANK MIAO</p> <p>6 PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC</p> <p>7</p> <p>8 Taken at Litigation Services</p> <p>9 on Tuesday, January 12, 2021</p> <p>10 at 9:00 a.m.</p> <p>11 at 3960 Howard Hughes Parkway, Suite 700</p> <p>12 Las Vegas, Nevada 89169</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported by: Trina K. Sanchez, CCR No. 933, RPR</p> <p>25 Job No.: 697915</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 For the Defendants via videoconference:</p> <p>3</p> <p>4 MICHAEL B. LEE, ESQ.</p> <p>5 MICHAEL B. LEE, P.C.</p> <p>6 1820 East Sahara Avenue, Suite 110</p> <p>7 Las Vegas, Nevada 89104</p> <p>8 (702) 477-7030</p> <p>9 mike@mblnv.com</p> <p>10</p> <p>11 For the Plaintiff:</p> <p>12</p> <p>13 BENJAMIN B. CHILDS, ESQ.</p> <p>14 318 South Maryland Parkway</p> <p>15 Las Vegas, Nevada 89101</p> <p>16 (702) 251-0000</p> <p>17 ben@benchilds.com</p> <p>18</p> <p>19 Also present via videoconference: Helen Chen</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 I N D E X</p> <p>2 WITNESS: PAGE</p> <p>3 FRANK MIAO</p> <p>4 Examination by Mr. Michael Lee 7</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 EXHIBITS DESCRIPTION PAGE</p> <p>9 EXHIBIT 1 Notice of Deposition of Person 10</p> <p>10 Most Knowledgeable for WLAB</p> <p>11 Investment, LLC</p> <p>12 EXHIBIT 2 Residential Purchase Agreement 147</p> <p>13 EXHIBIT 3 Seller's Real Property 200</p> <p>14 Disclosure Form</p> <p>15 EXHIBIT 4 Mold Notice & Waiver 212</p> <p>16 EXHIBIT 5 Trustee's Deed Upon Sale 216</p> <p>17 EXHIBIT 6 Email dated August 24, 2017 217</p> <p>18 EXHIBIT 7 Email chain dated August 17, 2017 217</p> <p>19 EXHIBIT 8 Invoice 0335107 224</p> <p>20 EXHIBIT 9 Declaration of Frank Miao in 224</p> <p>21 Support of Opposition to</p> <p>22 Defendant's Motion for Summary</p> <p>23 Judgment and Countermotions</p> <p>24 EXHIBIT 10 Permit/Application Status 249</p> <p>25 EXHIBIT 11 When do I need a permit? 260</p>	<p style="text-align: right;">Page 5</p> <p>1 A Homeowner's Guide</p> <p>2 EXHIBIT 12 Declaration of Amin Sani 266</p> <p>3 EXHIBIT 13 Photographs from GLVAR 268</p> <p>4 of 2132 Houston Drive</p> <p>5 EXHIBIT 14 HVAC Service Order Invoice 271</p> <p>6 EXHIBIT 15 Letter 272</p> <p>7 EXHIBIT 16 Flipping Fund - InvestPro Realty 274</p> <p>8 EXHIBIT 17 Email dated September 5, 2017 280</p> <p>9 EXHIBIT 18 Addendum No. 1 to Purchase 281</p> <p>10 Agreement</p> <p>11 EXHIBIT 19 Residential Purchase Agreement 282</p> <p>12 EXHIBIT 20 Authorization to Close Escrow 289</p> <p>13 EXHIBIT 21 Expert Testimony Report 289</p> <p>14 EXHIBIT 22 Penny Electric Estimate 298</p> <p>15 EXHIBIT 23 Cost to Repair documents 303</p> <p>16 EXHIBIT 24 ACLV Proposal 315</p> <p>17 EXHIBIT 25 Larkin Plumbing & Heating 315</p> <p>18 Proposal & Contract</p> <p>19 EXHIBIT 26 Home Depot Quote 316</p> <p>20 EXHIBIT 27 Neil D. Opfer Report 317</p> <p>21 EXHIBIT 28 Defendants' Request for Entry 334</p> <p>22 onto Land and for Inspection</p> <p>23 of Tangible Things Pursuant</p> <p>24 to NRCP 34</p> <p>25 EXHIBIT 29 Defendants' Amended Request for 334</p>

<p>Page 6</p> <p>1 Entry onto Land and for Inspection 2 of Tangible Things Pursuant 3 to NRCF 34 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 7</p> <p>1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 12, 2021; 2 9:00 A.M. 3 -000- 4 5 (In an off-the-record discussion held prior to the 6 commencement of the deposition proceedings, counsel 7 agreed to waive the court reporter requirements 8 under Rule 30(b)(5) of the Nevada Rules of Civil 9 Procedure.) 10 11 Whereupon, 12 FRANK MIAO, 13 having been first duly sworn to testify to the 14 truth, the whole truth and nothing but the truth, 15 was examined and testified as follows: 16 17 EXAMINATION 18 BY MR. LEE: 19 Q. Good morning, sir. Thank you for 20 appearing for your deposition today. You're 21 appearing as the 30(b)(6) or the person most 22 knowledgeable for this deposition; is that correct? 23 A. Yes. 24 Q. And you understand what that term means? 25 A. Yes.</p>
<p>Page 8</p> <p>1 Q. I think I saw you going through the 2 deposition exhibits. The top of the pile should 3 have been the 30(b)(6) notice. 4 Do you see that? 5 A. 30(b)(6)? I don't know what that -- what 6 document? 7 MR. LEE: For the record, Helen Chen, the 8 defendant, has just joined us for the deposition. 9 THE WITNESS: I haven't read that one yet. 10 MR. LEE: Ms. Court Reporter, can you help 11 him? 12 MADAM REPORTER: Yes. Let's go off the 13 record. 14 (A discussion was held of the record.) 15 BY MR. LEE: 16 Q. We're back on the record. It appears the 17 exhibits didn't get printed, but we'll go ahead and 18 wait for them to get printed. 19 During the interim, I'll just share my 20 screen so you can see what the exhibits are; okay? 21 A. Okay. 22 Q. Then I'll go over the rules of the 23 deposition. You're doing a good job right now. I 24 just want to get this PMK notice out of the way; 25 okay?</p>	<p>Page 9</p> <p>1 Did you have an audible response? 2 MADAM REPORTER: No. 3 BY MR. LEE: 4 Q. You need to say "yes" or "no." 5 Do you understand? 6 THE WITNESS: What did he ask? 7 MADAM REPORTER: He's -- 8 BY MR. LEE: 9 Q. "Audible" means out loud. 10 A. Can you speak a little slowly? Because if 11 you speak too quick, I -- I cannot catch up. 12 Q. Okay. So I just -- I'll go over the rules 13 of the deposition with you after I just do this PMK 14 notice; okay? 15 A. Okay. What's a "PMK" mean? 16 Q. "PMK" means person most knowledgeable. 17 A. Oh, okay. Okay. Yes. 18 Q. See right where I highlighted it, person 19 most knowledgeable? 20 A. Yeah, yeah, yeah. 21 Q. Okay. So for the record, what I'm doing 22 is showing you what will eventually be proposed 23 Exhibit 1 to the deposition, which is the notice of 24 deposition of the person most knowledgeable for WLAB 25 Investments, LLC.</p>

<p style="text-align: right;">Page 30</p> <p>1 now.</p> <p>2 Q. You were born in 1963 in Nanjing, China.</p> <p>3 A. Yeah.</p> <p>4 Q. Did you go to high school there?</p> <p>5 A. Yes, in China.</p> <p>6 Q. Did you -- what kind of education did you</p> <p>7 have after high school?</p> <p>8 A. I got a bachelor degree in chemical</p> <p>9 engineering in Beijing in Chemical University --</p> <p>10 Chemical Technology University.</p> <p>11 Then after that, I come to U.S. to pursue</p> <p>12 the advance degree, then I got the Ph.D. at Illinois</p> <p>13 Institute of Technology all in the engineering</p> <p>14 background.</p> <p>15 Q. Now, you got your bachelor's degree in</p> <p>16 Beijing in chemical engineering?</p> <p>17 A. Chemical Technology University, I think</p> <p>18 they call it, right.</p> <p>19 Q. Technology.</p> <p>20 What year?</p> <p>21 A. 1985. Then I come to U.S. 1986.</p> <p>22 Q. Okay. So you went to high school. Is</p> <p>23 that a four-year program or how long is it?</p> <p>24 A. Where?</p> <p>25 Q. In China --</p>	<p style="text-align: right;">Page 31</p> <p>1 A. In China, it's four-year bachelor degree.</p> <p>2 Q. Okay. So you went from high school, then</p> <p>3 you went to this college program in Beijing; is that</p> <p>4 correct?</p> <p>5 A. Beijing, yes, yes.</p> <p>6 Q. Okay. Then what year did you go to the</p> <p>7 Illinois Institute of Technology?</p> <p>8 A. I think it was 1986. 1986 to 19 -- oh,</p> <p>9 I'm sorry. 1987, January.</p> <p>10 Q. What?</p> <p>11 A. 1987.</p> <p>12 Q. To when?</p> <p>13 A. To all the way to the 1990, I guess.</p> <p>14 Q. You said this was a Ph.D. program?</p> <p>15 A. Yeah, yeah. I think it's only been four</p> <p>16 years to get my Ph.D. degree without master degree.</p> <p>17 Q. So you skipped the master's and just got a</p> <p>18 Ph.D. in three years?</p> <p>19 A. Four years. Around four years, yeah. By</p> <p>20 that time, they said I set a record for Chinese</p> <p>21 student at that time for fastest --</p> <p>22 Q. So between 1985 and 1987, what were you</p> <p>23 doing?</p> <p>24 A. I -- first, before I went to get some</p> <p>25 education for foreign language, study English a</p>
<p style="text-align: right;">Page 32</p> <p>1 little bit before come to U.S. Prepare English.</p> <p>2 When I first come to U.S. in 1986, I went</p> <p>3 to Ohio University. Then when I found out Ohio</p> <p>4 University in a small town, so very difficult to get</p> <p>5 some job employment for students enrolled in the</p> <p>6 school, so I moved to transfer to IIT, Illinois</p> <p>7 Institute of Technology. At that time, the</p> <p>8 professor have some of the Department of Energy</p> <p>9 program, the grant money, so they are looking for</p> <p>10 some research assistants, so I went --</p> <p>11 Q. What's the name of the college where you</p> <p>12 studied in Ohio?</p> <p>13 A. Called Ohio University.</p> <p>14 Q. Oh, just Ohio University --</p> <p>15 A. Yeah.</p> <p>16 Q. -- not, like, you know, any city, like</p> <p>17 Columbus?</p> <p>18 A. In Athens, Ohio.</p> <p>19 Q. I'm sorry, what city?</p> <p>20 A. Athens, just like -- A-N-T-H-E-N-S [sic],</p> <p>21 Athens.</p> <p>22 Q. Anthem?</p> <p>23 A. Athens, yeah.</p> <p>24 Q. Okay. When you got your Ph.D. from</p> <p>25 Illinois Institute, what was the Ph.D. in?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Huh?</p> <p>2 Q. What was the Ph.D. in?</p> <p>3 A. In engineering.</p> <p>4 Q. Chemical engineering?</p> <p>5 A. Yeah, engineering. Chemical and the</p> <p>6 mechanical both. It's, like -- also, they said is</p> <p>7 chemical but mostly is mechanical side.</p> <p>8 Q. And what was the course of your study</p> <p>9 work?</p> <p>10 A. Oh, study lot of work. Chemistry and also</p> <p>11 mechanical science, structure. Basically, my</p> <p>12 background is, like, in building the factory system</p> <p>13 design, engineering, that kind of thing.</p> <p>14 Q. So a large commercial building?</p> <p>15 A. Commercial building, factory, like a</p> <p>16 chemical plant, refinery plant, power plant. Build</p> <p>17 the power plant. Mostly power plant.</p> <p>18 So after that, most of my career is power</p> <p>19 plant.</p> <p>20 Q. So after 1990, what did you do?</p> <p>21 A. Huh? After the --</p> <p>22 Q. Like, in terms of work after 1990.</p> <p>23 A. After 1990, I working for the one company</p> <p>24 called the Gas Research Institute.</p> <p>25 Q. Gas Research Institute?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Yeah. There is the company is sponsored 2 by the American gas company, like the Southwest Gas 3 Company or the Edison or the so called gas company. 4 They all contribute to many to do the research and 5 technology developed at that branch. So I working 6 for them.</p> <p>7 Q. I recently reviewed a document related to 8 the Edison group in California.</p> <p>9 A. Yeah.</p> <p>10 Q. So --</p> <p>11 A. Yeah.</p> <p>12 Q. -- how long did you work at the --</p> <p>13 A. I working there and here in 1995.</p> <p>14 Q. What was your job title?</p> <p>15 A. I was engineer and -- research engineer 16 and research --</p> <p>17 Q. What were you researching?</p> <p>18 A. Huh?</p> <p>19 Q. What were you researching?</p> <p>20 A. I was researching two fields. One is 21 gasification. It's to convert the natural -- 22 convert the coal to the natural gas. So it's a 23 program, you know. Sometimes before they shorten 24 the natural gas, so they think it can work from the 25 coal through the coal gasification to make the gas.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. I'm going to circle back.</p> <p>2 When you went to the Illinois Institute of 3 Technology, did you get a degree or a certificate 4 from there?</p> <p>5 A. Ph.D. degree.</p> <p>6 Q. Okay.</p> <p>7 A. Yeah, Ph.D. degree. It's highest 8 engineering degree. And actually, it's a field, the 9 gasification.</p> <p>10 Q. So after 1995, what did you do?</p> <p>11 A. Then I went to the company called the 12 Westinghouse, which is later the Siemens. The 13 German company called Siemens acquired the 14 Westinghouse Power Generation Group. That was 15 there. I was working -- I ended up working for the 16 Siemens corporation, which is one of the --</p> <p>17 Q. How long did you work there for?</p> <p>18 A. Huh?</p> <p>19 Q. How long did you work there for?</p> <p>20 A. I working for there for two years.</p> <p>21 Q. In 1997?</p> <p>22 A. Yeah. Then I moved -- that is --</p> <p>23 Q. Hold on one second.</p> <p>24 A. Mm-hmm.</p> <p>25 Q. One second.</p>
<p style="text-align: right;">Page 36</p> <p>1 What was your job title with Siemens?</p> <p>2 A. Siemens engineer.</p> <p>3 Q. What were your job duties?</p> <p>4 A. Our duties is just design the coal 5 gasification power plants and design the natural gas 6 combined circle power plant.</p> <p>7 Q. Then in 1997 -- let me go back.</p> <p>8 Why did you leave your position? What was 9 the name of the company you worked for in 1990?</p> <p>10 A. Gas Research Institute. Presently they're 11 called -- yeah, Gas Research. Before they call the 12 Institute of Gas Technology. It's also called IGT, 13 but it's Institute of Gas Technology.</p> <p>14 Then later, they change the name called 15 Gas Research Institute.</p> <p>16 Q. Why did you leave the Gas Research 17 Institute to go work for Siemens?</p> <p>18 A. Because I don't want to work in the 19 research academic; right? That is research 20 organization. I want to do the real -- build the 21 real plant, real commercial company, so I went to 22 the company, which is build the power plant, build 23 all the power system.</p> <p>24 Q. 1997, what did you do after that?</p> <p>25 A. Then I joined the company called the --</p>	<p style="text-align: right;">Page 37</p> <p>1 original they called it Combustion Engineering, then 2 they later called it ABB, ASEA Brown Boveri, which 3 is a Swiss and Sweden company. It is one of the 4 largest -- at that time, it was the largest power 5 generation company in the world.</p> <p>6 Q. How long did you work there for?</p> <p>7 A. I working there until -- later, this ABB 8 been acquired -- the power generation people is 9 acquired by the company -- French company called 10 Alstom, A-L-S-T-O-M.</p> <p>11 Then General Electric bought this Alstom. 12 So later, before I left -- it's General Electric. 13 So after that, I working for them until 2004 -- 14 2004.</p> <p>15 Q. So in 1997 to 2004, you started with ABB 16 who got acquired by other companies --</p> <p>17 A. Right.</p> <p>18 Q. -- until 2004?</p> <p>19 A. Yeah, 2004.</p> <p>20 Q. What was your position when you started?</p> <p>21 A. I was starting as a senior consulting 22 engineer, then later as a technical fellow, then as 23 a project manager and project director.</p> <p>24 Q. And what were your job duties?</p> <p>25 A. Was supervisor, build the power plant,</p>

<p style="text-align: right;">Page 38</p> <p>1 commercial power plant; training the licensee in 2 Asia; and mostly doing the competitive bid for the 3 new power plant in U.S. worldwide. 4 Q. These are gas or coal power plants? 5 A. Gas. Mostly it's combined cycle power 6 plant. 7 Q. So you mean gas. Does that mean, like, 8 natural gas or is there another type of gas? 9 A. One is coal gasification gas or natural 10 gas. Sometimes they also use diesel. Build a 11 diesel plant for the -- we call it peaker. It's a 12 simple cycle. Like the Las Vegas or the NV Energy, 13 they have some plant. On the 215, you'll see that 14 small plant. That is a simple cycle peaker. We 15 called it peaker. During the high demand season, 16 they running that kind of plant. 17 Q. Okay. 18 A. Yeah. 19 MADAM REPORTER: I'm sorry, Counsel. 20 Are you saying peak, P-E-A-K? 21 THE WITNESS: P-E-A-K, yeah. 22 MADAM REPORTER: Okay. Thanks. 23 THE WITNESS: Yeah, yeah. Because when in 24 the summer the electricity demand is high, so they 25 have running some simple cycle plant, yeah.</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. LEE: 2 Q. Okay. This is 2004. What did you do 3 after that? 4 A. Then I come to California. I come to 5 California working with a company called Parsons 6 Engineering. 7 Q. Parson, P-A-R-S-O-N? 8 A. Yeah, P-A-R-S-O-N. Which at that time is 9 world's largest engineering company in West Coast 10 for the power generation and the refinery and the 11 chemical. 12 Q. How long did you work there for? 13 A. Until the 2008, I think. 2010. We do all 14 kinds. We design the power plant and we do the 15 refinery engineering. We do chemical plant 16 engineering. We do mining company engineering, 17 design. 18 Q. So what was your job title? 19 A. I was the supervisor -- senior supervisor. 20 Q. Did you provide (inaudible) -- 21 A. Huh? 22 Q. You were supervising? 23 A. Yeah. Supervise a whole bunch of 24 engineering doing this kind of design and also 25 project management. Project manager, project</p>
<p style="text-align: right;">Page 40</p> <p>1 director kind of, yeah. 2 Q. Okay. Then 2008, the recession, what did 3 you do after that? 4 A. After that, I just -- I don't want to work 5 for other people. I just working for myself. 6 Q. Okay. So what does that mean? 7 A. That means WLAB. We bought a lot of land 8 and a rental house, so we just collected rent. 9 Q. 2008 to the present, that's when you 10 formed and -- 11 A. Yeah, yeah, yeah. 12 Q. -- still are involved with WLAB; right? 13 A. Yeah, yeah, yeah, yeah. I forgot exactly 14 when we set up this WLAB lab, but we starting since 15 2008, 2010, that range. Not I -- exactly I don't 16 know when I start working for company. 17 The reason why the -- I stopped working at 18 company is the company want to assign me to the 19 Saudi for the supervisor design the one refinery in 20 Saudi. Then I found out, they said in the middle of 21 nowhere in the desert. 22 So at that time, my kids were too small in 23 the education, so I don't want to go there. So I 24 tell them I just rather working for myself. 25 Q. You don't want to go to Saudi Arabia, so</p>	<p style="text-align: right;">Page 41</p> <p>1 you decided to start your own business? 2 A. Yeah, yeah, yeah. 3 Q. Okay. Then you're already in California, 4 so you just stayed in California; correct? 5 A. Right, right, yeah. 6 Q. Okay. WLAB, what does WLAB stand for? 7 A. I forgot why it's called the name of WLAB, 8 you know. To be honest, maybe my wife choose the 9 name and -- yeah. I don't know why we call that 10 name. 11 Q. So your wife would be a little bit more 12 knowledgable related to some of the formation of 13 WLAB? 14 A. I think so. We both -- we have 15 50/50 percent share for that LLC right now, yeah. 16 Q. Okay. As part of the PMK notice, it does 17 specify Topic 13, which is formation of Plaintiff. 18 This would be something else that your wife would be 19 more knowledgable about? 20 A. Yeah. Maybe for that company, yeah. 21 MADAM REPORTER: Sorry. You broke up 22 there. 23 BY MR. LEE: 24 Q. You and your wife are the only partners or 25 members of WLAB; is that right?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. At this moment, yes.</p> <p>2 Q. Okay. I believe that you presented an</p> <p>3 operating agreement related to eventually doing a</p> <p>4 1031 exchange for the property.</p> <p>5 Do you recall if that's the same operating</p> <p>6 agreement that you have in place today?</p> <p>7 A. Yes, yes.</p> <p>8 Q. Have you ever amended your operating</p> <p>9 agreement?</p> <p>10 A. I don't know. My wife usually doing that</p> <p>11 kind of hard work, you know. I'm not sure.</p> <p>12 Q. Is your wife a little bit better -- what</p> <p>13 does your wife do?</p> <p>14 A. My wife, well, she's also engineering</p> <p>15 background. Actually, we met in Chicago. Then</p> <p>16 she -- she's an engineering Ph.D. too, but she's</p> <p>17 more focused on the biotech side. So later, she</p> <p>18 just -- when we purchase this property, she's the</p> <p>19 CEO for the company in San Diego.</p> <p>20 Q. I'm sorry. You said you purchased a</p> <p>21 company. What company did you purchase?</p> <p>22 A. No. We purchased the property, the --</p> <p>23 the -- currently the 2132 Houston Drive. At that</p> <p>24 time, she's the CEO of the one biotech company in</p> <p>25 San Diego.</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. What's the name of the biotech company?</p> <p>2 A. I don't know. You got to -- in Chinese is</p> <p>3 MabPlex, MabPlex, MabPlex, yeah.</p> <p>4 MADAM REPORTER: What is it?</p> <p>5 THE WITNESS: It's MabPlex, M-I -- I don't</p> <p>6 know how to spell that. Her company is in China</p> <p>7 company, and one branch is subsidiary in San Diego.</p> <p>8 She own -- the CEO for that company.</p> <p>9 BY MR. LEE:</p> <p>10 Q. Okay. So in 2017 or so, 2018, she was the</p> <p>11 CEO of this biotech company in San Diego; correct?</p> <p>12 A. Right, right, yeah.</p> <p>13 Q. And at the same time, she was also a</p> <p>14 managing member of WLAB; is that correct?</p> <p>15 A. Right, right. She's the managing member</p> <p>16 of this WLAB, but she don't do the daily operation.</p> <p>17 I'm the mostly person doing the daily operation.</p> <p>18 Q. Okay. But she's the one who handled,</p> <p>19 like, the underlying transactional documents for</p> <p>20 WLAB such as your operating agreement; is that fair?</p> <p>21 A. I think so. Maybe, yeah.</p> <p>22 Q. Did you -- were you also involved in the</p> <p>23 drafting of the operating agreement?</p> <p>24 A. Yes, yes. I -- I cannot remember very</p> <p>25 clearly. Actually, we went to the one accounting</p>
<p style="text-align: right;">Page 44</p> <p>1 firm in Monterey Park, Los Angeles, and working with</p> <p>2 this accounting firm to set up the company. Then I</p> <p>3 get the seal, all the documents together. Then</p> <p>4 accounting firm continued to the accountants.</p> <p>5 Every year we file the tax returns through</p> <p>6 the company firm. I think they called the Southern</p> <p>7 California Accounting something company.</p> <p>8 Q. A California accounting company?</p> <p>9 A. Yeah, California company. It's actually</p> <p>10 we set up through that company.</p> <p>11 Q. What's the name of the company?</p> <p>12 A. Southern California Accounting.</p> <p>13 Q. Oh, okay.</p> <p>14 A. Yeah. If you go to the Chinese newspaper,</p> <p>15 you will see that advertise, yeah, from the Chinese</p> <p>16 newspaper, local newspaper.</p> <p>17 Q. So I went through your work history. You</p> <p>18 know, like, 1990 to 2008, you were working in a, you</p> <p>19 know -- capacity as an engineer supervisor. Did you</p> <p>20 have to review many contracts during that time?</p> <p>21 A. Yes, yes. Yeah.</p> <p>22 Q. Okay. And then you understood the</p> <p>23 importance of reading contracts; is that fair?</p> <p>24 A. Yes, yes.</p> <p>25 Q. How many of these contracts led to the</p>	<p style="text-align: right;">Page 45</p> <p>1 development or building of buildings?</p> <p>2 A. I'll be very honest with you, I like</p> <p>3 building, building the house. My family, all my</p> <p>4 kids, my wife live in the house I build. So since</p> <p>5 the one we have ability to buy the house, instead of</p> <p>6 buying or leasing a house, we always build the</p> <p>7 house, so we --</p> <p>8 Q. So this is the Sewanee --</p> <p>9 A. Yeah. I build that house too. That house</p> <p>10 I build. That one in Connecticut, we build the</p> <p>11 house too. So we go through all this document.</p> <p>12 And the Sewanee name, the house, I bought</p> <p>13 all the house that he tear down immediately, then I</p> <p>14 build that house.</p> <p>15 Q. So Sewanee is a house that you built and</p> <p>16 constructed.</p> <p>17 A. Yeah.</p> <p>18 Q. Did you act as the general contractor?</p> <p>19 A. Yes, yes.</p> <p>20 Q. You acted as the project manager?</p> <p>21 A. Yes, yeah.</p> <p>22 Q. Did you hire contractors to help you</p> <p>23 construct it?</p> <p>24 A. Yeah. We hire -- we negotiate the -- we</p> <p>25 doing the -- first we solicited the subcontract and</p>

<p style="text-align: right;">Page 46</p> <p>1 then we evaluate the subcontractor code and also the</p> <p>2 qualification and then submit to the subcontract</p> <p>3 doing the work, then doing the quality control.</p> <p>4 Q. Quality control.</p> <p>5 During that process, this was -- how many</p> <p>6 homes have you constructed?</p> <p>7 A. Huh?</p> <p>8 Q. How many homes have you constructed?</p> <p>9 MADAM REPORTER: You keep breaking up,</p> <p>10 Counsel.</p> <p>11 THE WITNESS: I cannot hear you.</p> <p>12 BY MR. LEE:</p> <p>13 Q. How many homes have you constructed?</p> <p>14 A. Oh, boy. Probably three or four. Yes,</p> <p>15 because -- yeah, because some houses we completed</p> <p>16 from starting all the way together I do my own. But</p> <p>17 at the beginning, we build a house. It's through</p> <p>18 the Nacka ne ma (phonetic) or some other company;</p> <p>19 right? So we sign the contract after the company to</p> <p>20 build the house.</p> <p>21 Just like in Las Vegas from the home</p> <p>22 builder, you go to their site -- community, you sign</p> <p>23 the contract, you participate in the building</p> <p>24 together, then they build it for you.</p> <p>25 Q. Okay. So let's do this: With the Quiet</p>	<p style="text-align: right;">Page 47</p> <p>1 Cove property in Las Vegas, is it a residential</p> <p>2 property?</p> <p>3 A. Yes, yeah.</p> <p>4 Q. Okay. Did you improve upon it or it's as</p> <p>5 is?</p> <p>6 A. I bought this one. Actually, it's from</p> <p>7 auction. What happened -- done the remodeling. I</p> <p>8 bought this one from the homeowners association</p> <p>9 auction.</p> <p>10 Q. When did you buy this?</p> <p>11 A. October 2019.</p> <p>12 Q. Recently?</p> <p>13 A. Yeah.</p> <p>14 Q. It was a foreclosure; correct?</p> <p>15 A. Yes, yeah.</p> <p>16 Q. Did it have damage or it was just a</p> <p>17 foreclosure?</p> <p>18 A. Damage. It's -- the second floor, one</p> <p>19 room is burned.</p> <p>20 Q. You were living in a burned home?</p> <p>21 A. The second floor.</p> <p>22 Q. Okay. So you're just living in the --</p> <p>23 A. First floor.</p> <p>24 Q. The habitable places is where you're</p> <p>25 residing?</p>
<p style="text-align: right;">Page 48</p> <p>1 A. Right, right, right. Right now I put in</p> <p>2 the second floor. I clean the second floor, all the</p> <p>3 burned stuff, and started doing the remodeling.</p> <p>4 Q. You're doing that yourself?</p> <p>5 A. No. It's also through some people.</p> <p>6 Q. Who are you contracting?</p> <p>7 A. Right now it's -- I interview contractor,</p> <p>8 yeah. I haven't done the -- complete the remodeling</p> <p>9 yet because we -- last year we have some issue and</p> <p>10 the -- for the company homeowners association hired</p> <p>11 the attorney to do foreclosure. Then we have some</p> <p>12 issues. So we waiting for the -- until that one</p> <p>13 settle down, then we can do...</p> <p>14 Q. So you bought this by an HOA foreclosure</p> <p>15 or a bank foreclosure?</p> <p>16 A. HOA foreclosure.</p> <p>17 Q. Okay. So it was, like, a superpriority</p> <p>18 lien? Do you understand what that means?</p> <p>19 A. I don't know. I tell you what's happened</p> <p>20 we found out last year. It's -- actually, HOA</p> <p>21 only -- that house own -- actually, previous owner</p> <p>22 owe actually about \$6,000. Actually put in auction</p> <p>23 for that property. That I pay 85,000 cash for that</p> <p>24 property.</p> <p>25 Then we found out this lien about \$70,000.</p>	<p style="text-align: right;">Page 49</p> <p>1 That legal -- the County and the City are going to</p> <p>2 foreclose on the house again, so we are trying to</p> <p>3 use that, actually gather the \$85,000 so they have</p> <p>4 access to proceeding. So want to use that access of</p> <p>5 proceedings to pay off for the County and the City</p> <p>6 name. That's --</p> <p>7 Q. Do you have an attorney that's</p> <p>8 representing you for this action right now?</p> <p>9 A. Yeah, yeah. It's Mr. Lee -- Ben.</p> <p>10 Q. Ben Childs. I'm Mr. Lee.</p> <p>11 A. Yeah, yeah.</p> <p>12 Q. That's your attorney; right?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. It sounds like basically the public</p> <p>15 works utility liens is something that he's trying to</p> <p>16 help you resolve; is that fair?</p> <p>17 A. Yes, yeah.</p> <p>18 Q. Mr. Childs is shaking his head no.</p> <p>19 A. Huh?</p> <p>20 Q. Maybe you guys can confer about that</p> <p>21 later.</p> <p>22 MR. CHILDS: It's tax liens.</p> <p>23 THE WITNESS: Tax lien.</p> <p>24 BY MR. LEE:</p> <p>25 Q. A tax lien. Thank you.</p>

<p style="text-align: right;">Page 134</p> <p>1 heating -- or heater is not light up, so I call the 2 AC company -- or they call the AC company then to 3 fix the other one. They give me the receipt. Then 4 I just keep the receipt, then I pay them.</p> <p>5 Q. Do you have a property management company 6 that manages the property for you or do you do it?</p> <p>7 A. No. That one, no. No property manager. 8 Just I do it.</p> <p>9 Q. And then for the handyman work or the 10 maintenance of it, how do you resolve that?</p> <p>11 A. I just hire the -- from the -- the yellow 12 page or the Google, found the local people and call 13 them, ask them to go there to fix things.</p> <p>14 Q. Are they -- like, what kind of people? 15 Like, handyman?</p> <p>16 A. No. Usually it's a company. Licensed 17 contractor, not a handyman. I never hire handyman. 18 Mostly it's go to the yellow pages, found the 19 plumber. Go to the local plumber, licensed plumber 20 to do that. Actually, I say call the licensed -- 21 actually, I say to do that.</p> <p>22 Q. Well, like, in 2009, it's fair to say that 23 you understood the difference between a licensed 24 contractor and a handyman?</p> <p>25 A. Yes, yes.</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. How many times do you think you have to 2 hire a contractor to address issues with the Bundy 3 property on a yearly basis?</p> <p>4 A. Not very many. Maybe one year one time. 5 I currently have a tenant living there for more than 6 three years. They only call me one time.</p> <p>7 Q. And what was that issue?</p> <p>8 A. They said it's a -- water heater is not 9 light up, so he text me and said that the -- he 10 needed me to come over and take a look and fix that. 11 I said, Go ahead and fix that and send me the bill, 12 and we just deduct from the rent.</p> <p>13 Q. For the water heater, did you hire a 14 plumber or did you just hire, like, a company to 15 give you a new water heater and install --</p> <p>16 A. Plumber, plumber. In California, usually 17 you hire the plumber. They sell you the -- they go 18 to replace the water heater.</p> <p>19 Q. Do you have an understanding that a water 20 heater requires permit work for replacement?</p> <p>21 A. I don't think so. Water heater don't need 22 a permit. In California, no, no permit. 23 (Two speakers at once.)</p> <p>24 Q. Okay. Clark County -- it should be 25 subject to a permit. Would you insist on a</p>
<p style="text-align: right;">Page 136</p> <p>1 contractor showing you a permit?</p> <p>2 A. In California, that one, I don't think so. 3 They don't apply the permit. Because this is -- 4 since they need to do immediately, how you get a 5 permit? You know, the tenant said today, I don't 6 have hot water. I need to replace. So I call the 7 plumber go there to the place. How you get a tenant 8 the permit even in the weekend? No, I don't think 9 so.</p> <p>10 Q. So if you hire, like, a contractor, you 11 understand that they'll take care of any permitting 12 issues that there will be?</p> <p>13 A. Depends. Sometimes with the contractor 14 need me to work with them to get the permit. They 15 cannot directly by themselves. But my understanding 16 for the water heater in California, no permit is 17 required.</p> <p>18 Q. Well, if a permit was required, would you 19 expect that the contractor will take care of that 20 for you?</p> <p>21 A. Yes, but usually I know that sometimes the 22 permit -- I need to apply for permit, they need my 23 information from contractor. Contractor need my 24 information, and my -- some documents that they can 25 apply the permit. I gave them my authority.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. After the work is performed, do you ever 2 ask the contractor to show you the permits they 3 obtained?</p> <p>4 A. Yes. Sometimes I need. I ask for it 5 before.</p> <p>6 Q. Does that also mean sometimes you don't 7 ask for one?</p> <p>8 A. Some -- in California, that house, I just 9 said -- you asked me in California, the house, I 10 didn't -- I don't think I asked them to permit for 11 the -- for water heater replacement.</p> <p>12 Q. So just in general, not just for water 13 heaters, but if a contractor does work for you, are 14 there times where you don't ask to see any related 15 permits?</p> <p>16 A. To my knowledge, I don't think so. I 17 probably doing that. If they required a permit, I 18 will ask them to show me permit and also ask them to 19 show me the inspection and the inspection result. 20 Because that is your duty, you know. You pay the 21 contractor to do the work. Then when they performed 22 the work, you need to gather the certain party to 23 inspect, make sure they're doing it safely and meet 24 law requirement; right?</p> <p>25 Q. Okay. So when you asked, you know, for</p>

<p style="text-align: right;">Page 138</p> <p>1 someone to do the work, you want -- you would 2 usually follow up and ask to see the permit and 3 inspection? 4 A. Yes, I will do that. 5 Q. Okay. So after Bundy, what else did you 6 guys buy? 7 A. We buy a lot of property in California. 8 Q. In general, how many properties do you 9 own? 10 A. A lot. More than ten. But I cannot count 11 exactly right now. 12 Q. More than ten in California or in total? 13 A. In California. 14 Q. So we know you own eight or nine here in 15 Vegas and that you own more than ten in California; 16 right? 17 A. Right, right, right. 18 Q. And then the properties that WLAB owns, 19 are there separate properties that you and Marie own 20 that aren't part of WLAB? 21 A. Yes, yes. We -- we thinking in the -- 22 sometimes they use my wife name because she's get a 23 W-2. She can get a loan, so -- but some we change 24 the title. I went to the County recording office 25 and change the title because time to move to the</p>	<p style="text-align: right;">Page 139</p> <p>1 WLAB now. Some haven't -- 2 Q. How many properties do you and Marie own 3 that are outside of what WLAB owns? 4 A. I don't -- I don't know. Usually when my 5 wife file the tax return, they think it's mostly 6 WLAB for rental property. 7 Q. So this is an area that Marie would know 8 better than you would? 9 A. I think so. She's the person involved in 10 more that. 11 Q. In general with the properties that you 12 purchased, walk me through the process of how you go 13 through it. Like, do you find it on Zillow? Do you 14 find it on some type of listing agreement? How does 15 this work? 16 A. In general, it's I found the property from 17 the Redfin or Zillow; right? Then I contact the 18 listing agent, then I make the listing agent 19 appointment with the listing agent, then go to the 20 property, take a look at the property, do some 21 inspection, then I recording all that by myself and 22 say what's the -- and that property. 23 Then after that, I make the offer to 24 the -- ask my wife make the offer, then sign the 25 purchase agreement after negotiation the price.</p>
<p style="text-align: right;">Page 140</p> <p>1 Q. So in terms of the inspection, like, in 2 general, have you ever used a professional 3 inspection company to do those for you? 4 A. I did some. One or two. Not much. 5 Because we did some work, buy some property in Yuca 6 Valley. I think I hired an inspector to do that. 7 Then later I found out, you know, what later 8 inspector report is not much different than what I 9 found. So later, we just didn't hire the 10 professional inspector doing this work. 11 Q. Can you spell Yucca Valley? Is that 12 Y-U-C-C-A? 13 A. Yeah, Y-U-C-C-A. Yeah. 14 Q. So you've only hired a professional 15 inspector once or twice. Do you recall which years 16 that would have been when you did that? 17 A. 2014, something like that. It's -- yeah, 18 early 2014, 2015. Let me see. 19 Q. Have you ever hired a professional 20 inspection company in Clark County, Nevada? 21 A. No. That's -- like I said, in the Nevada, 22 all the property is multi-family rental property, 23 so -- multi-family rental property usually don't 24 need professional inspector to do that. 25 Q. Do you know if there's professional</p>	<p style="text-align: right;">Page 141</p> <p>1 inspectors that will inspect multi-tenant 2 residential properties that have six units or less? 3 A. I -- I think some of the advertisement 4 they can do that, but I contact the -- they tried to 5 log money, but also we found out that you don't need 6 to do that. According to -- I talk to the other 7 landlord, them said it's a -- you know, if you have 8 lot of unit in that apartment, you cannot do the 9 inspection. 10 Then also the law is -- what they said for 11 the multi-family rental property, the seller must 12 provide a good, safe, and healthy environment for 13 tenant. So that is a burden is on the seller to 14 make sure that everything is safe. 15 The tenant is not going to inspect -- hire 16 an inspector to do the inspection before they rented 17 the building or the room; right? Then it's also -- 18 Q. First of all, what is the law that you're 19 referencing in your discussion? 20 A. This is -- even you take a look at the -- 21 here on this one, what's the deed of permit 22 inspection, is on the tenant and the landlord they 23 said this way. Yeah, they said you -- you have to 24 provide in the tenant. You have to provide healthy, 25 well-being facility for the tenant.</p>

<p style="text-align: right;">Page 338</p> <p>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. 6 Q. So is there any information that you want 7 to provide that I haven't asked you about? 8 A. No. 9 Q. No? Okay. 10 Would you like to revise or supplement any 11 of your prior answers? 12 A. Yes. I need to read this description, 13 the -- what's it called? 14 MR. CHILDS: Transcript. 15 THE WITNESS: Transcript, yeah. 16 BY MR. LEE: 17 Q. Okay. So I presume you guys are going to 18 buy a copy of the transcript. You'll need to let 19 the court reporter know. If you are, they'll mail 20 you a copy. If not, you're going to have to go to 21 the court reporter's office to review it; okay? 22 A. Yeah. We just buy one. 23 Q. Okay. And then in terms of the areas that 24 we covered that was based on your experience or your 25 speculation, are you planning on offering those</p>	<p style="text-align: right;">Page 339</p> <p>1 opinions at the time of trial? 2 A. Yes, yes. 3 Q. Okay. 4 MR. LEE: I don't have any further 5 questions, so we can go off record and -- or 6 actually, I pass the witness. How about that? 7 MR. CHILDS: No questions. 8 THE WITNESS: No questions. 9 MR. LEE: Okay. Then I'll release you 10 subject to any disclosure of any additional 11 documents that we haven't received at this time, but 12 I thank you for your time today; okay? 13 THE WITNESS: Thank you. 14 MADAM REPORTER: Counsel, would you like a 15 copy of the transcript? 16 MR. CHILDS: Yeah, I think -- 17 THE WITNESS: Yeah, yeah. 18 MADAM REPORTER: Do you want electronic? 19 MR. CHILDS: Sure. 20 MR. LEE: I only want an e-copy with 21 exhibits. 22 MADAM REPORTER: Okay. 23 (The deposition concluded at 5:26 p.m.) 24 25</p>
<p style="text-align: right;">Page 340</p> <p>1 CERTIFICATE OF WITNESS 2 PAGE LINE CHANGE REASON 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 * * * * * 17 18 I, FRANK MIAO, witness herein, do hereby 19 certify and declare under the penalty of perjury the 20 within and foregoing transcription to be my 21 deposition in said action; that I have read, 22 corrected and do hereby affix my signature to said 23 deposition. 24 _____ 25 FRANK MIAO Witness Date</p>	<p style="text-align: right;">Page 341</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF NEVADA) 3) ss 4 COUNTY OF CLARK) 5 I, Trina K. Sanchez, a duly certified 6 court reporter licensed in and for the State of 7 Nevada, do hereby certify: 8 That I reported the taking of the 9 deposition of the witness, FRANK MIAO, at the time 10 and place aforesaid; 11 That prior to being examined, the witness 12 was by me duly sworn to testify to the truth, the 13 whole truth, and nothing but the truth; 14 That I thereafter transcribed my shorthand 15 notes into typewriting and that the typewritten 16 transcript of said deposition is a complete, true 17 and accurate record of testimony provided by the 18 witness at said time to the best of my ability. 19 I further certify (1) that I am not a 20 relative, employee or independent contractor of 21 counsel or of any of the parties; nor a relative, 22 employee or independent contractor of the parties 23 involved in said action; nor a person financially 24 interested in the action; nor do I have any other 25 relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRPC 30(e) was requested. IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 20 23rd day of January, 2021. <i>Trina K. Sanchez</i> 21 22 23 TRINA K. SANCHEZ, RPR, CCR NO. 933 24 25</p>

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