

Electronically Filed
Jul 22 2021 12:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EXHIBIT “3”



1532



1533



1534



1535



1536









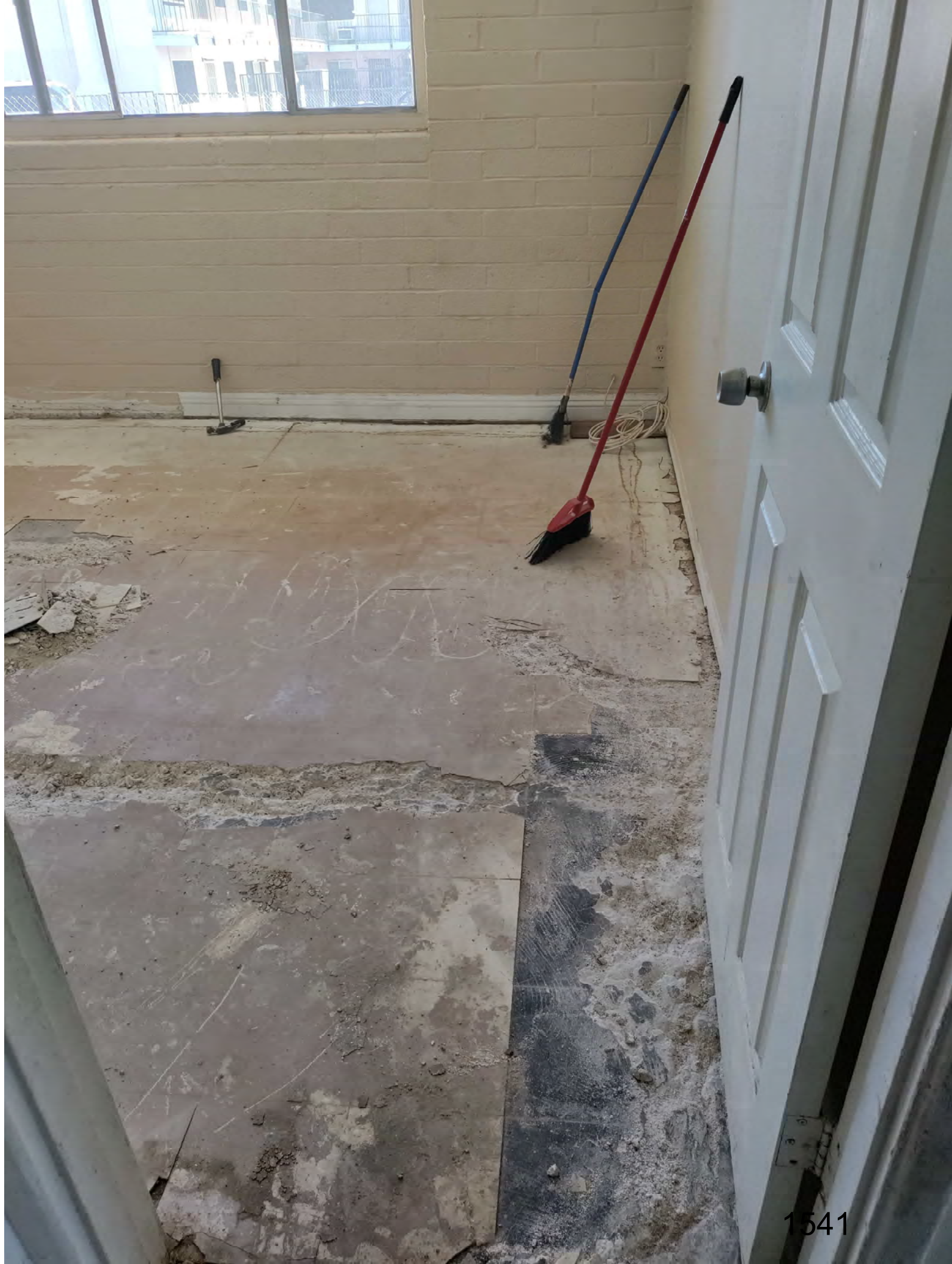


EXHIBIT “4”

EXHIBIT “5”

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
联系电话 95013515588 x 88855



恆興地產

WLAB Investment v. TKNR

Case # A-18-785917-C

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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



WLAB Investment v. TKNR
Case # A-18-785917-C

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。

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案例分析
SUCCESSFUL
PROJECTS

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已运作项目
PROVIDED
LIST

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短炒周期
FLIPPING
TERM

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资金分配
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& EXPENSES

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投资回报
RPO
FORMS

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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

\$55,100.00

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相关政策

TERMS & CONDITIONS

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2. 投资门槛: 最少\$5万, 每股\$1000。
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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 9501351558 x 88855



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InvestPro Realty
3553 S Valley View Blvd
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Office phone: 702-997-3832
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Investment Opportunities - InvestPro Realty



Introducing

■ ■

■ ■

WLAB Investment v. TKNR

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Management Team

Professional team
to optimize your fund



Kenny Lin [more>](#)

Over 20-years experience in real estate investment industry.
Specialize in Auctions, Investments, Luxury homes, High raise
condo, Residential, Commercial, Apartment, Property
Management, New Construction, Development Land.

Languages: English, Mandarin, Cantonese, Fuzhou dialect

Service Area: Las Vegas NV, Summerlin NV, Henderson NV

(<http://investprorealty.net/agents/kenny-lin/>)



We carefully chose

Investment Projects

FLIPPING FUND

Las Vegas

Flipping Fund is for investing on value
increasing real estates in Las Vegas.

[Learn more>](#)

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EXHIBIT “6”



SELLER'S REAL PROPERTY DISCLOSURE FORM

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

Date August 2nd, 2017

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

Property address 2132 HOUSTON DR LAS VEGAS NV 89104

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

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

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

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

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

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

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

Co
Seller(s) Initials

MZ

Buyer(s) Initials

Property conditions, improvements and additional information:

Are you aware of any of the following?:

YES NO N/A

1. Structure:

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

2. Land / Foundation:

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

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

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

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

6. Environmental:

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

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

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

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

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

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

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

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☒ YES ☐ NO
(If yes, additional Federal EPA notification and disclosure documents are required)

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

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

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

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

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

17. This property is subject to a Private Transfer Fee Obligation? ☐ YES ☒ NO

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

Co
Seller(s) Initials

MZ
Buyer(s) Initials

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

one of the unit has brand new kitchen cabinet installed
 all 3 Units has brand new AC installed within 3 months.
 all 3 bathrooms are realone within 2 years.
 sprinkler for landscaping doesn't work, all pipes are broken;
 please consider that there are no sprinkler system.
 AC units are installed by Licensed contractor, all other work
 are done by owner's handyman.
 owner never reside in the property, and never ~~there~~ visited
 the property.


 Seller(s) Initials


 Buyer(s) Initials

EXHIBIT “7”



1562

EXHIBIT “8”



RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 09/05/17

Marie Zhu ("Buyer"), hereby offers to purchase
2132 HOUSTON DR ("Property"), within the
city or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,
Zip 89104, A.P.N. # 162-01-110-017 for the purchase price of \$ 200,000.00
(Two Hundred Thousand dollars) ("Purchase Price") on the terms and conditions
contained herein: BUYER ☐ does **-OR-** ☒ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

\$ 500.00 **A. EARNEST MONEY DEPOSIT ("EMD")** is ☐ presented with this offer **-OR-** ☒ will wire to
escrow upon acceptance. Upon Acceptance, Earnest Money to be
deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2
business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, **-OR-** ☐ Seller's Broker's
Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000
fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ 0.00 **B. ADDITIONAL DEPOSIT** to be placed in escrow on or before (date) _____. The
additional deposit ☐ will **-OR-** ☐ will not be considered part of the EMD. (Any conditions on the additional
deposit should be set forth in Section 28 herein.)

\$ 150,000.00 **C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:**
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____.

\$ 0.00 **D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE**
FOLLOWING EXISTING LOAN(S):
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____.
Interest: ☐ Fixed rate, _____ years **-OR-** ☐ Adjustable Rate, _____ years. Seller further agrees to
provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer
within FIVE (5) calendar days of acceptance of offer.

\$ 0.00 **E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS**
IN "FINANCING ADDENDUM" which is attached hereto.

\$ 49,500.00 **F. BALANCE OF PURCHASE PRICE** (Balance of Down Payment) in Good Funds to be paid prior to
Close of Escrow ("COE").

\$ 200,000.00 **G. TOTAL PURCHASE PRICE.** (This price DOES NOT include closing costs, prorations, or other fees
and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a

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: CW

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completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 7 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 0 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

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

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

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

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

The following additional items of personal property: _____

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement

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

("Opening of Escrow"), at National Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Lynnette Marrujo ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.

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

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before: 09/22/17 (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

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

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

7. BUYER'S DUE DILIGENCE: Buyer's obligation is is not MZ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 0 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

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

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

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Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

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writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

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

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

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

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

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

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

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

A. TITLE, ESCROW & APPRAISAL FEES:

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

B. PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be

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Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CN

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credited to the Buyer. All proration will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute \$ 5000 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☒ including ~~OR~~ ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☒ waives ~~OR~~ ☐ requires a Home Protection Plan with Plan at a price not to exceed \$ N/A 0. ☒ Seller ~~OR~~ ☐ Buyer will pay for the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

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

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

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

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

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	Seller	CIC Capital Contribution	Seller	CIC Transfer Fees	Seller
Other: _____					

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

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

☒ **Seller Real Property Disclosure Form:** (NRS 113.130) ☐ **Open Range Disclosure:** (NRS 113.065)

☐ **Construction Defect Claims Disclosure:** If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)

☒ **Lead-Based Paint Disclosure and Acknowledgment:** required if constructed before 1978 (24 CFR 745.113)

☐ **Other:** (list) _____

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

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

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

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

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

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

18. DEFAULT:

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

BUYER(S) INITIALS: [MZ] / _____ SELLER(S) INITIALS: [CW] / _____

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]

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

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

Instructions to Escrow

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

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

Brokers

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

22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all

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Buyer's Name: Marie Zhu

BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR

SELLER(S) INITIALS: CN

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claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. DEFINITIONS: "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

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

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

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

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement

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

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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.

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

28. **ADDITIONAL TERMS:**

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

Buyer's Acknowledgement of Offer

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

Buyer's Broker: Joyce Nickrandt
Company Name: Investpro Realty
Broker's License Number: B0144660
Phone: 702-997-3832
Fax: 702-997-3836

Agent's Name: Liwei Helen Chen
Agent's License Number: S.0175520
Office Address: 3553 VALLEY VIEW BLVD
City, State, Zip: LAS VEGAS NV 89103
Email: helen0510c@gmail.com

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

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

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

Seller must respond by: 5 (☐AM☒PM) on (month) September, (day) 6, (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

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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 09/05/2017 4:05 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: Liwei Helen Chen
 Company Name: Investpro Realty Agent's License Number: S.0172460
 Broker's License Number: B0144660 Office Address: 3553 Valley View Dr
 Phone: _____ 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 09/05/2017 4:53 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



ADDENDUM NO. 1 TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Marie Zhu
as Buyer(s) and TKNR INC
as Seller(s), dated 09/05/17
covering the real property at 2132 HOUSTON DR LASVEGAS NV 89104
, the ☒ Buyer ☐ Seller hereby proposes that the Purchase

Agreement be amended as follows:

1. buyer and seller agree to extend the COE to 1/5/18.
2. buyer to make an immediate additional deposit of \$60,000 (sixty thousand dollars) to escrow , and the escrow to release the entire \$60,000 (sixty thousands dollars) to seller immediately, and become non-refundable. If this transfer is not completed within 48 hours of execution of this addendum , this addendum will become invalid immediately, either buyer and seller have any obligations to each other.
3. Total of \$60,000 will be applied to purchase price as buyer's credit at COE. All other terms on the existing RPA and addendum to stay the same and effective .
4. Buyer also agree to pay for the rent on one of 2 bedroom unit at the rate of \$650 per month until seller place a tenant in the unit , the rent will be paid by buyer to seller at successful COE . in the event that seller place a tenant in the unit , buyer will no longer be paying the rent to seller , and buyer will pay \$800 tenant placement fee (leasing fee) to current PM immediately, which is none refundable and to be prorated at successful COE.
5. Time is essence on this addendum.
6. Seller has the right to cancel the escrow without any obligation to the buyer only if the buyer fails to close the escrow for any reason what so ever by Jan 5th, 2018.
7. Buyer agrees to hold harmless against the seller, listing agent and its broker, selling agent and its broker if the buyer fails the close by Jan 5th, 2018 per RPA and this addendum.

Authentisign
Joyce Nickrandt
witness 9/20/2017 7:48:07 PM PDT

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

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

<p style="text-align: center;">Authentisign <u>Marie Zhu</u></p> <p><input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller</p>	<p><u>09/26/2017</u></p> <p>Date</p>
<p><input type="checkbox"/> Buyer <input type="checkbox"/> Seller</p>	<p><u>7:48 PM</u></p> <p>Time</p>
<p>Acceptance:</p> <p style="text-align: center;">Authentisign <u>[Signature]</u></p>	
<p><input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller</p>	<p><u>09/27/2017</u></p> <p>Date</p>
<p><input type="checkbox"/> Buyer <input type="checkbox"/> Seller</p>	<p><u>11:06 AM</u></p> <p>Time</p>

Prepared by: Liwei Helen Chen
Agent's Printed Name

Phone _____

Addendum to Purchase Agreement 9/12

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ADDENDUM NO. 2
TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by _____ Marie Zhu
_____ as Buyer(s) and _____ TKNR INC
_____ as Seller(s), dated _____ 09/05/17
covering the real property at _____ 2132 HOUSTON DR _____ LASVEGAS NV 89104
_____, the ☒ Buyer ☐ Seller hereby proposes that the Purchase
Agreement be amended as follows:
1. Buyer's name amend to WLAB INVESTMENT GROUP LLC

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

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

GNING. 12/12/2017
 [*Marie Zhu*]
 [☒ Buyer] [☐ Seller] 12/12/2017 4:39:33 PM PST Date

☐ Buyer ☐ Seller 1:39 PM

Acceptance:  12/12/2017

☐ Buyer ☒ Seller

12/12/2017 2:45:12 PM PST

Date

☐ Buyer
 ☐ Seller
 2:45 PM

Prepared by: Liwei Helen Chen _____
Agent's Printed Name Phone

Addendum to Purchase Agreement 9/12

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RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 08/11/17

Marie Zhu ("Buyer"), hereby offers to purchase
2132 HOUSTON DR ("Property"), within the
city or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,
Zip 89104, A.P.N. # 162-01-110-017 for the purchase price of \$ 200,000.00
(Two Hundred Thousand dollars) ("Purchase Price") on the terms and conditions
contained herein: BUYER ☐ does -OR- ☒ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

\$ 5,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☒ presented with this offer -OR- ☐ Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000 fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ 0.00 B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) The additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$ 150,000.00 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)

\$ 0.00 D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)
Interest: ☐ Fixed rate, years -OR- ☐ Adjustable Rate, years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$ 0 E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.

\$ 45,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

\$ 200,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a

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: [Signature]

SELLER(S) INITIALS: [Signature]

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completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 14 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

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

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

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

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

The following additional items of personal property: _____

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement

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

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1 ("Opening of Escrow"), at Nevada Title title or escrow company ("Escrow Company" or
2 "ESCROW HOLDER") with Michele Eaton ("Escrow Officer") (or such other escrow officer as
3 Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted
4 Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and
5 the Escrow Number.

6
7 **B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of
8 this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

9
10 **C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before:
11 30 days upon acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business
12 day.

13
14 **D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW
15 HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction
16 and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this
17 information to the Internal Revenue Service after COE in the manner prescribed by federal law.

18
19 **6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and
20 marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase
21 price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate
22 marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

23
24 **7. BUYER'S DUE DILIGENCE:** Buyer's obligation is not is not not conditioned on the Buyer's Due Diligence as
25 defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative,
26 Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 14 calendar days from Acceptance (as
27 defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence.
28 Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's
29 investigations and through the close of escrow.

30
31 **A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such
32 action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to,
33 whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise
34 affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or
35 hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other
36 concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/
37 non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning,
38 water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors
39 or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors.
40 Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at
41 Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not
42 apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross
43 negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to
44 consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools;
45 proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire
46 protection; other governmental services; existing and proposed transportation; construction and development; noise or odor
47 from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection
48 report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and
49 telephone number of the inspector.

50
51 **B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole
52 discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence
53 Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller,
54 whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of
55 further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in

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

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6 **Buyer's Initials** **Buyer's Initials**

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

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

A. TITLE, ESCROW & APPRAISAL FEES:

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credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute \$ 0 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☒ including **OR** ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

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

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

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

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

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

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	Seller	CIC Capital Contribution	Seller	CIC Transfer Fees	Seller
Other: <u> </u>					

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

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Case # A-18-785917-C

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

☒ **Seller Real Property Disclosure Form:** (NRS 113.130) ☐ **Open Range Disclosure:** (NRS 113.065)

☐ **Construction Defect Claims Disclosure:** If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)

☒ **Lead-Based Paint Disclosure and Acknowledgment:** required if constructed before 1978 (24 CFR 745.113)

☐ **Other:** (list) _____

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

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

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

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

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

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

18. DEFAULT:

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

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

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

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

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

Instructions to Escrow

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

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

Brokers

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

22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all

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

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BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. DEFINITIONS: "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

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

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

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

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement

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

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BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CV

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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.

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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

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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: CW

☒ **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: CW

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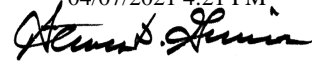
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EXHIBIT “9”


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.

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.

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.

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

1 11 one. I think it's okay; right? Then the –
2 Supplement at 166:2-11.

3 8 . . . Q . . So you had the right to inspect the
4 9 structure; correct?
5 10 . . . A . . Yes, yes, I did that.
6 11 . . . Q . . You had the right to inspect the roof; is
7 12 that correct?
8 13 . . . A . . Yes.
9 14 . . . Q . . Okay. Did you do that?
10 15 . . . A . . I forgot. I maybe did that because
11 16 usually I go to the roof.

12 * * *

13 22 . . . Q . . You had the right to inspect the
14 23 mechanical system; correct?
15 24 . . . A . . Right. Yes, yes.
16 25 . . . Q . . You had the right to inspect the
17 Page 167
18 1 electrical systems; correct?
19 2 . . . A . . I check the electrical system, yes.
20 3 . . . Q . . You had a right to inspect the plumbing
21 4 systems; correct?
22 5 . . . A . . Yes.
23 6 . . . Q . . You had the right to inspect the
24 7 heating/air conditioning system; correct?
25 8 . . . A . . Yes.

26 * * *

27 3 . . . Q . . And then you could have inspected any
28 4 other property or system within the property itself;
1 5 correct?
2 6 . . . A . . Yes, yes.

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

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

6 13 . . . Q . . "It is strongly recommended that buyer
7 14 retain licensed Nevada professionals to conduct
8 15 inspections."
9 16 . . . A . . Yes.
10 17 . . . Q . . Yeah. So you were aware of this
11 18 recommendation at the time --
12 19 . . . A . . Yeah, I know.

13 *Id.* at 176:13-19.

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

16 *////*

18 · · · Q · · Okay · So going back to paragraph 7D --

19 · · · A · · Yeah.

20 · · · Q · · -- right, after the language that's in
21 italics, would you admit that because it's in the
22 italics, it's conspicuous, you can see this
23 language?

24 · · · A · · Yeah · Yeah.

25 · · · Q · · Okay · Then it goes on to say, "If any
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· 1 inspection is not completed and requested repairs
· 2 are not delivered to seller within the due diligence
· 3 period, buyer is deemed to have waived the right to
· 4 that inspection and seller's liability for the cost
· 5 of all repairs that inspection would have reasonably
· 6 identified had it been conducted."

· 7 · · · · Did I read that correctly?

· 8 · · · A · · Yes, yes.

· 9 · · · Q · · Okay · So we'll eventually get to the
10 issues that, you know, Ms. Chen identified that you
11 wanted corrected in the emails or text messages.

12 · · · · Is that fair to say that those are the
13 only issues that you deemed needed to be resolved to
14 go forward with the purchase?

15 · · · A · · Yeah · After that time, yes.

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

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

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

22 22. As to all the properties purchased by Plaintiff, Mr. Miao always does the
23 inspections and does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25,
24 140:5-10. Based on his own belief, he does not believe that a professional inspection is
25 necessary for multi-tenant residential properties. *Id.* at 120:6-9 (his own understanding), 120:16-
26 25 (second-hand information he received).

27 23. Notably, he does not have any professional license related to being a general
28 contractor, inspector, appraiser, or project manager. *Id.* at 123:5-16 (no professional licenses),
123:23-24 (no property management license), 169:7-14 (no licensed or bonded inspector),
171:23-25 (have not read the 1952 Uninformed Building Code), 172:17-19 (not an electrician),

1 172:23-25-1-16 (no general contractor license or qualified under the intentional building code),
2 174:13-23 (not familiar with the international residential code).

3 24. Mr. Miao has never hired a professional inspector in Clark County, *Id.* at 140:19-
4 21, so he does not actually know what a professional inspection would encompass here. *Id.* at
5 143:9-13, 144:8-19.

6 25. The main reason Plaintiff does not use a professional inspector is because of the
7 cost. *Id.* at 147:2-7.

8 26. On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at
9 158:1-25-159:1-12. During that time, he admitted that he noticed some issues with the Property
10 that were not up to code, finishing issues, GFCI outlets, and electrical issues:

11 16. . . . A. . . I looked at a lot of things. . For example,
12 17 like, the -- I point out some drywall is not
13 18 finished; right? . And the -- some of smoke alarm is
14 19 not -- is missing and -- which is law required to
15 20 put in for smoke alarm. . Then no carbon monoxide
16 21 alarm, so I ask them to put in.
17 22. Then in the kitchen, lot of electrical,
18 23 the outlet is not a GFCI outlet, so I tell them, I
19 24 said, You need to change this GFCI. . Right now this
20 25 outlet is not meet code. . You probably have problem.

21 *Id.*

22 27. Similarly, he also specified that there was an issue with exposed electrical in Unit
23 C. *Id.* at 175:10-24. He also noted that there could have been a potential asbestos issue as well.
24 *Id.* at 160:7-12.

25 28. Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, *Id.*
26 at 249:22-25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269:13-22
27 (aware of slab cracks), which were open and obvious. *Id.* at 270:14-24.

28 29. Mr. Miao admitted that he could also have seen the dryer vent during his
inspection. *Id.* at 269:23-25.

30. As to those issues, Mr. Miao determined that the aforementioned issues were the
only issues that TKNR needed to fix after his inspection. *Id.* at 171:2-9 (was only concerned
about the appraisal), *Id.* at 219:13-25-221:1-2.

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

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

9 23 · · · Q · Okay · So when they disclosed that there
10 24 was construction and modification, alterations,
11 25 and/or repairs made without State, City, County
 Page 205
12 · 1 building permits, which was also work that was done
13 · 2 by owner's handyman, did you ever do any follow-up
14 · 3 inquiries to the seller about this issue?
15 · 4 · · · A · No, I didn't follow up ·

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

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

19 10 · · · Q · Under the disclosure form --
20 11 · · · A · Yeah.
21 12 · · · Q · -- like, where it specified that there
22 13 were heating system/cooling system issues that
23 14 they're aware of, that you could have elected to
24 15 have an inspection done at that time; correct?
25 16 · · · A · Yes.

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

27 15 · · · Q · Okay · So as your attorney said, you could
28 16 have obtained a copy of the permits at any time?
29 17 Yes?
30 18 · · · A · Yes.
31 19 · · · Q · Okay · And then it's fair to say that just
32 20 put you on notice of the potential permit issue;
33 21 correct?
34 22 · · · A · Yes.
35 23 · · · Q · It also put you on notice of the issues of
36 24 everything that's basically specified on page 38;
37 25 correct?
38 Page 209
39 1 · · · A · Yes.

Id. at 209:15-25-210:1, 245:22-25 (could have obtained permit information in 2018).

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

22 . . . Q. . Okay. So you understand that for more
23 information during the diligence process, you should
24 contact the local building department?

25 . . . A. . Yes.

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* * *

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

7 . . . A. . Yes.

8 . . . Q. . And the office hours; is that correct?

9 . . . A. . Yes.

10 . . . Q. . And it also provides you with a phone
11 number; correct?

12 . . . A. . Yes.

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

17 . . . A. . Yes.

18 . . . Q. . And this would have been true prior to the
19 purchase of the building; correct?

20 . . . A. . Yes.

21 . . . Q. . And this would also have been true at the
22 time you read the disclosure that specified that
23 some of the improvements or some of the disclosures
24 had been done without a permit; right?

25 . . . A. . Yes.

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

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

5 . . . Q. . Okay. And it says, "It's the buyer's duty
6 to inspect. Buyer hereby assumes responsibility to
7 conduct whatever inspections buyer deems necessary
8 to inspect the property for mold contamination.

9 "Companies able to perform such
10 inspections can be found in the yellow pages under
11 environmental and ecological services."

12 I read that correctly? Yes?

13 . . . A. . Yes.

14 . . . Q. . Okay. And then you elected not to get a
15 mold inspection; correct?

16 . . . A. . Yeah.

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

2 ·5· · · Q· ·So you relied upon your own determination
3 ·6 related to the potential mold exposure of the
4 ·7 property; correct?
5 ·8· · · A· ·Yes.
6 ·9· · · Q· ·Okay· And you elected to proceed with
7 purchasing it without a professional mold
8 inspection; correct?
9 ·12· · · A· ·Yes.

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

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

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

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

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

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

31 *There Is No Dispute a Professional Inspection Could Have Revealed the Alleged Issues*

32 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 23 sentence begins, "Items complained about in the Sani
30 24 report were open and obvious in the roof area, attic
31 25 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?
Page 321

* * *

·3 · · · · · Yes, yes.

·4 BY MR. LEE:

·5 · · · Q. · You agree with that? · Okay.

·6 · · · A. · Agree.

Id. at 321:17-21 – 322:3-6. This would have also included any issues with the dryer vent and ducts, *Id.* at 325:3-20, as he recognized that most rentals do not include washer / dryer units. *Id.* at 326:7-25-327:1-9.

No Permits Required for Cosmetic Work by TKNR

47. No dispute exists that TKNR did not need permits for the interior work it had done to the Property. Mr. Miao admitted the following:

·5 · · · Q. · Number 5 says, "Painting, papering,
·6 tiling, carpeting, cabinets, countertops, interior
·7 wall, floor or ceiling covering, and similar finish
·8 work."

·9 · · · · · Do you see that?

10 · · · A. · Yes.

11 · · · Q. · So you agree that no permits are required
12 for any of these types of work; correct?

13 · · · A. · Yes.

Id. at 262:5-13.

·1 Window Replacements where no structural member -- no
·2 structural member is altered or changed," that does
·3 not need a permit either; right?

·4 · · · A. · Yes.

Id. at 265:1-4.

17 · · · Q. · Okay. · If you turn the page to 82,
18 Plumbing Improvements, no permits required to repair

19 or replace the sink; correct?
20 . . . A. . . Yes.
21 . . . Q. . . To repair or replace a toilet?
22 . . . A. . . Yes.
23 . . . Q. . . To repair or replace a faucet?
24 . . . A. . . Yes.
25 . . . Q. . . Resurfacing or replacing countertops?
Page 264
26 . . . A. . . Yes.
27 . . . Q. . . Resurfacing shower walls?
28 . . . A. . . Yes.
29 . . . Q. . . Repair or replace shower heads?
30 . . . A. . . Yes.
31 . . . Q. . . Repair or replace rain gutters and down
32 spouts?
33 . . . A. . . Yes.
34 . . . Q. . . Regrouting tile?
35 . . . A. . . Yes.
36 . . . Q. . . And a hose bib, whatever that is.
37 . . . A. . . Water freezer. . . It's, like, for the
38 filtration of the water.
39 . . . Q. . . Okay. . . And then for the mechanical, no
40 permits required for portable heating appliances;
41 correct.
42 . . . A. . . Yes.
43 . . . Q. . . For portable ventilation appliances?
44 . . . A. . . Yes.
45 . . . Q. . . Or portable cooling units; correct?
46 . . . A. . . Yes.
47 . . . Q. . . And for portable evaporative coolers
48 installed in windows; correct?
49 . . . A. . . Yes.

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

Plaintiff Does not Disclose the Alleged Issues to Potential Tenants

48. Since the date it purchased the Property, Plaintiff has always been trying to lease
it. *Id.* at 330:19-25-331:1-2. According to Mr. Miao, the landlord must provide safe housing for
the tenant:

19 Then also in according to the law, and
20 they said it very clearly, because this is
21 residential income property, right, rental income
22 property, multi-family, we need -- landlord need
23 provide housing and well-being and -- for the
24 tenant. . . The tenant is not going to do all this
25 inspection. . . They can't. . . The burden is on the
Page 120
26 . . 1 landlord to make sure all these building is safe and
27 . . 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 ··· Q. · All right. · In terms of tenants -- renting
7 out the units to any tenants, do you ever provide
8 them with a copy of the Sani report?

9 ··· A. · No.

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

13 ··· A. · No.

14 * * *

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

18 ··· A. · Yeah. · And also we need to tell is a lot
19 Page 337

20 1 of things report that we don't need to go to the
21 inside the building. · It's wall cracking. · It's
22 outside. · You can see.

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

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

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

26 50. This illustrates the lack of merit of Plaintiff's claims, proven that it has done
27 nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does
28 not tell prospective tenants about them.

Squatters or Tenants Could Have Damaged the Property

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

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

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

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

1 were occupying it:

2 ·4· · · Q· ·Okay· So the tenant in this context would
3 ·5 have damaged the unit at the time that you owned it;
4 ·6 is that fair?

5 ·7· · · A· ·Maybe· Yes.

6 ·8· · · Q· ·Okay· So some of the -- so the damage
7 ·9 that was to the water heater system, could the
8 10 tenant have damaged that as well?

9 11· · · A· ·Yes.

10 12· · · Q· ·And then he could have damaged the cooler
11 13 pump and the valve as well; is that correct?

12 14· · · A· ·Yes.

13 15· · · Q· ·Okay· Then on 122, these are all issues
14 16 that the tenant could have damaged; is that correct?

15 17· · · A· ·Yes.

16 18· · · Q· ·And then the same through for 145; is that
17 19 right?

18 20· · · A· ·Yes.

19 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.

20 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

21 *No Evidence That Defendants Knew of Alleged Conditions*

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

25 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at
26 253:17-19.

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

55. Mr. Miao recognized that a 63-year-old property could have issues that were not
caused by Defendants. *Id.* at 324:6-15. This would have also included any issues with the dryer

vent and ducts, *Id.* at 325:3-20, and when the duct became disconnected. *Id.* at 329:1-16.

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

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

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

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

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

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

Cost of Repairs

59. Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been \$102,873.00. *Id.* at 307:6-22. However, Plaintiff's expert opined that the cost of repair would have been \$600,000, although he did not provide an itemized cost of repair. *Id.* at 334:17-21.

Allegations in the Second Amended Complaint

60. On November 23, 2020, Plaintiff filed its Second Amended Complaint ("SAC").

Based on the admissions of Mr. Miao and the waivers related to the RPA and the 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
swamp cooler water supply lines without UBC required
permits and inspections. To save money, minimize flipping
cost, minimize flipping time, and maximize flipping fund
profits, Investpro Manager LLC used unlicensed and
unskilled workers who just plugged high pressure water
supply lines at rooftop instead of at ground level and who
did not remove the water supply lines on top of the roof,
inside the attic and behind the drywall. In cold winter, the
high pressure water line which was left inside the building
may freeze and break the copper line and lead flooding in
the whole building.

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

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

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

1 leak and are causing moisture conditions behind tile walls
2 and drywalls.

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

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

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

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

Further, Investpro Manager LLC installed two electrical
heat pump heating systems without UBC required permits
and inspections for Unit B and Unit C. The Unit A does not
have an electrical heat pump heating system nor a natural
gas wall furnace heating system now. Unit A has to use
portable electrical heaters.

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

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

Further, as early as March of 2016, Investro Manager, LLC
hired Air Supply Cooling to install one five ton new heat
pump package unit with new rooftop ducting systems on

one roof area to supply cooling and heating air to the whole building consisting of Unit A, Unit B and Unit C without UBC required weight load and wind load calculations, permits and inspections. The five ton heat pumps package unit was too big, too heavy and had control problems. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC also used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with ducting system without UBC required permits and inspections. All of this work was done without UBC required structural calculation, permits and inspections.

Further, in early June, 2017, Investro Manager, LLC hired The AIRTEAM to install two new two ton heat pump package units, one each for Unit B and Unit C. Invespro (sic) Manager, LLC also used unlicensed and unskilled workers to install two window cooling units in Unit A's exterior walls. All of the above work was done without UBC required permits and inspections.

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

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

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

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

To saving money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to

complete renovation to all three bathrooms without UBC required permits and inspections. Some faucets and connections behind tile walls and drywall leaks and caused moisture conditions behind tile walls and drywalls.

h. SRPDF stated that there was no structure defect. Investpro Manager LLC added one new five ton heat pump package unit with ducting systems on the one roof top area for the whole building in early March, 2016 without UBC required weight load and wind load calculation, permits and inspections. Due to the five ton heat pump package unit being too big, too heavy and having control problems to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investro (sic) Manager, LLC used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with part of the ducting system again without UBC required permits and inspections. Investpro Manager LLC added two new two ton heat pump package units on the two roof top areas for Unit B and Unit C with new ducting systems without UBC required weight load and wind loan calculation, permits and inspections.

Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to open two new window holes on exterior walls for two window cooling units in Unit A without UBC required structure calculation, permits and inspections. This work damaged the building structure. Further, the moisture condition behind tile walls and drywall due to faucets leaking damaged the building structure.

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

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

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

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

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

The roof of the Subject Property was damaged by changing

1 roof top HVAC units and ducting systems multiple times
2 from October, 2015 to June, 2017. Investpro Manager LLC
3 removed the existing swamp coolers from roof top and
4 covered the swamp coolers ducting holes. Investpro
5 Manager LLC added a five ton heat pump package unit
6 with a new ducting system on one roof top area in March,
7 2016. Investpro the removed the one year old five ton heat
8 pump package unit with part of the ducting system from the
9 one roof top area in June, 2017. Then Investpro Manager
10 LLC added two two ton heat pump package units on the
11 two roof top areas in June, 2017. The work damaged the
12 roof of the Subject Property to such an extent that when it
13 rains the roof leaks. All of this renovation, demolition, and
14 construction work was done without UBC required weight
15 load and wind load calculations, permits and inspections
16 and this damaged the building roof structure.

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

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

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

i. Problems with flooring.

To save money, minimize flipping cost, minimize
flipping time, and maximize flipping fund profits,
Investpro Manager LLC used unlicensed and
unskilled workers to lay low quality cheap ceramic
tiles on the loose sandy ground rather than on a
strong, smooth, concrete floor base. Within few
months after tenants moving into the Subject
Property, mass quantities of floor ceramic tiles
cracked and the floor buckled. These cracked
ceramic tiles may cut tenants' toes and create a trip
and fall hazard. These are code violations had to be
repaired before the units could be rented to tenants.
The plaintiff has to spend lot money to replace all
ceramic tile floor in Unit C with vinyl tile floor.

ii. Problems with the land/foundation.

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

cracking.

iii. Problems with closet doors.

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

61. As to 31(a), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Incredibly, Mr. Miao admitted that he was the person who asked for TKNR to install the GFCI outlets, so he was clearly aware of this issue as well. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

62. As to 31(b), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the plumbing system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

63. As to 31(c), Mr. Miao admitted that the Seller's Disclosures disclosed the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff

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

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

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

20 66. As to 31(f), this allegation illustrates that Plaintiff had knowledge before
21 purchasing the Property, and the overall emphasis on the failure to obtain a professional
22 inspection of the Property prior to purchasing it.

23 67. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture
24 waiver, and understood its affirmative duty to have an inspection done prior to the purchase of
25 the Property. He also admitted that the Seller’s Disclosures disclosed the use of a
26 handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he
27 specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the
28 Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,

1 Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the
2 time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence
3 showed that Defendants were aware of any of these issues.

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

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

15 70. As to 31(j), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
16 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,
17 he specified that he noted issues were "open and obvious" that a reasonable, professional
18 inspection could have discovered in 2017. Mr. Miao agreed that there was no noticeable sagging
19 on the roof. Despite these issues, Plaintiff chose not to have a professional inspection.
20 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or
21 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no
22 evidence showed that Defendants were aware of any of these issues.

23 71. As to 31(l), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
24 the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao
25 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and
26 obvious at the time that Plaintiff purchased the Property in 2017. Mr. Miao noted that this
27 condition could have been inspected at or prior to the Property's purchase. Mr. Miao
28 acknowledged there was no evidence that Defendants were aware of these issues.

Plaintiffs Did Not Reply on Broker Agents

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

Mr. Miao Agreed with Defendants' Expert

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

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

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

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

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

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

Conclusions of Law

1. Summary judgment is appropriate when the pleadings, depositions, answers to

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

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

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

4. The pleadings and proof offered in a Motion for Summary Judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still “bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at

1 1031. “To successfully defend against a summary judgment motion, ‘the nonmoving party must
2 transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts
3 that show a genuine issue of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev.
4 2008) (quoting *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

5 5. The non-moving party bears the burden to set forth specific facts demonstrating
6 the existence of a “genuine” issue for trial or have summary judgment entered against him.
7 *Collins v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).
8 When there is no genuine issue of material fact and the non-moving party provides no admissible
9 evidence to the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US
10 317, 322 (1986). When a motion for summary judgment is made and supported, an adversary
11 party who does not set forth specific facts showing a genuine issue to be resolved at trial may
12 have a summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99
13 Nev. 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev.
14 414, 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

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

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

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

1 law. *Id.* at 426.

2 7. Generally, “[n]ondisclosure by the seller of adverse information concerning real
3 property . . . will not provide the basis for an action by the buyer to rescind or for damages when
4 property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,
5 552 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer
6 either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs.,*
7 *Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general
8 rule foreclosing liability for nondisclosure when property is purchased as-is does not apply when
9 the seller knows of facts materially affecting the value or desirability of the property which are
10 known or accessible only to [the seller] and also knows that such facts are not known to, or
11 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at
12 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

13 8. A buyer waives its common law claims of negligent misrepresentation, fraudulent
14 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
15 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
16 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*
17 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).
18 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is
19 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on
20 common law claims. *Id.* (citation omitted).

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

25 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at *5 (Nev. App. Nov. 25,
26 2020).

27 9. Nevada Revised Statute § 113.140 clearly provides that the Seller Disclosures
28 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to

1 exercise reasonable care to protect himself. Nevada Revised Statute § 113.140 also provides that
2 the Seller does not have to disclose any defect that he is unaware of. Similarly, Nevada Revised
3 Statute § 113.130 does not require a seller to disclose a defect in residential property of which
4 the seller is not aware. A completed disclosure form does not constitute an express or implied
5 warranty regarding any condition of residential property. Nevada Revised Statute § 113.140(2).
6 Chapters 113 and “645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of
7 the duty to exercise reasonable care to protect himself or herself.” *Id.* at § 113.140(2).

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

13 11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all
14 known conditions of the Subject Property. TKNR disclosed that “3 units has (sic) brand new AC
15 installed within 3 months,” and further that the “owner never resided in the property and never
16 visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was
17 conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. TKNR also
18 disclosed that it was aware of issues with the heating and cooling systems, there was
19 construction, modification, alterations, or repairs done without permits, and lead-based paints.

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

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

26 13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures,
27 Plaintiff did not inspect the Subject Property, request additional information and/or conduct any
28 reasonable inquires. Ms. Zhu cancelled the original RPA, Ex. E, because of an issue related to

her financing, unrelated to the Seller's Disclosures. Notably, she included the explicit waiver of the inspections, which included her initialing the provision that she had not done in the original RPA. Ms. Zhu informed her agent to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller's Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. Through Addendum 2 to the 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

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

Civil Procedure 11.

IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that the Motion is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that the Countermotion, including the 56(f) Countermotion, is **DENIED**. This is a 2018 case. Discovery ended October 30, 2020. This Court will not agree to enlarge discovery.

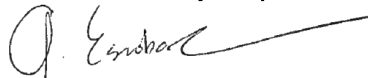
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that Defendants are awarded attorneys' fees and costs pursuant to Rule 11. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this is a final order related to the claims and counterclaim. This Court directs entry of a final judgment of all claims.

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

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

Dated this 7th day of April, 2021



THE HON. ADRIANA ESCOBAR
DISTRICT COURT JUDGE

158 436 3E2D 40F2
Adriana Escobar
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 W L A B Investment LLC,
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

8
9 TKNR Inc, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Amended Order was served via the court's electronic eFile system to
all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/7/2021

15 Brinley Richeson

bricheson@daynance.com

16 Steven Day

sday@daynance.com

17 Michael Matthis

matthis@mblnv.com

18 BENJAMIN CHILDS

ben@benchilds.com

19 Nikita Burdick

nburdick@burdicklawnv.com

20 Michael Lee

mike@mblnv.com

21 Bradley Marx

brad@marxfirm.com

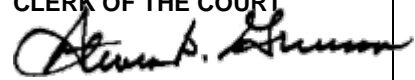
22 Frank Miao

frankmiao@yahoo.com

23
24
25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 4/8/2021

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



NOAS
Steven L. Day, Esq.
Nevada Bar No. 3708
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702) 309-3333
Fax (702) 309-1085
sday@daynance.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

v.

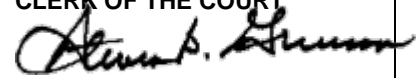
Case No: A-18-785917-C
Dept No: 14

NOTICE OF APPEAL

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

Defendants.

NOTICE IS HEREBY GIVEN that Plaintiff WLAB INVESTMENT, LLC, hereby
appeals to the Supreme Court of Nevada from the certain Amended Order Granting



ASTA
Steven L. Day, Esq.
Nevada Bar No. 3708
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702) 309-3333
Fax (702) 309-1085
sday@daynance.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

v.

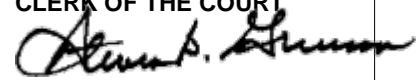
Case No: A-18-785917-C
Dept No: 14

CASE APPEAL STATEMENT

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

Defendants.

1. Name of appellant filing this case appeal statement: WLAB INVESTMENT,
LLC.



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.

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

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION

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

Defendants.

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

counsel of record, Michael B. Lee, P.C., hereby files this Opposition (“Opposition”) to Plaintiff’s Motion to Reconsider (“Motion”). This Opposition is made on the following Memorandum of Points and Authorities, any affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to as “Plaintiff” or “WLAB”.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Overview

The Motion should be denied for both procedural and factual concerns. First, the Motion was filed 16 days after the Notice of Entry of Order Granting Defendants’ Motion for Summary Judgment, which is untimely pursuant to Eighth Judicial District Court Rule (“EDCR”) § 2.24(b) and must not be considered. Second, Plaintiff has filed a notice of appeal in this matter, divesting the district court of jurisdiction in this matter. Finally, the Motion relies entirely on Mr. Miao’s affidavit to contradict or refute the facts he admitted to in his own deposition testimony, which is inappropriate and eviscerates the purpose of summary judgment.

To the extent, the Motion argues that exhibits should have been authenticated, that is nothing more than harmless error, which Defendants have corrected through the Declaration of Mr. Kenny Lin. Additionally, the argument lacks merit as Plaintiffs disclosed some of the documents that they argue were not authenticated.

B. Statement of Facts

The following facts are taken from the “Findings of Fact” portion of the Order Granting Defendants’ Motion for Summary Judgment, or in the alternative, Partial Summary Judgment (“Order”); however, for length and clarity, the citations to Mr. Miao’s deposition have been removed from the below recitation.

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

The Property (defining as 2132 Houston Drive, Las Vegas, NV 89104) was originally constructed in 1954. On or about August 11, 2017, Marie Zhu (“Zhu”), the original purchaser,

1 executed a residential purchase agreement (“RPA”) for the Property. See Order at ¶ 1. At all
2 times relevant, Ms. Zhu and Mr. Miao, the managing member of Plaintiff, were sophisticated
3 buyers related to “property management, property acquisition, and property maintenance.” *Id.*
4 The purchase price for the property was \$200,000. *Id.*

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

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

11 *Id.* at ¶ 2.

12 Ms. Zhu did not cancel the contract related to any issues with the Property. *Id.* at ¶ 3.
13 Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition. *Id.* at 4. Under
14 Paragraph 7(D) of the RPA, it provided:

15 *It is strongly recommended that Buyer retain licensed Nevada*
16 *professionals to conduct inspections. If any inspection is not*
17 *completed and requested repairs are not delivered to Seller within*
18 *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.

19 *Id.*

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

24 Under Paragraph 7(F), it was Ms. Zhu’s responsibility to inspect the Property sufficiently
25 as to satisfy her use. *Id.* at ¶ 6. Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt
26 (collectively, “Brokers” or “Broker Defendants”) had “no responsibility to assist in the payment
27 of any repair, correction or deferred maintenance on the Property which may have been revealed
28 by the above inspections, agreed upon by the Buyer and Seller or requested by one party.” *Id.*

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

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

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

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

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

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

Thank you!

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

Id. at ¶ 8.

On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, Addendum No. 1, and entered into a new Residential Purchase Agreement dated September 5, 2017 ("2nd RPA"). *Id.* at ¶ 9. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the close of escrow ("COE" or "Closing"). *Id.* The COE was set for September 22, 2017. *Id.*

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1 Notably, although Ms. Zhu had not initialed the “Failure to Cancel or Resolve
2 Objections” provision in the RPA, she initialed the corresponding provision in the 2nd RPA. *Id.* at
3 ¶ 10. This was consistent with Ms. Zhu’s instructions to Ms. Chen. *Id.* This is the second time
4 that Ms. Zhu waived inspections for the Property despite the language in the 2nd RPA that
5 strongly advised to get an inspection done. *Id.*

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

13 3. *Deposition of Plaintiff’s Person Most Knowledgeable – Mr. Miao*

14 Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of
15 approximately twenty properties. *Id.* at ¶ 12. In Clark County alone, Ms. Zhu and Mr. Miao
16 were involved with the purchase of at least eight rental properties starting in 2014. *Id.* Plaintiff
17 understands the importance of reading contracts. *Id.* at ¶ 13. Mr. Miao specified that he
18 understands the needs to check public records when conducting his due diligence. *Id.* at ¶ 14.
19 Plaintiff was a sophisticated buyer who understands the necessity of getting properties inspected.
20 *Id.* at ¶ 15.

21 4. *Requirement to Inspect was Known*

22 The terms of the RPA were clear to Plaintiff. *Id.* at ¶ 16. As to Paragraph 7(A), Mr. Miao
23 specified that he believed that his inspection and conversations with the tenant constituted the
24 actions necessary to deem the Property as satisfactory for Plaintiff’s purchase. *Id.* at ¶ 17. At all
25 times relevant prior to the purchase of the Property, Plaintiff had access to inspect the entire
26 property and conduct non-invasive, non-destructive inspections. *Id.* at ¶ 18. Prior to the
27 purchase, Mr. Miao was always aware that the Seller “strongly recommended that buyer retain
28 licensed Nevada professionals to conduct inspections”. *Id.* at ¶ 19. Plaintiff was also aware of

1 the language in the RPA under Paragraph 7(D) that limited potential damages that could have
2 been discovered by an inspection. *Id.* at ¶ 20. Finally, as to the RPA, Mr. Miao agreed that all
3 the terms in it were conspicuous and understandable, and it was a standard agreement similar to
4 the other agreements he had used in purchasing the other properties in Clark County, Nevada. *Id.*
5 at ¶ 21.

6 5. *Mr. Miao does Inspections for Plaintiff Although he is not a Licensed,*
7 *Bonded Professional Inspector*

8 As to all the properties purchased by Plaintiff, Mr. Miao always does the inspections and
9 does not believe a professional inspection is necessary. *Id.* at 22. Based on his own belief, he
10 does not believe that a professional inspection is necessary for multi-tenant residential properties.
11 *Id.* Notably, he does not have any professional license related to being a general contractor,
12 inspector, appraiser, or project manager. *Id.* at ¶ 23. Mr. Miao has never hired a professional
13 inspector in Clark County, so he does not actually know what a professional inspection would
14 encompass here. *Id.* at ¶ 24. The main reason Plaintiff does not use a professional inspector is
15 because of the cost. *Id.* at ¶ 25.

16 On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at ¶ 26.
17 During that time, he admitted that he noticed some issues with the Property that were not up to
18 code, finishing issues, GFCI outlets, and electrical issues. *Id.* Similarly, he also specified that
19 there was an issue with exposed electrical in Unit C. *Id.* at ¶ 27. He also noted that there could
20 have been a potential asbestos issue as well. *Id.* Additionally, Mr. Miao noted that there were
21 cracks in the ceramic floor tiles, and he was aware of visible cracks in the concrete foundation,
22 which were open and obvious. *Id.* at ¶ 28. Mr. Miao also admitted that he could also have seen
23 the dryer vent during his inspection. *Id.* at ¶ 29. As to those issues, Mr. Miao determined that
24 they were the only issues that TKNR needed to fix after his inspection. *Id.* at ¶ 30.

25 Moreover, Mr. Miao received the SRPDF prior to the purchase of the Property. *Id.* at ¶
26 31. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the
27 Property, and there were issues with the heating systems, cooling systems, and that there was
28 work done without permits. *Id.* at 31. Similarly, it was aware that the Property was 63 years old

1 at that time and all the work was done by a handyman other than the HVAC installation. *Id.* at ¶
2 31. Despite these disclosures, Mr. Miao never followed up. *Id.* at ¶ 32. However, Mr. Miao also
3 admitted that he could have followed up on the issues identified in the SRPDF that included the
4 HVAC and the permits. *Id.* at ¶ 33. Similarly, Mr. Miao was aware that he should have
5 contacted the local building department as part of his due diligence. *Id.* at ¶ 34.

6 Plaintiff was also on notice of the potential for mold and the requirement to get a mold
7 inspection. *Id.* at ¶ 35. Despite actual knowledge of these issues, Plaintiff did not elect to have a
8 professional inspection done. *Id.* at ¶ 36. Finally, Plaintiff was also acutely aware of the
9 requirement of Nevada law to protect itself by getting an inspection. *Id.* at ¶ 37. Ultimately,
10 Plaintiff assumed the risk of failing to exercise reasonable care to protect itself. *Id.* at ¶ 38.

11 6. *No Dispute a Professional Inspection Could Have Revealed the Alleged*
12 *Issues*

13 The alleged defects identified by both parties' experts could have been discovered at the
14 time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had access
15 to the entire building. *Id.* at ¶ 39. He had access to the attic and looked at it. *Id.* Mr. Miao
16 admitted that Plaintiff's expert examined the same areas that he did. *Id.* Notably, Plaintiff's
17 expert did not do any destructive testing, so the expert's access was exactly the same as Mr.
18 Miao's original inspection. *Id.* at ¶ 40. Mr. Miao admitted that Plaintiff's expert's inspection of
19 the HVAC and the plumbing system would have been the same as his in 2017. *Id.* at ¶ 41. Mr.
20 Miao also admitted that the pictures attached to Plaintiff's expert report were areas that he could
21 have inspected in 2017. *Id.* at ¶ 42.

22 Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id.* at ¶
23 43. As before, Mr. Miao had the same access to the Property in 2017 for the areas inspected by
24 Defendants' expert. *Id.* Mr. Miao agreed with Defendants' expert that the alleged conditions
25 identified by Plaintiff's expert were "open and obvious." *Id.* at ¶ 44. He also agreed with
26 Defendants' expert's finding that there was no noticeable sagging in the roof. *Id.* at ¶ 45.
27 Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that failed to
28 differentiate between conditions prior to when TKNR owned the Property, while it owned it, and

1 those afterwards. *Id.* at ¶ 46. This would have also included any issues with the dryer vent and
2 ducts, as he recognized that most rentals do not include washer / dryer units. *Id.*

3 7. *No Permits Required for Cosmetic Work by TKNR*

4 No dispute exists that TKNR did not need permits for the interior work it had done to the
5 Property. *Id.* at ¶ 47. Mr. Miao admitted no permits are required for: painting, papering, tiling,
6 carpeting, cabinets, countertops, interior wall, floor or ceiling covering, and similar finish work.
7 *Id.* Also, no permit was needed for: window replacement without structural change or alteration,
8 replace or repair the sink, faucet, countertops, shower walls, shower heads, rain gutters and down
9 spouts, regrouting tile, a hose bib, portable heating appliances, portable ventilation appliances,
10 portable cooling units, and/or portable evaporative coolers installed in windows. *Id.*

11 8. *Plaintiff does not Disclose Alleged Issues to Potential Tenants*

12 Since the date it purchased the Property, Plaintiff has always been trying to lease it. *Id.* at
13 ¶ 48. According to Mr. Miao, the landlord must provide safe housing for the tenant. *Id.*
14 However, they have not done any of the repairs listed by Plaintiff's expert. *Id.* This illustrates
15 the lack of merit of Plaintiff that there are underlying conditions with the Property. *Id.*
16 Moreover, Plaintiff does not provide any notice to the tenants about its expert's report or this
17 litigation. *Id.* at ¶ 49. This illustrates the lack of merit of Plaintiff's claims, proven that it has
18 done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it
19 does not tell prospective tenants about them. *Id.* at ¶ 50.

20 9. *Squatters or Tenants could have Damaged the Property*

21 Mr. Miao admitted that multiple third parties could have potentially damaged the
22 Property. *Id.* at ¶ 51. The Property has a historic problem with squatters during the time that
23 Plaintiff owned it. *Id.* He also admitted that tenants could have damaged the Property while they
24 were occupying it. *Id.* This could also account for the cracking on the walls. *Id.* Tenants could
25 have also damaged the Property if they hit it with their cars. *Id.*

26 10. *No Evidence that Defendants Knew of Alleged Conditions*

27 Plaintiff's case is based on speculation that Defendants knew about the alleged conditions
28 in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants

1 knew about them. *Id.* at ¶ 52. The entire case is based on Mr. Miao’s personal belief and
2 speculation. *Id.* at ¶ 53. Mr. Miao admitted that he has no evidence Defendants knew about the
3 alleged moisture conditions. *Id.* at ¶ 54. Additionally, he also admitted that there is no evidence
4 that Defendants knew about the alleged issues with the plumbing system. *Id.* He also admitted
5 that he did not know if Defendants knew about the alleged issues with the duct work when they
6 owned the Property. *Id.* He also recognized the deficiency in Plaintiff’s expert’s report that
7 failed to differentiate between conditions prior to when TKNR owned the Property, while it
8 owned it, and those afterwards. *Id.*

9 Mr. Miao also recognized that a 63-year-old property could have issues that were not
10 caused by Defendants. *Id.* at ¶ 55. This would have also included any issues with the dryer vent
11 and ducts, and when the duct became disconnected. *Id.* Plaintiff did not identify any discovery
12 illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the
13 Property that they had not already disclosed on Seller’s Disclosures. *Id.* at ¶ 56. Notably, during
14 Mr. Miao’s due diligence period, he spoke with the tenants of the Property. *Id.* at ¶ 57. This
15 included a conversation with the long-term tenant of Unit A, who still resides in the Property to
16 this day. *Id.* At that time, the tenant reported being very happy with the Property and had no
17 complaints. *Id.* In fact, the tenant reported still being very happy with the Property. *Id.* This
18 illustrates that there is no basis that Defendants should have been aware of any of the issues
19 when Mr. Miao, a self-professed expert, did not even know about them following his inspection.
20 *Id.*

21 11. No Basis for RICO and/or Related to Flipping Fund

22 The Flipping Fund had nothing to do with Plaintiff’s decision to purchase the Property.
23 *Id.* at ¶ 58. He also admitted that he never received any pro forma, private placement
24 information, calculations of profit and loss, capital contribution requirements, member share or
25 units, or any such information about the Flipping Fund. *Id.*

26 12. Plaintiff Admitted it Inflated its Cost of Repair

27 Initially, Mr. Miao contacted contractors to bid the potential cost of repair for the
28 Property and determined that it would have been \$102,873.00. *Id.* at ¶ 59. 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.* This illustrates that the bad faith purposes of this lawsuit were to simply harass Defendants. *Id.* Mr. Miao perjured himself in his Declaration in support of the Opposition. *Id.* at ¶ 60. He denied, under the penalty of perjury, that he never made an offer to settle this matter for \$10,000. *Id.* However, during his deposition he admitted that he did make this offer. *Id.* 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. *Id.* These are undisputed facts that prove abuse of process as a matter of law. *Id.*

13. *Allegation in the Second Amended Complaint*

On November 23, 2020, Plaintiff filed its Second Amended Complaint (“SAC”). *Id.* at ¶ 61. 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. *Id.*

As to paragraph 31(a) of the SAC, 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. *Id.* at ¶ 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. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* 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. *Id.* 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. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

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. *Id.* at ¶ 63. Additionally, he specified that he noted issues with the plumbing system

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

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

14 As to 31(d), Mr. Miao admitted that the Seller’s Disclosures did disclose issues with the
15 heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 65.
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. *Id.* Despite these issues, Plaintiff chose not to have a professional
19 inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have
20 inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao
21 admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

22 As to 31(e), Mr. Miao admitted that the Seller’s Disclosures did disclose issues with the
23 heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 66.
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. *Id.* Despite these issues, Plaintiff chose not to have a professional
28 inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have

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

3 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. *Id.* at ¶ 67.

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

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

22 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 followed
25 up related to the permit issue prior to Plaintiff purchasing the Property. *Id.* at 70.

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

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

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

15 14. No Reliance on Broker Agents

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

25 15. Mr. Miao Agreed with Defendants' Expert

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

Opfer. *Id.* Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious. *Id.* at ¶ 75. Mr. Miao also agreed with Professor Opfer that Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase. *Id.* at ¶ 76. Additionally, Mr. Miao agreed with Professor Opfer that Plaintiff's alleged expert did "not recognize prior conditions in existence before any work took place by the Defendants." *Id.* at ¶ 77.

II. DISCUSSION

The following Discussion is organized into four (4) Parts. Part A sets forth the legal standards related to the Motion's requested relief. Part B illustrates that there are procedural issues that bar the court from granting the Motion. Part C explains that the Motion relies solely on the affidavit of Mr. Miao to contradict his previous deposition testimony in an attempt to create an issue of fact, which is improper. Part D sets forth that the lack of authentication of the documents is harmless error and does not require reconsideration. Part E establishes that there was no evidence in the record to support Plaintiff's claims. Part F requests sanctions for the frivolous nature of the Motion. Finally, Part G provides that the deadline to object to the award of attorneys' fees has expired and therefore should be issued in full to Defendants.

A. Legal Standards

1. Reconsideration

"No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." See EDCR § 2.24(a). "A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." *Id.* at § 2.24(b) (in pertinent part).

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2. Appeal Divests District Court of Jurisdiction

The timely filing of a notice of appeal “divests the district court of jurisdiction to act and vests jurisdiction in [the Supreme Court].” See Mack-Manley v. Manley, 122 Nev. 849, 855, 1387 P.3d 525, 529 (2006) (quoting Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)). “[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal’s merits. *Id.* at 855, 529-30.

3. Prior Deposition Testimony

“[A]n admitting party is barred from denying that which it has already admitted. *La-Tex Partn. v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro. 36). The general rule “is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.” *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) (citations omitted). “[I]f a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.” *Id.* (quoting *Foster v. Arcata Associates*, 772 F.2d 1453, 1462 (9th Cir.1985), cert. denied, 475 U.S. 1048, 106 S.Ct. 1267, 89 L.Ed.2d 576 (1986) (additional citations omitted)).

“[A] ‘genuine’ issue of material fact within the intendment of NRCP 56 may not be created by the conflicting sworn statements of the party against whom summary judgment was entered, and that it was permissible for the court to prefer one statement over the other in deciding a summary judgment motion.” See Bank of Las Vegas v. Hoopes, 84 Nev. 585, 586, 445 P.2d 937, 938, 1968 Nev. LEXIS 414, 3 (Nev. 1968) (citing *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965)). A party’s conflicting statements do not create a genuine issue of material fact because Rule 56 contemplates conflicts created by adversaries. *Id.* In circumstances where the

1 party is contradicting its own factual statement, the court is not required to accept the affidavit as
2 true. *Id.*

3 **B. The Motion should be Denied for Procedural Concerns**

4 The Motion is untimely and should be denied for that reason. The Notice of Entry of the
5 Order was filed on March 31, 2021. However, the Motion was not filed until April 16, 2021,
6 two days after the deadline to file the Motion had ran. See EDCR § 2.24(b) (party has 14 days
7 after Notice of Entry of Order to file a motion to reconsider). Notably, the Notice of Entry of
8 Order was filed electronically, and Plaintiff is well aware from previous briefing in this matter
9 that there is no longer an additional three days tacked on to filing deadlines that arise from
10 documents served through the court's electronic filing system. See Nev. R. Civ. Pro. § 9(f)(2).
11 As such, there is no excuse for the late filing, and the Motion should not be considered.

12 Additionally, Plaintiff filed a notice of appeal in this matter on April 26, 2021, appealing
13 the Order that is the subject of the Motion's request for reconsideration. As such, this Honorable
14 Court has been divested of jurisdiction to rule on the Motion. See *Mack-Manley v. Manley*, 122
15 Nev. 849, 855, 1387 P.3d 525, 529-30 (2006). The Motion is clearly not collateral or
16 independent from the appealed Order and thus cannot be considered by the court at this time. *Id.*

17 Therefore, based on the aforementioned procedural issues, the Motion must be denied as
18 the court lacks jurisdiction to grant the Motion based on the untimely filing of the Motion and
19 the timely filing of the notice of appeal.

20 **C. Mr. Miao cannot Create an Issue of Fact through Affidavit that Contradicts**
21 **his Prior Deposition Testimony**

22 The Order that is the subject of the Motion's request for reconsideration includes
23 numerous direct citations to the deposition testimony of Mr. Miao to establish that there is no
24 genuine of material fact that would keep the court from granting Defendants' Motion for
25 Summary Judgment. See Order, generally. Plaintiff clearly understood that the deposition
26 testimony of Mr. Miao was a substantial factor in the court's determination to grant Defendants'
27 Motion for Summary Judgment because Plaintiff uses the first thirty (30) pages of the Motion to
28 contradict Mr. Miao's deposition testimony through a subsequent affidavit signed by Mr. Miao.

1 See Motion at pp. 1-30, and *Motion* at Ex. 1. Instead of bolstering its arguments by using the
2 deposition testimony of Mr. Miao, Plaintiff attempts to completely ignore the undisputed facts
3 gathered from Mr. Miao's deposition testimony and tries to rewrite history through the new
4 affidavit of Mr. Miao. However, the court has previously determined that it will not consider
5 affidavits from a party that contradicts the party's own prior testimony when determining if there
6 is a genuine issue of material fact. See Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 266 (9th
7 Cir. 1991) (citations omitted).

8 Here, the Motion provides no reasonable argument that the court's determination to grant
9 summary judgment based on the evidence presented was in error. Instead, Plaintiff relies solely
10 on the self-serving testimony of Mr. Miao's April 16, 2021 Affidavit (attached as Exhibit 1 to the
11 Motion). Incredibly, Plaintiff does not even attempt to camouflage the deleterious purpose of
12 Mr. Miao's affidavit as it quite literally goes line by line through court's factual findings and
13 tries to contradict / explain away each finding made through the use of the affidavit. This is the
14 exact type of conduct that the court found to be disfavored as "it would greatly diminish the
15 utility of summary judgment as a procedure for screening out sham issues of fact." See Kennedy,
16 952 F.2d at 266.

17 Similar to *Hoopes*, this court does not have to accept the averments in the affidavit as true
18 and can disregard any alleged issue of fact created by the affidavit because of the clear
19 contradictory nature of the affidavit to the previous deposition testimony. See Bank of Las Vegas
20 *v. Hoopes*, 84 Nev. 585, 586, 445 P.2d 937, 938, 1968 Nev. LEXIS 414, 3 (Nev. 1968). In
21 *Hoopes*, the vice-president of the bank signed a satisfaction of debt that was acknowledged by
22 the court, but later signed an affidavit stating the debt was not paid. *Id.* The court determined
23 that it would not accept the affidavit as true and would not disregard the prior satisfaction of
24 debt. *Id.* The same result should follow here as the April 16, 2021 affidavit is nothing more than
25 self-serving testimony of Mr. Miao to contradict and rewrite the testimony he previously gave at
26 the time of his deposition under oath, for which he had every opportunity to review and correct at
27 the time of the deposition, and/or shortly thereafter. Incredibly, Mr. Miao did make corrections
28 following review of his deposition transcript; however, none of the corrections were substantial

1 in nature, nor was did it include any of the information included in Mr. Miao’s new affidavit,
2 illustrating the Motion and the new affidavit are in bad faith and lack substance. See Correction
3 Sheet attached as **Exhibit A**.

4 Ultimately, the Motion fails to address the deposition testimony of Mr. Miao that the
5 court utilized in making its determination. Instead, Plaintiff tries to rewrite history though the
6 April 16, 2021 affidavit of Mr. Miao that is in direct contention with his previous deposition
7 testimony. Plaintiff cannot manifest its own alleged issues of material fact to survive summary
8 judgment, which is exactly what the Motion intends to do. As such, the Motion should be denied
9 in its entirety.

10 **D. Lack of Authentication of Exhibits is Harmless Error that does not Require**
11 **Reconsideration**

12 “Any error, defect, irregularity or variance which does not affect substantial rights shall
13 be disregarded.” See Nev. Rev. Stat. § 178.598. The determination of whether an error is
14 harmless depends on whether it had a substantial and an injurious effect or influence’ ” See
15 *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting *Kotteakos v. U.S.*, 328
16 U.S. 750, 776 (1946). Here, any failure to authenticate the exhibits and/or documents utilized by
17 the court in reaching its decision to grant summary judgment was a harmless error that can be
18 cured through the affidavit of Kenny Lin, which is attached as **Exhibit B** to this Opposition.

19 Additionally, certain documents used were actually produced and/or generated by
20 Plaintiff, illustrating no real issue of authenticity of those documents. Specifically, those
21 documents include:

- 22 1. Exhibit B to Motion for Summary Judgment (“MSJ”) – RPA that was disclosed in
23 Plaintiff’s 16.1 Early Case Conference Disclosures Exhibit 5, p. 26 – 35.
- 24 2. Exhibit C to MSJ – Seller Disclosures Form disclosed by Plaintiff’s 16.1 Early Case
25 Conference Disclosures, Exhibit 5, p. 36 – 40.
- 26 3. Exhibit M to MSJ – Plaintiff’s Calculation of Damages contained in Plaintiff’s 16.1
27 Early Case Conference Disclosures, and all supplements thereto.
- 28 4. Exhibit N to MSJ – Plaintiff’s Answers to Kenny Lin’s Second Set of Interrogatories.

Moreover, the court’s decision was largely based off the deposition testimony of Mr. Miao which does not carry any issues of authentication. As discussed above, Mr. Miao had every opportunity to review his testimony and correct any statements in his deposition transcript at the time of his deposition and shortly thereafter, but he chose not to. Only after the MSJ was granted did Plaintiff scramble to produce the competing affidavit contradicting the admissions made by Mr. Miao. As such, any lack of authentication prior to the MSJ being granted is harmless error that is cured by the Affidavit of Kenny Lin attached as **Exhibit B**.

E. No Evidence in Record to Establish Plaintiff’s Claims

The Motion should be denied because Plaintiffs have failed to provide any evidence to illustrate that Defendants knew of any alleged defects or conditions in the Property that had to be disclosed. The lack of evidence is fatal to Plaintiff’s claims because discovery has no closed and Plaintiff cannot bring any new evidence or discovery to try and support its claims. Additionally, Plaintiff, through Mr. Miao, expressly admitted that he should have followed up on the known disclosed issues. As such, any failure to do so is not the fault of Defendants, but unequivocally Plaintiff’s fault. Moreover, it is undisputed that all alleged defects were open and obvious conditions did not require disclosure by Defendants.

Here, the Motion is nothing more than an attempt to subvert the discovery deadline and introduce new evidence that is in direct contradiction to the evidence already in the record. Specifically, Mr. Miao’s April 16, 2021 Affidavit is clearly a deleterious attempt by Plaintiff to rewrite the facts of this case and muddy the waters to manifest an issue of fact that does not actually exist. Ultimately, the discovery in this matter has closed and all evidence in record, including the admissions of facts contained in Mr. Miao’s affidavit, established that there was no basis for Plaintiff’s claims to survive summary judgment.

F. Rule 11 Sanctions are Warranted

The Motion should be subject to Rule 11 sanctions for lack of any factual or legal merit. Under Rule 11, Plaintiff and its attorney have a duty to ensure: (1) “[the Motion] is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;” and, (2) “the factual contentions have evidentiary support or, if

specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.]” See Nev. R. Civ Pro. § 11(b)(1) and (3).

As discussed at length above, the primary argument of the Motion is centered around the April 16, 2021 Affidavit of Mr. Miao, proffered for the sole purpose of refuting and contradicting Mr. Miao’s own previous testimony to mislead the court. This type of conduct is clearly inappropriate. Notably, Mr. Miao had already reviewed his deposition testimony and made corrections to his deposition transcript prior to signing the newly created affidavit that the Motion is based on. See Ex. A. The correction sheet made only minor changes, none of which were substantive, nor did they amount to the sweeping changes to the testimony that is shown in the April 16, 2021 Affidavit. *Id.* This illustrates the lack of candor on behalf of Plaintiff in bringing the affidavit and the Motion.

Moreover, based on the contradictory nature of the April 16 Affidavit to Mr. Miao’s deposition testimony, one or the other contains false statements of fact. As such, it is obvious that Mr. Miao has lied either in his deposition while under oath, or in his affidavit that was signed under oath and penalty of perjury. Considering the self-serving nature of the affidavit and the Motion’s failure to address the deposition testimony in the Motion, it is likely that the affidavit and Motion contain deliberately false and misleading information, which is subject to sanctions under Rule 11.

G. Attorneys’ Fees Award should Issue in Full

Following the Order, Defendants’ counsel was directed to provide an affidavit in support of the attorneys’ fees requested in light of the Order’s decision to grant fees and costs. See Order at p. 41 (“Defendants may file an affidavit in support of requested attorneys’ fees and costs within 10 days of the entry of Order.”). Here, Defendants’ counsel filed its Affidavit in Support of Attorneys’ Fees on April 6, 2021. As of the filing of this Opposition, Plaintiff has yet to file and objection, opposition, or any type of response to the Affidavit in Support of Attorneys’ Fees. It has been over 20 days since the filing of the Affidavit in Support of Attorneys’ Fees has been filed, illustrating that the deadline to object to the Affidavit has expired and that the fees should issue in full as requested in the Affidavit.

1 **III. CONCLUSION**

2 Based on the foregoing, Defendants respectfully request that the Motion be denied in its
3 entirety for both procedural and factual concerns.

4 Dated this 30th day of April, 2021.

5 MICHAEL B. LEE, P.C.

6 /s/ Michael Lee
7 MICHAEL B. LEE, ESQ. (NSB 10122)
8 MICHAEL MATTHIS, ESQ. (NSB 14582)
9 1820 E. Sahara Avenue, Suite 110
10 Las Vegas, Nevada 89104
11 Telephone: (702) 477.7030
12 Facsimile: (702) 477.0096
13 mike@mblnv.com
14 Attorney for Defendants

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 30th day of April, 2021, the foregoing **DEFENDANTS’**
OPPOSITION TO PLAINTIFF’S MOTION FOR RECONSIDERATION 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:

STEVEN L. DAY, ESQ.
Nevada State Bar No. 3708
1060 Wigwam Parkway
Henderson, Nevada 89074
Telephone: (702) 309 3333
Fax: (702) 309 1085
Email: sday@daynance.com
Attorneys for *Plaintiff*

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

EXHIBIT A

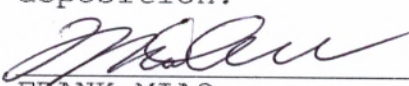
1	CERTIFICATE OF WITNESS			
2	PAGE	LINE	CHANGE	REASON
3	52	15	"fleeting" should be "flipping"	wrong word transcribed
4	63 75	5 & 6 12	I don't remember is there is a written estimate "manufacture" should be "manufactured"	clarify statement wrong word transcribed
5	75 76	23 & 25 2	"work hall" is "walk out"	wrong words transcribed
6	75 83	22 12, 13 & 14	"cabinetry" should be "foundation" "side" should be "site"	used wrong word wrong word transcribed
7	119 128	8 7	"now" should be "law" "mold" should be "more"	wrong word transcribed wrong word transcribed
8	141 149	21 5	"deed" should be "need" "full price" should be "four-plex"	wrong word transcribed wrong words transcribed
9	150 160	3 23	add "we did 1031 exchange" "rental" should be "rented"	clarify the answer wrong word transcribed
10	177 178 179	24 8 15	"circle" should be "circuit". add "in winter" delete "rules"	wrong line transcribed clarify the answer clarify the answer
11	212	20	"real" should be "rare"	wrong word transcribed
12	228 232	11 6	"bribe" should be "boast" delete first "not"	wrong word transcribed clarify answer
13	251 255	19 2	delete "people" delete "gas"	clarify answer clarify answer
14	275 296	10 19	delete "not" and add "a lot" delete "handy"	transcription error transcription error
15	297	13 14 15	delete "pay that one" should be "paid by me" add "Tenant" before "Cannot" add "good" at end	clarify answer clarify answer answer was cut off
16	310	21 24	replace "no ring" with "not raining" replace "now" with "law"	transcription error transcription error
17	319	15	replace "wall" with "force"	transcription error
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	 FRANK MIAO			2/23/2021
25	Witness			Date

EXHIBIT B

DECLARATION OF KENNY LIN

KENNY LIN, being first duly sworn, deposes and says that he has personal knowledge and is competent to testify to the facts below. 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.

1. I have personal knowledge of the events related to WLAB Investment, LLC's ("Plaintiff") case against 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") related to the purchase of 2132 Houston Drive, Las Vegas, NV 89104 ("Property").

2. I personally reviewed the Motion for Summary Judgment, or in the alternative, Partial Summary Judgment ("MSJ") including the exhibits attached thereto.

3. Exhibit A to the MSJ is a true and correct copy of the MLS Listing for the Property.

4. Exhibit B to the MSJ is a true and correct copy of the Residential Purchase Agreement for the Property.

5. Exhibit C to the MSJ is a true and correct copy of the Seller's Disclosures for the sale of the Property.

6. Exhibit D to the MSJ is a true and correct copy of the September 5, 2017 Email Chain between Helen Chen and Frank Miao.

7. Exhibit E to the MSJ is a true and correct copy of the September 5, 2017 Cancellation Addendum.

8. Exhibit F to the MSJ is a true and correct copy of the second Residential Purchase Agreement for the Property, including all addendums, dated September 5, 2017.

9. Exhibit G to the MSJ is a true and correct copy of Defendant's Expert Report.

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

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

10. Exhibit H to the MSJ is a true and correct copy of the Air Team Invoice.
11. Exhibit I to the MSJ is a true and correct copy of my declaration in support of the MSJ.
12. Exhibit J to the MSJ is a true and correct copy of a permit search conducted online for the Property.
13. Exhibit K to the MSJ is a true and correct copy of the Limited Opposition to Defendants' Motion to File Amended Answer, Counterclaim and Third-Party Claim filed with the court on November 16, 2020.
14. Exhibit L to the MSJ is a true and correct copy of the Order granting Defendants' Motion for Leave to File Amended Answer, Counterclaim and Third-Party Claim filed on December 2, 2020.
15. Exhibit M to the MSJ is a true and correct copy of Plaintiff's Calculation of Damages.
16. Exhibit N to the MSJ is a true and correct copy of Plaintiff's Answers to Kenny Lin's Second Set of Interrogatories.
17. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NAUGHT
DATED this 29th day of April, 2021.


KENNY LIN

2. Identify the judge issuing the decision, judgment or order appealed from:
Judge Adriana Escobar.

3. Identify each appellant and the name and address of counsel for each appellant: WLAB INVESTMENT, LLC; Steven L. Day, Day & Nance, 1060 Wigwam Parkway, Henderson, NV 89074.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent: TKNR, INC., a California Corporation, and CHI ON WONG aka CHI KUEN WONG, an individual, and KENNY ZHONG LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN, an individual, and LIWE HELEN CHEN aka HELEN CHEN, an individual and YAN QIU ZHANG, an individual and INVESTPRO LLC dba INVESTPRO REALTY, a Nevada Limited Liability Company, and MAN CHAU CHENG, an individual, and JOYCE A. NICKRANDT, an individual, and INVESTPRO INVESTMENTS LLC, a Nevada Limited Liability Company, and INVESTPRO MANAGER LLC, a Nevada Limited Liability Company and JOYCE A. NICKDRANDT; **Respondents' appellant counsel unknown; counsel in District Court** action was Michael B. Lee, Esq., 1820 East Sahara Ave., Suite 110, Las Vegas, NV 89104.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42: all are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: appellant was represented by retained counsel.

7. Indicated whether appellant is represented by appointed or retained counsel on appeal: retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: no.

9. Indicate the date the proceedings commenced in the district court: Complaint filed 12/11/18.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: The underlying case concerns, among other things, alleged acts of fraud and breach of contract arising out of the sale of real property in Clark County, Nevada.

Appellant is appealing from an order granting **Summary Judgment on all of appellants'** causes of action.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: no.

12. Indicate whether this appeal involves child custody or visitation: no.

13. If this is a civil case, indicate whether this appeal involved the possibility of settlement: unknown.

DATED this 26th day of April, 2021.

DAY & NANCE

Steven L. Day, Esq.

Steven L. Day, Esq.
Nevada Bar No. 3708
1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702) 309-3333
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 26th day of April, 2021, service of this CASE APPEAL STATEMENT made upon each of the parties listed below, via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system:

Michael B. Lee, Esq. Phone: 702-731-0244 Fax: 702-477-0096
Michael N. Matthis, Esq.
Michael B. Lee, P.C. mike@mblnv.com
1820 E. Sahara Ave., Suite 110 matthis@mblnv.com
Las Vegas, NV 89104
Attorneys for Defendant

Benjamin B. Childs, Esq. Phone: 702-251-0000 Fax: 702-384-1119
318 S. Maryland Pkwy. ben@benchilds.com
Las Vegas, NV 89101




An Employee of Day & Nance

1 **Defendants' Motion for Summary Judgment** entered in this action on the 7th day of April,
2 2021.

3 DATED this 26th day of April, 2021.

4 DAY & NANCE

5
6 

7 Steven L. Day, Esq.
8 Nevada Bar No. 3708
9 1060 Wigwam Parkway
10 Henderson, NV 89074
11 *Attorneys for Plaintiff*

12 CERTIFICATE OF SERVICE

13 Pursuant to NRCP 5(b), on the 26th day of April, 2021, service of this NOTICE OF
14 APPEAL made upon each of the parties listed below, via electronic service through the
15 **Eighth Judicial District Court's Odyssey E-File and Serve system:**

16 Michael B. Lee, Esq.
17 Michael Mathis, Esq.
18 Michael B. Lee, P.C.
19 1820 E. Sahara Ave., Suite 110
20 Las Vegas, NV 89104
21 *Attorneys for Defendants*

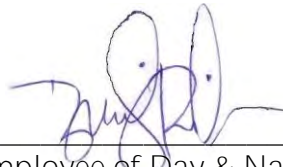
22 Phone: 702-477-7030
23 mike@mblnv.com
24 matthis@mblnv.com

25 Fax: 702-477-0096

26 Benjamin B. Childs, Esq.
27 318 S. Maryland Pkwy.
28 Las Vegas, NV 89101

Phone: 702-251-0000
ben@benchilds.com

Fax: 702-384-1119



An Employee of Day & Nance

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

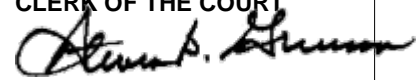
APPENDIX VOLUME IX

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**APPENDIX
VOLUME IX**

CHRONOLOGICAL INDEX

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Order Granting in Part and Denying in Part Plaintiff's Motion for Reconsideration and Judgment Against Plaintiff and previous Counsel	05/25/2021	IX	1836-1843
Notice of Appeal re: Order Granting in Part and Denying in Part Plaintiff's Motion for Reconsideration and Judgment Against Plaintiff and previous Counsel	06/08/2021	IX	1844-1845
Case Appeal Statement re: Order Granting in Part and Denying in Part Plaintiff's Motion for Reconsideration and Judgment Against Plaintiff and previous Counsel	06/08/2021	IX	1846-1849



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

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

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 submits this Errata (“Errata”) to the Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (“Motion”) as follows:

1. Amending the Statement of facts section of the Motion to include the prior deposition testimony of Mr. Miao as laid out in the Supplement to the Motion.
2. Including as **Exhibit O** the Deposition Transcript of Fank Miao as Plaintiff’s PMK.
3. Including as **Exhibit P** the Declaration of Kenny Lin authenticating the Exhibits attached to the Motion, which is attached hereto.

The prior deposition testimony to be added is as follows:

A. Statement of Facts

1. Plaintiff is Sophisticated Buyer

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

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

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

3. Requirement to Inspect was Known

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

1 specified that he believed that his inspection and conversations with the tenant constituted the
2 actions necessary to deem the Property as satisfactory for Plaintiff's purchase.

3 19 · · · A. · Yes. · Based on -- we bought this -- we go
4 20 to the inspection, then we also talk to the tenant,
5 21 so we thinking this is investment property; right?
6 22 So financial it's looking at the rent, it's
7 23 reasonable, it's not very high compared with the
8 24 surrounding area. · Then also financially, it's good.
9 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.

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

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

12 ·2 · · Q. · So at the time when you did your
13 ·3 diligence, you had a right to conduct noninvasive,
14 ·4 nondestructive inspection; correct?
15 ·5 · · A. · Yes, I did.
16 ·6 · · Q. · And you had the opportunity to inspect all
17 ·7 the structures?
18 ·8 · · A. · I check the other one -- on the walk, I
19 ·9 don't see the new cracking, so the -- some older
20 10 cracking. · I check the neighbor who also have that
21 11 one. · I think it's okay; right? · Then the --

18 *Id.* at 166:2-11.

19 8 · · Q. · So you had the right to inspect the
20 ·9 structure; correct?
21 10 · · A. · Yes, yes, I did that.
22 11 · · Q. · You had the right to inspect the roof; is
23 12 that correct?
24 13 · · A. · Yes.
25 14 · · Q. · Okay. · Did you do that?
26 15 · · A. · I forgot. · I maybe did that because
27 16 usually I go to the roof.

* * *

24 22 · · Q. · You had the right to inspect the
25 23 mechanical system; correct?
26 24 · · A. · Right. · Yes, yes.
27 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?

1 ·5· · · A· · Yes.
2 ·6· · · Q· · You had the right to inspect the
3 ·7 heating/air conditioning system; correct?
4 ·8· · · A· · Yes.

5 * * *

6 ·3· · · Q· · And then you could have inspected any
7 ·4 other property or system within the property itself;
8 ·5 correct?
9 ·6· · · A· · Yes, yes.

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

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

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

20 *Id.* at 176:13-19.

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

23 18· · · Q· · Okay· So going back to paragraph 7D --
24 19· · · A· · Yeah.
25 20· · · Q· · -- right, after the language that's in
26 21 italics, would you admit that because it's in the
27 22 italics, it's conspicuous, you can see this
28 23 language?
29 24· · · A· · Yeah· Yeah.
30 25· · · Q· · Okay· Then it goes on to say, "If any
31 Page 179
32 ·1 inspection is not completed and requested repairs
33 ·2 are not delivered to seller within the due diligence
34 ·3 period, buyer is deemed to have waived the right to
35 ·4 that inspection and seller's liability for the cost
36 ·5 of all repairs that inspection would have reasonably
37 ·6 identified had it been conducted."
38 ·7· · · · · Did I read that correctly?
39 ·8· · · A· · Yes, yes.
40 ·9· · · Q· · Okay· So we'll eventually get to the
41 10 issues that, you know, Ms. Chen identified that you
42 11 wanted corrected in the emails or text messages.
43 12· · · · · Is that fair to say that those are the
44 13 only issues that you deemed needed to be resolved to
45 14 go forward with the purchase?
46 15· · · A· · Yeah· After that time, yes.

1 *Id.* at 179:18-25-180:1-15. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were
2 conspicuous and understandable, and it was a standard agreement similar to the other agreements
3 he had used in purchasing the other properties in Clark County, Nevada. *Id.* at 198:19-25-199:1-
4 2, 200:3-15.

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

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

23 16 · · · A · I looked at a lot of things · For example,
24 17 like, the -- I point out some drywall is not
25 18 finished; right? · And the -- some of smoke alarm is
26 19 not -- is missing and -- which is law required to
20 20 put in for smoke alarm · Then no carbon monoxide
21 21 alarm, so I ask them to put in.

27 ¹ 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.

22 · · · · Then in the kitchen, lot of electrical,
23 the outlet is not a GFCI outlet, so I tell them, I
24 said, You need to change this GFCI. Right now this
25 outlet is not meet code. You probably have problem.

Id. Similarly, he also specified that there was an issue with exposed electrical in Unit C.
175:10-24. He also noted that there could have been a potential asbestos issue as well. *Id.* at
160:7-12. Additionally, he 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. *Id.* at 270:14-24. He also admitted that he could also
have seen the dryer vent during his inspection. *Id.* at 269:23-25. As to those issues, Mr. Miao
determined that the aforementioned issues were the only issues that TKNR needed to fixed after
his inspection. *Id.* at 171:2-9 (was only concerned about the appraisal), *Id.* at 219:13-25-221:1-
2.

Moreover, Mr. Miao received the Seller's Real Property Disclosure Form ("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.").

Despite these disclosures, Mr. Miao never followed up:

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

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

1 10 . . . Q . Under the disclosure form --
2 11 . . . A . Yeah.
3 12 . . . Q . -- like, where it specified that there
4 13 were heating system/cooling system issues that
5 14 they're aware of, that you could have elected to
6 15 have an inspection done at that time; correct?
7 16 . . . A . Yes.

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

9 15 . . . Q . Okay. So as your attorney said, you could
10 16 have obtained a copy of the permits at any time?
11 17 Yes?
12 18 . . . A . Yes.
13 19 . . . Q . Okay. And then it's fair to say that just
14 20 put you on notice of the potential permit issue;
15 21 correct?
16 22 . . . A . Yes.
17 23 . . . Q . It also put you on notice of the issues of
18 24 everything that's basically specified on page 38;
19 25 correct?
20 Page 209
21 1 . . . A . Yes.

22 *Id.* at 209:15-25-210:1, 245:22-25 (could have obtained permit information in 2018).

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

25 22 . . . Q . Okay. So you understand that for more
26 23 information during the diligence process, you should
27 24 contact the local building department?
28 25 . . . A . Yes.
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29 5 . . . Q . -- it provides you with the address of the
30 6 building and safety department; is that correct?
31 7 . . . A . Yes.
32 8 . . . Q . And the office hours; is that correct?
33 9 . . . A . Yes.
34 10 . . . Q . And it also provides you with a phone
35 11 number; correct?
36 12 . . . A . Yes.
37 13 . . . Q . And this is information or resources that
38 14 you could have used at any time related to finding
39 15 information about the permits of the property;
40 16 correct?
41 17 . . . A . Yes.
42 18 . . . Q . And this would have been true prior to the
43 19 purchase of the building; correct?
44 20 . . . A . Yes.
45 21 . . . Q . And this would also have been true at the
46 22 time you read the disclosure that specified that
47 23 some of the improvements or some of the disclosures

1 24 had been done without a permit; right?
25 . . . A. . . Yes.

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

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

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

18
19 *Id.* at 213:5-16.

20 .5 . . . Q. . . So you relied upon your own determination
21 .6 related to the potential mold exposure of the
22 .7 property; correct?
23 .8 . . . A. . . Yes.
24 .9 . . . Q. . . Okay. . . And you elected to proceed with
25 10 purchasing it without a professional mold
26 11 inspection; correct?
27 12 . . . A. . . Yes.

28
19 *Id.* at 216:5-12. Despite actual knowledge of these issues, Plaintiff did not elect to have a
20 professional inspection done. 160:17-20. It would have refused to get a professional inspection
21 because it believed that Mr. Miao had already performed one. *Id.* at 162:23-25-163:1.

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

24 .2 . . . Q. . . If we go to page 40 --
25 .3 . . . A. . . Mm-hmm.
26 .4 . . . Q. . . --- there's a bunch of Nevada statutes
27 .5 here.
28 .6 . . . A. . . Mm-hmm.
29 .7 . . . Q. . . If you look at NRS 113.140 --
30 .8 . . . A. . . Mm-hmm.
31 .9 . . . Q. . . --- do you see that at the top of the page?
32 10 "Disclosure of unknown defects not required. . . Form

11 does not constitute warranty duty of buyer and
12 prospective buyer to exercise reasonable care."
13 Do you see that?
14 . . . A. . . Yes.
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 . . . A. . . Yeah.
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 Did I read that correctly?
25 . . . A. . . Yes.

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

12 4. *No Dispute a Professional Inspection Could Have Revealed the Alleged*
13 *Issues*

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

17 14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

18 . . . Q. . . Okay. . . So you walked through the property
19 . . . with him at the time he did his inspection; correct?
20 . . . A. . . Right.
21 . . . Q. . . Okay. . . During that time, did he inspect
22 10 any areas that -- that you did not have access to in
23 11 2017?
24 . . . A. . . Yes. . . He didn't go to anything I didn't
25 13 inspect during 2017 too.
26 . . . Q. . . So he inspected the same areas you
27 15 inspected?
28 . . . A. . . Yes, yes.

24 *Id.* at 291:6-16. Notably, Plaintiff's expert did not do any destructive testing, so the expert's
25 access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5. Mr. Miao
26 admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-5, 293:18-23, and the
27 plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as his in 2017. He also
28 admitted that the pictures attached to Plaintiff's expert report were areas that he could have

1 inspected in 2017. *Id.* at 302:6-13.

2 Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id.* at
3 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas
4 inspected by Defendants' expert. *Id.* at 321:1-6. Mr. Miao agreed with Defendants' expert that
5 the alleged conditions identified by Plaintiff's expert were "open and obvious":

6 22 · · · Q. · And then the second line down, the first
7 23 sentence begins, "Items complained about in the Sani
8 24 report were open and obvious in the roof area, attic
9 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.

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

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

16 17 · · · Q. · -- midway down the first complete sentence
17 18 says, "The Sani report does not recognize prior
18 19 conditions in existence before any work took place
19 20 by defendants."

21 · · · · · Q. · 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.

22 *Id.* at 321:17-21 – 322:3-6. This would have also included any issues with the dryer vent and
23 ducts, *Id.* at 325:3-20, as he recognized that most rentals do not include washer / dryer units. *Id.*
24 at 326:7-25-327:1-9.

25 5. No Permits Required for Cosmetic Work by TKNR

26 No dispute exists that TKNR did not need permits for the interior work it had done to the
27 Property. Mr. Miao admitted the following:

28 ·5 · · · Q. · Number 5 says, "Painting, papering,

1 ·6 tiling, carpeting, cabinets, countertops, interior
2 ·7 wall, floor or ceiling covering, and similar finish
3 ·8 work."
4 ·9 · · · · · Do you see that?
5 10 · · · A · · Yes.
6 11 · · · Q · · So you agree that no permits are required
7 12 for any of these types of work; correct?
8 13 · · · A · · Yes.

9
10 Id. at 262:5-13.

11 ·1 Window Replacements where no structural member -- no
12 ·2 structural member is altered or changed," that does
13 ·3 not need a permit either; right?
14 ·4 · · · A · · Yes.

15
16 Id. at 265:1-4.

17 17 · · · Q · · Okay · If you turn the page to 82,
18 18 Plumbing Improvements, no permits required to repair
19 19 or replace the sink; correct?
20 20 · · · A · · Yes.
21 21 · · · Q · · To repair or replace a toilet?
22 22 · · · A · · Yes.
23 23 · · · Q · · To repair or replace a faucet?
24 24 · · · A · · Yes.
25 25 · · · Q · · Resurfacing or replacing countertops?
26 Page 264
27 ·1 · · · A · · Yes.
28 ·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.

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

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

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

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

10 Since the date it purchased the Property, Plaintiff has always been trying to lease it. *Id.* at
11 330:19-25-331:1-2. According to Mr. Miao, the landlord must provide safe housing for the
12 tenant:

13 19 · · · · Then also in according to the law, and
14 20 they said it very clearly, because this is
15 21 residential income property, right, rental income
16 22 property, multi-family, we need -- landlord need
17 23 provide housing and well-being and -- for the
18 24 tenant. The tenant is not going to do all this
25 inspection. They can't. The burden is on the
Page 120
·1 landlord to make sure all these building is safe and
·2 in good condition.

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

22 Moreover, it does not provide any notice to the tenants about its expert's report or this
23 litigation:

24 ·6 · · Q · All right. In terms of tenants -- renting
25 ·7 out the units to any tenants, do you ever provide
26 ·8 them with a copy of the Sani report?
27 ·9 · · A · No.
28 10 · · Q · Do you ever provide them with any of the
11 pleadings or the first amended complaint, second
12 amended complaint, the complaint itself?
13 · · A · No.

* * *

22 · · · Q · Okay · So basically, you just tell them,
23 There's this · You can inspect the unit if you want;
24 is that it?
25 · · · A · Yeah · And also we need to tell is a lot
Page 337
1 of things report that we don't need to go to the
2 inside the building · It's wall cracking · It's
3 outside · You can see.
4 · · · Q · Okay · So it's open and obvious for them?
5 · · · A · Yeah · You can see always outside.

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

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

11 Multiple third parties could have potentially damaged the Property. The Property has a
12 historic problem with squatters during the time that Plaintiff owned it:

13 12 · · · Q · Do you generally have a squatter problem
14 13 with the property?
15 14 · · · A · Yes · As a matter of fact, today I just
16 15 saw the one text message that said one -- some
17 16 people go to my apartment.

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

20 4 · · · Q · Okay · So the tenant in this context would
21 5 have damaged the unit at the time that you owned it;
22 6 is that fair?
23 7 · · · A · Maybe · Yes.
24 8 · · · Q · Okay · So some of the -- so the damage
25 9 that was to the water heater system, could the
26 10 tenant have damaged that as well?
27 11 · · · A · Yes.
28 12 · · · Q · And then he could have damaged the cooler
13 pump and the valve as well; is that correct?
14 · · · A · Yes.
15 · · · Q · Okay · Then on 122, these are all issues
16 that the tenant could have damaged; is that correct?
17 · · · A · Yes.
18 · · · Q · And then the same through for 145; is that
19 right?
20 · · · A · Yes.

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

9. No Evidence That Defendants Knew of Alleged Conditions

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. *Id.* at 245:1-13 (speculating that InvestPro made changes). The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at 253:17-19.

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

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.

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

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

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

1 *Id.* at 274:20-23. He also admitted that he never received any pro forma, private placement
2 information, calculations of profit and loss, capital contribution requirements, member share or
3 units, or any such information about the Flipping Fund. *Id.* at 277:7-16. Mr. Miao solely made
4 his statements in the Declaration related to the Flipping Fund based on information he reviewed
5 on a website and alleged conversations at a holiday party. *Id.* at 227:22-25. He also specified
6 that he does not know the structure between the Investpro Defendants and the scope of each's
7 purpose. *Id.* at 230:20-25-231:1.

8 11. *Miao Declaration is Based on Speculation and Hearsay*

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

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

17 *Id.* at 233:11-16. His additional statements are based on hearsay statements from third parties.
18 *Id.* at 234:12-24. In terms of the allegations he made as to Defendants' knowledge, those are
19 only based on his personal belief:

20 17 · · · Q · · So no one ever told you that · It's just
21 based on your own personal belief?
22 19 · · · A · · Yes.
23 20 · · · Q · · Okay · And then, "Removal of natural gas
24 supply line was, which occurred with no permit or
25 inspection and was not performed by active licensed
26 contractor as required by law," this is also based
27 on your personal belief?
28 25 · · · A · · Yeah

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

31 24 · · · · · So as it relates to all these items here,
32 no defendant ever came up to you and said, Yes,
33 Page 255
34 1 we're actually aware of these issues; right?
35 2 · · · A · · No.

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

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

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

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

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

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

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

1 . . . Q . . So "It's impossible that Defendants, at
2 least the ones involved in the sale, which are
3 Defendants TKNR, et cetera, did not know about the
4 renovations."
5 So you're basically speculating; right?
6 . . . A . . Yeah, yeah, yeah.

25 *Id.* at 260:1-6.

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

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

1 Plaintiff's expert opined that the cost of repair would have been \$600,000, although he did not
2 provide an itemized cost of repair. *Id.* at 334:17-21. This illustrates that the bad faith purposes
3 of this lawsuit was to simply harass Defendants.

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

11 Dated this 29th day of April, 2021.

12 MICHAEL B. LEE, P.C.

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

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 30th day of April, 2021, the foregoing **ERRATA TO**
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL SUMMARY JUDGMENT 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

EXHIBIT O

1 IN THE EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 WLAB INVESTMENT, LLC,)

5 Plaintiff,)

6 vs.)CASE NO.: A-18-785917-C

)DEPT NO.: 14

7 TKNR INC., a California)

Corporation, and CHI ON WONG)

8 aka CHI KUEN WONG, an)

individual, and KENNY ZHONG)

9 LIN, aka KEN ZHONG LIN aka)

KENNETH ZHONG LIN aka WHONG)

10 K. LIN aka CHING KENNY LIN)

aka ZHONG LIN, an)

11 individual, and LIWE HELEN)

CHEN aka HELEN CHEN, an)

12 individual and YAN QIU)

ZHANG, an individual, and)

13 INVESTPRO LLC dba INVESTPRO)

REALTY, a Nevada Limited)

14 Liability Company, and MAN)

CHAU CHENG, an individual,)

15 and JOYCE A. NICKRANDT, an)

individual, and INVESTPRO)

16 INVESTMENTS LLC, a Nevada)

Limited Liability Company,)

17 and INVESTPRO MANAGER LLC, a)

Nevada Limited Liability)

18 Company, and JOYCE A.)

NICKRANDT, an individual and)

19 Does 1 through 15 and Roe)

Corporation I-XXX,)

20)

21 Defendants.)

_____)

22 Job Number. 697915

23 DEPOSITION OF FRANK MIAO

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DEPOSITION OF FRANK MIAO
PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC

Taken at Litigation Services
on Tuesday, January 12, 2021
at 9:00 a.m.

at 3960 Howard Hughes Parkway, Suite 700
Las Vegas, Nevada 89169

Reported by: Trina K. Sanchez, CCR No. 933, RPR
Job No.: 697915

1 APPEARANCES:

2 For the Defendants via videoconference:

3

MICHAEL B. LEE, ESQ.
MICHAEL B. LEE, P.C.
1820 East Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
(702) 477-7030
mike@mblnv.com

7

For the Plaintiff:

8

9

BENJAMIN B. CHILDS, ESQ.
318 South Maryland Parkway
Las Vegas, Nevada 89101
(702) 251-0000
ben@benchilds.com

10

11

12

13 Also present via videoconference: Helen Chen

14

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1 I N D E X

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5

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7 E X H I B I T S

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1 Entry onto Land and for Inspection
2 of Tangible Things Pursuant
3 to NRCP 34

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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.

1 firm in Monterey Park, Los Angeles, and working with
2 this accounting firm to set up the company. Then I
3 get the seal, all the documents together. Then
4 accounting firm continued to the accountants.

5 Every year we file the tax returns through
6 the company firm. I think they called the Southern
7 California Accounting something company.

8 **Q. A California accounting company?**

9 A. Yeah, California company. It's actually
10 we set up through that company.

11 **Q. What's the name of the company?**

12 A. Southern California Accounting.

13 **Q. Oh, okay.**

14 A. Yeah. If you go to the Chinese newspaper,
15 you will see that advertise, yeah, from the Chinese
16 newspaper, local newspaper.

17 **Q. So I went through your work history. You**
18 **know, like, 1990 to 2008, you were working in a, you**
19 **know -- capacity as an engineer supervisor. Did you**
20 **have to review many contracts during that time?**

21 A. Yes, yes. Yeah.

22 **Q. Okay. And then you understood the**
23 **importance of reading contracts; is that fair?**

24 A. Yes, yes.

25 **Q. How many of these contracts led to the**

1 Legal News, every day, every feature they have a lot
2 of legal notice and they have one called the Trustee
3 Sale Calendar; okay?

4 So actually, it's on the trustee sale
5 calendar that day, so I said, Okay. Maybe I -- so I
6 actually do a lot of the due diligence for other
7 property; right? So that I --

8 **Q. Let me pause you for a second. Hold on a**
9 **second.**

10 **So your due diligence for the properties,**
11 **what does that include?**

12 A. Okay. So before the auction, I go there.
13 When they have the lease, I go to check the Zillow,
14 then I go to the physical site to take a look;
15 right? Then -- I'm not a real estate agent, so I
16 cannot access to the title information. So I only
17 do this. From Zillow, Redfin, and Realtor.com,
18 after that I do a Google search, then I go to the
19 site to take a look at that house, inspect the
20 house.

21 **Q. So do you ever go to County Recorder's**
22 **page or Assessor's page to look at the property?**

23 A. Yeah, yeah, that one I did some.
24 Sometimes do the Assessor's page. Not in Nevada.
25 I'm sorry. In Nevada, I don't know that. In

1 question.

2 THE WITNESS: Yeah.

3 MR. CHILDS: He's asking if you know the
4 name.

5 THE WITNESS: No. I don't know her name.

6 BY MR. LEE:

7 Q. So this is just some trespasser that you
8 called the police on?

9 A. Yeah.

10 Q. Okay. This is 2018?

11 A. I think is 2018, yeah.

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 Q. I mean --

18 A. It's not in this property. It's in
19 different property. So that's why the reason we put
20 a fence in this 2132.

21 Q. Have you ever had issues with squatters
22 since you put the fence up?

23 A. No.

24 Q. What other properties do you own in Las
25 Vegas?

1 A. We own 905 East Bonanza, 736 North 10th
2 Street, 728 North 11th Street, 732 North 11th
3 Street.

4 Q. Okay. So -- I'm sorry. The first one was
5 905 something or 965?

6 A. Yeah. Bonanza, Bonanza Road, East
7 Bonanza. B-O-N-A-N-Z-A.

8 Q. And I live by East Bonanza, so -- and then
9 you have 728 North 11th Street?

10 A. Yeah.

11 Q. 732 North 11 Street?

12 A. Yeah.

13 Q. There was one other one that I missed.
14 What was that?

15 A. 736 North 10th Street.

16 Q. They're all kind of close to each other,
17 yeah?

18 A. Yeah.

19 Q. And they're all in bad neighborhoods,
20 yeah?

21 A. Yeah. Very bad. I don't know the other
22 one. The reason I got lessons, not -- to be honest
23 with you, I'm ready to sell this one because my wife
24 after this incident, she tell me, Sell this. So I'm
25 interviewing the realtor to sell all this stuff.

1 up really bad.

2 BY MR. LEE:

3 Q. When did you buy 965 East Bonanza?

4 A. I forgot exactly the time. Let me check.

5 Zillow have the number. I forgot right now.

6 Probably 2015 or 2014. You ask all this

7 information. I don't remember details, but you can

8 go to the Zillow to find out.

9 Q. Do you still own the properties?

10 A. Yes.

11 Q. Do you still own the property --

12 A. We probably sell that one. My wife ask me

13 to sell this ASAP.

14 Q. Because it's in a bad neighborhood?

15 A. Because of the incident. She says it's

16 too tough dealing with tenant, this kind of tenant,

17 you know. Anyone can force a claim, something that

18 you can put me in jail, you know, so it's very bad.

19 Q. So 736 North 10th Street, when did you buy
20 that, your best estimate?

21 A. I think it's 2015, 2014, that range of
22 time too.

23 Q. What about 728 North 11th Street?

24 A. It's 2017.

25 Q. So was this one part of the 1031 exchange

1 that you used to buy --

2 A. Yes, yes, yes.

3 Q. What about 732?

4 A. It's the same.

5 Q. 2017?

6 A. Yeah.

7 Q. 308 Maryland?

8 A. Same thing, 2017.

9 Q. What about Valley?

10 A. Valley is probably 2014, '15.

11 Q. And Quiet Cove was 2019?

12 A. Yeah, '19.

13 Q. Okay. So everything in 2017 was part of
14 the same 1031 exchange --

15 A. Right.

16 Q. Okay. And then what about these ones that
17 were about 2014, 2015, was that --

18 A. Yeah. That is -- I -- I -- because I
19 was -- at that time, the -- attended some of the
20 real estate investment seminar training program that
21 was in Las Vegas. I liked Las Vegas, so I just
22 bought some rental property there.

23 Q. Have you brought any claims at all related
24 to any of these properties other than the Houston
25 property at any time?

1 A. No, no other claim.

2 Q. Did you do the inspections on all these
3 properties?

4 A. Yes.

5 Q. Except Quiet Cove?

6 A. Yes.

7 Q. And then you did the inspections prior to
8 purchase; right?

9 A. Yes.

10 Q. Who's your real estate agent that
11 represented you on these sales?

12 A. Okay. Usually, I doing that one. All the
13 real estate agency for all the other property is why
14 I go to the Zillow founder. Then I hire the listing
15 agent, like a buyer agent. Except --

16 Q. How many properties generally on Zillow --

17 A. Yeah.

18 Q. -- the listing?

19 A. Yeah. Then I just hire the listing agent,
20 like the buyer agent, to do that. Except this 2132
21 Houston Drive -- actually, this is -- just yesterday
22 I was thinking about this. I found out maybe
23 strange I didn't catch up at that time. This one
24 originally I found Zillow is Kenny Lin is listing
25 agent, right, so I contact Kenny Lin based on the

1 A. I don't think so because -- let me pull
2 out a list of things.

3 It's different. Compare with the
4 commercial multi-family house apartment and the
5 inspection was to the real estate transition was to
6 the single-family -- owner occupied the
7 single-family house. It's quite different.

8 By now, in the multi-family apartment,
9 right, that office building, these cannot
10 transition. They don't need a professional
11 inspection required. Why?

12 Q. Is that -- is that based on your
13 experience or your understanding?

14 A. Yes. And also this is common knowledge
15 for the multi-family investor/owner. Imagine -- for
16 example, in Las Vegas, you have more than a thousand
17 unit in one apartment complex; right? More than
18 1,000 unit. How you do the inspection for that
19 1,000 unit within 30 days? Because some is owner is
20 already have tenant occupied. How you notify each
21 tenant to open the door and let you in to inspect?
22 Impossible and infeasible. Cannot do that.

23 So usually for multi-family, this kind of
24 commercial rental property, when they're doing that,
25 they doing this because walks-through for common

1 area, right, they rely on the seller, which is owner
2 for the other property manager to make sure if they
3 did any repair work or development work, they have
4 inspection by City safety -- building safety and the
5 department.

6 Q. Okay. So this is based on your
7 understanding of what's required related to
8 inspections of multi-tenant properties?

9 A. Yeah, it's my understanding. I also
10 the -- I talked to the -- because of the investor,
11 we had joined this club called the landlord
12 association when I was in California. They used to
13 call the landlord association and also Las Vegas,
14 they also call Las Vegas Landlord Association.
15 Inside there's people that say it this way.

16 Q. So secondary information you received as
17 part of these associations?

18 A. Right, right, right.

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

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

3 Q. All right. So East Bonanza, is that a
4 multi-tenant property or single-tenant?

5 A. All is multi-tenant except the 9101.

6 Q. All of these are multi-tenant?

7 A. Yeah.

8 Q. Like, Houston is more or less a
9 single-family residence that was converted to
10 multi-tenant?

11 A. No. It's multi-tenant before all the
12 time.

13 Q. So are all these other places, like --
14 like, how many units does East Bonanza have?

15 A. Four units.

16 Q. All of them?

17 A. No. 736 North 10th Street is a six-unit,
18 and Mar -- then except that one, 2132 is a
19 three-unit.

20 Q. So 736 is how many units?

21 A. Six.

22 Q. Six units?

23 A. Yeah.

24 Q. And then 728 is how many?

25 A. Four units.

1 Q. Okay. Have you ever declared bankruptcy?

2 A. No.

3 Q. For licenses, you gave a long detailed
4 history of, you know, your professional experience.

5 What kind of professional -- other than
6 your driver's license, what kind of licenses do you
7 have?

8 A. I don't have real estate license. I don't
9 have that.

10 MR. CHILDS: Any license he's asking.

11 THE WITNESS: Not any license, no.
12 Driver's license.

13 BY MR. LEE:

14 Q. So no licenses at all, no professional
15 licenses?

16 A. No.

17 Q. I have a license to practice law. Do you
18 need any license to practice gasology or whatever
19 it's called, gasification?

20 A. No.

21 Q. No?

22 A. No.

23 Q. Do you have a property management license?

24 A. No.

25 Q. Did you answer orally?

1 property to do the rental and get the income for the
2 retirement.

3 Q. Is that residential rentals or commercial
4 rentals?

5 A. Residential. In California, it's mostly
6 residential rental.

7 Q. When did WLAB buy its first residential
8 property in California?

9 A. Since we set up the company, every one or
10 two year we just do that way. We have some rental
11 property we bought in California and also sold.

12 Q. Did you already own residential rental
13 properties prior to forming WLAB?

14 A. Yes, yes.

15 Q. Okay. When did you buy your first
16 residential home?

17 A. 2009 or 2000 -- yeah, 2009, 2008, that
18 range of time.

19 Q. And the owner of that property would have
20 been you and Marie?

21 A. Yes.

22 Q. Okay. What kind of property was it?

23 A. Single-family house.

24 Q. Where was it?

25 A. Single-family house in West LA.

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.

5 Q. Do you have a property management company
6 that manages the property for you or do you do it?

7 A. No. That one, no. No property manager.
8 Just I do it.

9 Q. And then for the handyman work or the
10 maintenance of it, how do you resolve that?

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.

14 Q. Are they -- like, what kind of people?

15 Like, handyman?

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.

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?

25 A. Yes, yes.

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

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

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.

1 Q. -- it's also your understanding that --

2 MADAM REPORTER: Sorry. One at a time. I
3 didn't get any of that.

4 BY MR. LEE:

5 Q. It's also your understanding that the
6 professional inspection is not much different than
7 what you would perform?

8 A. Yeah, yeah.

9 Q. Okay. Since you've never had a
10 professional inspection done in Clark County, how
11 would you know?

12 A. That's -- that's what I said, I don't
13 know. What I said is in the -- my understanding is
14 there is no law in the Clark -- in the Nevada or in
15 California mandate to do the professional inspection
16 for the multi-family apartment.

17 Q. Is it fair to say that a professional
18 inspection may inspect areas that you don't
19 personally inspect in general when you purchase a
20 property?

21 MR. CHILDS: I'm going to object to that
22 because that calls for speculation.

23 MR. LEE: Speculation is not a proper
24 objection, so go ahead.

25 THE WITNESS: I don't think so. I go

1 through there very detail, and I even go more
2 detailed than the profession inspection when I was
3 down with the professional inspector for my summer
4 house in the property in Yucca Valley; right?

5 BY MR. LEE:

6 Q. Yucca Valley is California? Yes?

7 A. California, yeah, yeah.

8 Q. Okay. And you've never had a professional
9 inspection done in Nevada; correct?

10 A. I didn't do any professional inspection in
11 Nevada.

12 Q. And you've never done a professional
13 inspection in Clark County; correct?

14 A. No. I didn't hire any of the professional
15 inspection to do the inspection in the Clark County.

16 Q. So it's fair to say you don't know what
17 the additional areas that a professional inspection
18 would cover in Clark County?

19 A. Yes. I don't know, but yeah.

20 Q. Do you own any commercial real estate or
21 is it all residential?

22 A. What?

23 Q. Do you own any commercial real estate?

24 A. I think the multi-family, the apartment,
25 is commercial too. They call it commercial or --

1 inspector to do the inspection. And I said it this
2 way -- actually, we did -- the seller. The reason I
3 found out why I don't need to do the inspection, we
4 had one duplex in Yucca Valley; right? Before I
5 purchase, I hired the inspector to do that. They
6 are priced very high. I think it's about \$2,000 to
7 do the duplex inspection.

8 After that, I talked to the realtor;
9 right? The realtor said, You don't need to do that
10 because this is multi-family, this is rental
11 property. Seller make sure this -- everything is
12 good to sell you because you have need tenant to
13 make sure the safe and well-being for the seller --
14 tenant. That's just making me think about, Oh, this
15 is -- this -- this kind of thing. So I just don't
16 do that in the -- for the multi-family apartment
17 purchase.

18 **Q. That decision is based on cost and then**
19 **your belief that the seller makes sure that it's**
20 **habitable; correct?**

21 A. Right, right, habitable and -- yeah.

22 **Q. Okay. Let's go to the residential**
23 **purchase agreement that's dated August 11, 2017.**

24 (Exhibit 2 was marked for the record.)

25 ///

1 planning on purchasing this property individually or

2 what was -- you were going to get originally

3 financing for this purchase; right?

4 A. Yes. This is -- I identify the seller

5 property because we sold the one full price in

6 Twentynine Palms (phonetic). So we have some money.

7 We want to use the money to do the 1031 exchange,

8 so --

9 Q. How much did you sell the Twentynine Palms
10 property for?

11 A. Oh, gosh. I forgot the exact number.

12 Probably more than \$300,000, maybe \$400,000.

13 Q. With the 1031 exchange, you need to
14 purchase an equivalent amount of real estate;
15 correct?

16 A. Right, right, right, right.

17 Q. Okay. So whatever your 1031 exchange
18 would have been would have -- I mean, if you're
19 going to do a 1031 exchange, why did you need to try
20 to seek financing?

21 A. No. We do the 1031 exchange and then --

22 so we do that one for down payment. Okay. So we --

23 that's our reason we bought a whole bunch of

24 property. I think I buy four property during that

25 time.

1 A. Right, right.

2 Q. Okay. So let's stay on this document.

3 We're still on the August 11, 2017; okay?

4 A. Okay.

5 Q. Okay. So as part of this agreement, when
6 you go to page 28 of 166 --

7 A. Yeah.

8 Q. -- it's specified that the close of escrow
9 for the transaction would have been 30 days from
10 acceptance; correct?

11 A. Yes, yes.

12 Q. Okay. But, you know, based on your
13 financing falling through, that's the reason why you
14 ultimately had to end up canceling this agreement;
15 right?

16 A. Yes, because of the -- I think the Helen
17 Chen notified us. They said, you know, this not
18 closing on time in 30 days. They're going to take
19 the -- our deposit and then cancel this purchase
20 agreement. Then we said, Well, we got a problem
21 because of the 1031, we already filed the 1031
22 exchange including this property. Also, we don't
23 want to lose that \$5,000 deposit. So we said, Can
24 we do that one? Wait put more cash. We try to get
25 a loan. If we still can't get a loan by end of

1 A. No.

2 Q. No.

3 Okay. So, like, your wife's impressions
4 would be something I would have to ask her about
5 individually?

6 A. That's fine, yeah.

7 Q. You understand that the obligations
8 related to the buyer's due diligence to be done in
9 14 days of acceptance, though; correct?

10 A. Yes.

11 Q. And that's the reason why you are the
12 person who generally does the inspection of a
13 property?

14 A. Yeah. We do the -- I said that --
15 actually, my wife asked her -- usually I tell them,
16 I did the inspection. Because before, for the
17 purchase agreement, I go there personally to inspect
18 the property and do the very detailed inspection.

19 Then after that, I went to the property
20 several times too to the tenant and also other
21 things. Check the --

22 Q. Let's do it this way.

23 A. Okay.

24 Q. On -- when did you find the property? Do
25 you recall what date?

1 Q. Okay. Then tell me what happened.

2 A. Then I just go over the property all of
3 detail, surrounding area. I just check the other
4 building. Then this -- at that time, there's one
5 tenant there. So other two --

6 Q. So you had -- let me pause you.

7 So you had the ability to walk the
8 property with Kenny Lin?

9 A. Right, right.

10 Q. Okay. Like, do you recall all the areas
11 that you looked at?

12 A. Yeah. Actually, I walked the Unit B, C.
13 I go to there too. Now, Unit --

14 Q. So when you walked through them, what did
15 you look at?

16 A. I looked at a lot of things. For example,
17 like, the -- I point out some drywall is not
18 finished; right? And the -- some of smoke alarm is
19 not -- is missing and -- which is law required to
20 put in for smoke alarm. Then no carbon monoxide
21 alarm, so I ask them to put in.

22 Then in the kitchen, lot of electrical,
23 the outlet is not a GFCI outlet, so I tell them, I
24 said, You need to change this GFCI. Right now this
25 outlet is not meet code. You probably have problem.

1 Then the tenant get electrocuted somehow in the one

2 area. So I --

3 Q. What else did you inspect?

4 A. Then I inspected -- I found out there's a

5 lot of cabinets is new, so I said, Well, you got all

6 this new. They said, Yeah, we just did the

7 renovation for the kitchen cabinet and the fixtures

8 on the vanity are new. Then he also point out you

9 see all the shower, the ceramic tile is new shower.

10 Bathtub is new tile, all that one. He said he did

11 all new.

12 Then --

13 Q. Okay.

14 A. So I check that washer/dryer.

15 Q. Was there a sink that was clogged during

16 the time you did your inspection?

17 A. No. No, no clog.

18 Q. So there was never a clogged sink issue at

19 all?

20 A. I was inspect new tenant. Only one

21 tenant. Unit A have people. Other units, B and C,

22 at that time I think is vacant. Then I opened the

23 faucet, the water go through.

24 Okay. Then checked the ceiling --

25 actually, I mention to the Kenny Lin I saw the

1 ceiling, one whole ceiling is popcorn ceiling in
2 Unit C. I said, Well, you know, this popcorn
3 ceiling have issue if we have asbestos. They said,
4 No, no, no, no problem because -- I said, This is
5 older house. Then he said, If you don't touch that
6 one, it's okay.

7 Q. So you noticed that the property had
8 popcorn ceiling. What were you concerned about,
9 potentially asbestos?

10 A. Yeah, because I have experience when I
11 build my house in Arcadia, so I told them, If we got
12 popcorn ceiling there, then they may have asbestos.
13 Then they said, If you don't expose and disturb
14 that, that's okay. I said, Okay. I know that is
15 some people say that way too. So I just said --
16 ask, We don't disturbing that one, it's okay.

17 Q. But although you had this concern about
18 potential asbestos, did you do an inspection for
19 asbestos?

20 A. I didn't do the inspection, but I just
21 said -- he tell me if we're not disturbing that one,
22 it's not issue, so I just -- I said -- because he
23 already rental to tenant, so what's the point for me
24 to argue that.

25 Q. So Mr. Lin, did he ever tell you to get an

1 A. Not that we -- we noticed that this is
2 multi-family house. We don't need to do the
3 professional inspection. Even they ask us, This
4 is -- because this is dealing with the tenant --
5 with the owner or seller issue.

6 Q. Okay. So my question was: Was it
7 possible that Ms. Chen had told either you or your
8 wife that you needed to get a professional
9 inspection done?

10 A. Maybe. Maybe. I don't know. I just said
11 I cannot say on behalf of my wife because my wife,
12 she maybe received email from Chen.

13 Q. Okay. And as far as you know, do you
14 recall or not if she told you that you needed to get
15 a professional inspection done?

16 A. I don't think that I recall the memory on
17 that because I always tell my wife, I said, We
18 already done the inspection. That's the reason we
19 decide to buy this property; right?

20 Q. So if I break it down, you don't remember
21 if that happened; is that fair?

22 A. I don't remember, yes.

23 Q. Okay. And then the second thing is you
24 told your wife that you had already done the
25 inspection so you didn't need a professional

1 inspection?

2 A. Yes.

3 Q. Okay. So if we go back to the residential
4 purchase agreement, which is Exhibit 2, it was
5 conditioned originally on you having the ability to
6 complete your due diligence. So is it your
7 understanding that when you did your inspection on
8 August 10th, 2017, that that was your -- you doing
9 your due diligence?

10 A. Yes, yeah. That is on the understanding
11 we do the due diligence.

12 In addition to the initial inspection in
13 August 10th, I went to the site a couple of times.
14 I think another two times. Then take a look at the
15 surrounding environment, talk to the tenant Unit 1
16 also.

17 Q. And this is some -- like, can you estimate
18 the time frame when you talked to the tenants?

19 A. Just between the -- we purchase that one
20 in the 30 days, the due diligence period. I went to
21 there.

22 Q. Do you recall what those -- what you
23 learned during those conversations?

24 A. No. At that time, the tenant is very
25 happy. He said that, Yeah, I like this. We living

1 very good, and that's the reason he got my phone

2 number.

3 Q. Okay. Do you remember the name of this
4 tenant?

5 A. Yeah, Nicholas. He's the guy that's still
6 living there, Unit A. I give his phone number. I
7 said, Well, if we go to buy this property, I'm the
8 new owner, so I gave him his phone number.

9 Q. Okay. If we go back to Exhibit B, page
10 28, 7A, Property Inspection/Conditions, it says,
11 "During the due diligence period, buyer shall take
12 the actions buyer deems necessary to determine
13 whether the property is dissatisfactory to the
14 buyer." It goes on, but I'm going to stop there.

15 Based on what you've described, you
16 believe that you took the actions necessary to
17 determine if a property was satisfactory to you,
18 WLAB, to purchase it?

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

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.

4 Q. So with the rent that you described, did
5 you receive rent rolls about what the current rental
6 rates were for the property --

7 A. At that time only one tenant.

8 Q. One tenant.

9 But around that time, you already received
10 all the lease agreements and everything; correct?

11 A. I didn't receive leasing agreement until I
12 purchase it.

13 Q. Okay. So you did receive the lease
14 agreements that were for the property?

15 A. Yeah, yeah, yeah, yeah. After that, yeah.

16 Q. Okay. So if we keep reading on 7A, it
17 says -- line 36 on the left-hand side. "During such
18 period, buyer shall have the right to conduct
19 noninvasive, nondestructive inspections of all
20 structural, roofing, mechanical, plumbing,
21 heating/air conditioning, water/well/septic,
22 pool/spa, survey square footage, and any other
23 property or systems through licensed and bonded
24 contractors or other qualified professionals."

25 Did I read that correctly?

1 A. Yes, yes.

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 --

12 Q. Okay. So can you spell --

13 A. I can see. I'm the professional at that
14 time, so --

15 MADAM REPORTER: One at a time, please.

16 BY MR. LEE:

17 Q. Can you spell that last word? You can see
18 the packing?

19 A. No. I can see. I'm the -- also
20 professional.

21 Q. Yes.

22 A. So that's -- I'm thinking in here they
23 said, "Qualified the professional inspection";
24 right? Other qualified professional, so I'm
25 thinking, Yeah, we did other one.

1 Q. Okay. So my question related to you had
2 the opportunity to inspect the structure of the
3 property; correct?

4 A. Usually inspect the structure, no -- and
5 the invasive is you just look around the wall, make
6 sure wall is no big crack there, right, that kind of
7 thing.

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.

17 Q. Okay. Did -- you had a right to inspect
18 the mechanical systems; correct?

19 A. That's a Kenny Lin that point out, said
20 there's a new one, so I didn't go there. It's a
21 brand-new one.

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

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.

9 Q. You had a right to inspect the
10 water/well/septic systems; correct?

11 A. Yes. This is not applicable.

12 Q. Yeah. Like, pool or spa, there's no pool
13 or spa; right?

14 A. Yeah.

15 Q. You didn't do a survey. You didn't go out
16 there with a little land --

17 A. No, no, no, no. This is nothing land, you
18 know, yeah.

19 Q. Did you -- I'm sure you didn't -- like,
20 you had the right to inspect the square footage, but
21 I'm sure you didn't go out there with a tape
22 measure.

23 A. No, I didn't. I just -- it's rental
24 property, you know.

25 Q. Yeah. But you had the right to inspect

1 the square footage if you wanted?

2 A. Yeah.

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

6 A. Yes, yes.

7 Q. Okay. Now, I understand that you did the
8 inspection and you think you're a qualified
9 professional; right?

10 A. Yes.

11 Q. But you're not licensed; is that right?

12 A. Yeah. I'm not licensed, yeah.

13 Q. And you're not bonded; right?

14 A. No. Yes.

15 Q. Okay. Then it also says down here on line
16 43, "Buyer is advertised to" -- excuse me. "Buyer
17 is advised to consult with appropriate professionals
18 regarding neighborhood or property conditions."

19 Did I read that correctly?

20 A. Yes.

21 Q. Okay. Did you consult with any other
22 appropriate professionals?

23 A. Actually, that is -- I went to the second
24 time, a third time, I take a look at the
25 neighborhood surrounding, talk to tenant and talk to

1 the neighborhood.

2 Q. Okay. And everyone was pretty happy with
3 the neighborhood?

4 A. Right, because of that -- across the
5 street is apartment. I went to the apartment too,
6 the seller apartment there.

7 Q. And the tenant who still lives there was
8 pretty happy at the time?

9 A. Yeah.

10 Q. Okay. Under 7B, it says, "Buyer's right
11 to cancel or resolve objections."

12 A. Mm-hmm.

13 Q. So under line 55, Roman numeral II, "No
14 later than the due diligence deadline referenced in
15 Section 7, resolve in writing with seller any
16 objections buyer has arising from buyer's due
17 diligence."

18 Did I read that correctly?

19 A. Yes.

20 Q. We'll get to this in a minute because I
21 know that Ms. Chen had submitted some changes that
22 you wanted and I think there's some text messages
23 about that, so we'll get to that in a minute; okay?

24 A. It's email and text message, yeah.

25 Q. Email and text messages?

1 A. Yeah.

2 Q. So those would have been those issues that
3 you decided that needed to be resolved prior to you
4 purchasing it; correct?

5 A. Right, because of the -- I tell them,
6 based on my experience, this is needed to resolve
7 before the appraisal inspection because otherwise
8 they may not approve the appraisal, then I cannot
9 get loan. Because mostly by law it should be done.

10 Q. Sorry. By law what should be done?

11 A. By the unified building code, it should be
12 correct.

13 Q. Okay. So by your understanding of what
14 the building code is for these other applicable
15 standards, that's what you mean by "the law"; right?

16 A. Okay. Yeah. For example, in the unified
17 electrical code, very specific it says, Any new or
18 renovated building near the water, like a garage,
19 kitchen, bathroom, electric, all that, near the
20 water need to be done by the GFCI. So that's the
21 reason I wrote that one. I said, You need to do
22 that before you get a --

23 Q. I asked you: Have you read the 1952
24 Uniform Building Code?

25 A. No.

1 Q. Okay. Have you read the National
2 Electrical Code?

3 A. I read the National Electrical Code long
4 time ago.

5 Q. So are you familiar with it or understand
6 everything that's required under the National
7 Electrical Code?

8 A. New one. Anything the -- new after 2015,
9 requirement. That is the requirement.

10 Q. Have you ever taken any exams or
11 licensures related to your competency related to the
12 National Electric Code?

13 A. I don't recall that I need to do
14 examination for the code. Even you apply the
15 electrical permit -- electrician permit -- I don't
16 know.

17 Q. You have an electrician permit?

18 A. I haven't -- I didn't -- I don't have the
19 license for the electrician license.

20 Q. Have you read the International Building
21 Code?

22 A. I read it before.

23 Q. Okay. Have you ever taken any licensing
24 or certifications to qualify you as competent under
25 the International Building Code?

1 A. I didn't take exam, but I -- actually, I
2 take the course. I almost apply the general
3 contractor license.

4 Q. So you almost applied for it or you didn't
5 apply for it?

6 A. Yeah, I didn't apply for it because what
7 happened is I found out I need working for some
8 company to get apprenticeship for several years
9 before you can apply for general contractor license.

10 Q. So other than simply just reading some of
11 these materials, you've never been tested on your
12 scope of knowledge; is that fair?

13 A. Yes. I didn't get a testing, yeah.

14 Q. Never received your contractor's license
15 that you were thinking about applying for; right?

16 A. Right, right, yeah.

17 So I actually pay the money for a lot of
18 -- take courses for the general contractor license,
19 that kind of application cost in California.

20 Q. There's no certifications that show you
21 actually passed the coursework --

22 A. Maybe I can find some because they did the
23 online testing for each course that counts that one.
24 I accumulated enough credit to apply the general
25 contractor license. I did some. Maybe online maybe

1 I can find out some result. I just don't remember
2 one. I know that company before did that, that
3 school, at Golden Gate Contracting School, something
4 like that.

5 Q. Okay. So you may have taken some exams --

6 A. Yeah.

7 Q. -- or you may not have taken exams related
8 to --

9 A. I may take some exam, but I needed find
10 out the -- it's all online. They give you -- you
11 buy the book, then they have online courses. I go
12 to attend on -- do the online exam online.

13 Q. Have you read the International
14 Residential Code?

15 A. No. I don't know that code.

16 Q. So is it possible that there's codes and
17 standards related to, I guess, Clark County and
18 Nevada that you may be unfamiliar with?

19 A. Maybe, but for this GFCI, it's very
20 common. The reason is a lot of people, when they do
21 the renovation, right, they think they can continue
22 using older code. That is false. They have to
23 use -- adopt a new code to meet new code.

24 Q. Okay.

25 A. So if they doing the renovation, then they

1 have to do the -- meet the new code. They cannot
2 just use existing older 1950, the code. That's for
3 sure I know that. That's the reason I tell the
4 Kenny Lin, I say, You say you're doing the
5 renovation there. You need to meet the new code.

6 At that time, I remember telling Lin, I
7 said, Well, if your tenants complain to the code
8 enforcement, the code enforcement may shut down this
9 property due to --

10 **Q. On August 10th, 2017, you told Mr. Lin**
11 **that the building was not up to code; correct?**

12 A. I tell them that area, the electrical code
13 is not up to code and also no smoke alarm and no
14 carbon monoxide alarm. It's not going to meet the
15 code.

16 Oh, there's another thing I tell him. I
17 found out there's electrical conduit in Unit C
18 exposed on outside the wall, so I said, Well, you
19 need to do something to cover that up. I don't know
20 whether you meet code or not. Then at that time,
21 Lin also noticed that.

22 **Q. This is around the August 10, 2017, time**
23 **frame?**

24 A. Yeah. August 10, 2017.

25 **Q. Okay. So you went over the objections.**

1 Resolve any objections. We'll get to that in a
2 minute when we get to the emails.

3 If we look at page 29, Item D, starting at
4 line 11, it says, "We strongly recommend that a
5 buyer retain licensed Nevada professionals to
6 conduct inspections."

7 Did I read that correctly?

8 A. Which one? Which page?

9 Q. Line 11.

10 A. Yeah.

11 Q. Do you see that? It's in italics.

12 A. Yeah, yeah, yeah.

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.

20 Q. -- when you guys were purchasing the
21 property?

22 A. But, you know, we found out that later
23 even professional licensed inspector would not find
24 this issue that we're currently in the litigation.
25 I already explained very detailed about that.

1 They put it -- draw the hole, they -- there's
2 that -- there's new conduit line go to the building,
3 go to the breaker -- not breaker. At that time,
4 it's a fuse box. New line go there.

5 Q. So this is the box unit that we're talking
6 about?

7 A. Yeah. That is unit with two windows AC,
8 that unit.

9 Q. Okay.

10 A. Unit A, the tenant there. They said when
11 they move in there before, there's giant heat pump
12 on the roof. The roof was shaking. Then he call
13 the InvestPro. Then later, he said he going to call
14 the code enforcement. Then the InvestPro change the
15 rules, the bigger AC, the heat pump to the -- to
16 smaller. Then they put a new conduit, new line for
17 the window AC.

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

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 Q. Okay. So in terms of the waivers, you
17 know, waived some of the inspections that's on page
18 26, lines 18 and 19, do you see that box there?

19 A. Yeah.

20 Q. Okay. You -- like, did you agree to waive
21 these inspections based on your --

22 A. No.

23 Q. -- issue or did your wife?

24 A. Actually, all this is prepared by the
25 Helen Chen; okay?

1 A. Which page is that you want me to read?

2 Q. That's page 34, line 1 through 8.

3 A. Yes. Agreed.

4 Q. All right. So you understand that the
5 prevailing party shall be entitled to their
6 attorney's fees and costs; correct?

7 A. Right.

8 Q. Then it says this is a legally binding
9 contract.

10 You understood that?

11 A. Yes.

12 Q. And it was bold and conspicuous?

13 A. Yeah.

14 Q. And it says, "All parties are advised to
15 seek independent legal and tax advice to review the
16 terms of this agreement."

17 You saw that? Yes?

18 A. Yes.

19 Q. Do you agree that all the terms that we
20 discussed in this agreement are conspicuous and
21 understandable terms?

22 A. I need to check. I thought this is a
23 standard residential purchase agreement.

24 Q. This is a residential purchase agreement.

25 A. Yeah, yeah, standard one. It's, like, the

1 standard residential agreement with -- so if that is

2 the very standard one, I agree with that.

3 Q. Yeah. I mean, you're talking about, like
4 standard, GLVAR or whatever the applicable standard
5 form would be in California; right?

6 A. No. Even in Nevada, this one, I saw
7 this -- if this is the Nevada standard residential
8 purchase agreement. So -- because currently they
9 have InvestPro Realty logo there. So if it's a
10 standard, then I agree. If it's InvestPro put
11 themselves, then I'm not agree.

12 Q. So if you go to page -- any page in this
13 agreement, at the bottom of the page, it says,
14 "Copyright 2017, Greater Las Vegas Association of
15 Realtors."

16 Do you see that?

17 A. Yeah. Okay.

18 Q. Okay. So do you know what GLVAR means?

19 A. Yeah.

20 Q. Okay. Would you agree that that's a
21 standardized business that does standardized forms?

22 A. Yeah, but you see it also says, "This form
23 is presented by Liwei Chen InvestPro Realty"; right?
24 Then also here, the logo says the InvestPro Realty.

25 Q. You had purchased several residential

1 properties prior to this; correct?

2 A. Yeah, yeah.

3 Q. Okay. And then you actually purchased
4 several in Nevada prior to this transaction;
5 correct?

6 A. Yes.

7 Q. Do you find that this agreement was very
8 standard related to your other experience related to
9 those transactions?

10 A. I think at that time I was thinking they
11 should be the same with other change.

12 Q. Did you find anything that was -- in this
13 agreement that was different than the other
14 transactions that you were involved with?

15 A. No, not yet.

16 Q. No? Okay.

17 Let's go on to our next exhibit, which
18 would be the seller's real property disclosure form.

19 A. Yeah.

20 Q. The Bates on it should be page 36 of 166
21 to page 40 of 166.

22 Do you see that?

23 A. Right.

24 MR. LEE: Let's mark this next in order.

25 (Exhibit 3 was marked for the record.)

1 BY MR. LEE:

2 Q. So the date of this agreement is

3 August 2nd -- this document is August 2nd, 2017.

4 A. Yeah.

5 Q. The Bates range is page 136 to page 140;

6 is that correct?

7 A. Yeah. So --

8 Q. This is the seller's real property

9 disclosure form?

10 A. Yeah. So that's -- I want to ask real

11 this one -- reason I realize -- actually, they did

12 prepare this one even before we inspect the property

13 and before we even -- actually without the --

14 MR. CHILDS: But there's no question

15 pending, Frank. It will probably go quicker if you

16 wait until he asks a question.

17 THE WITNESS: Oh, okay. Okay.

18 MR. CHILDS: And I apologize for

19 interrupting. I'm just trying to speed it up.

20 THE WITNESS: Okay. Sorry. Okay.

21 BY MR. LEE:

22 Q. So you recall receiving this real property

23 disclosure form; correct?

24 A. Yes.

25 Q. Okay. And then it clearly says that the

1 seller had never occupied the property; right?

2 A. Yes.

3 Q. Okay. And then also indicates that the
4 type of seller was an investor; correct?

5 A. Yes.

6 Q. Okay. Then down in the middle of the page
7 where it says, "System/appliances" --

8 A. Uh-huh.

9 Q. -- "Are you aware of any problems and/or
10 defects with any of the following," and then it has
11 next to "Heating systems," "Yes, there were problems
12 or defects."

13 That's correct? Yes?

14 A. Yes, they said this.

15 Q. And then it also shows next to the cooling
16 system that they were aware of problems with that as
17 well? Yes?

18 A. Yes, yes.

19 Q. Okay. And then this is initialed by
20 DocuSign by MZ, which is Marie Zhu; right?

21 A. Yeah. My wife, yeah.

22 Q. Okay. Go to page 37 --

23 A. Mm-hmm.

24 Q. -- under No. 1 where it specifies,
25 "Property conditions, improvements, and additional

1 "Was the property constructed on or before
2 December 31st, 1977," and it says "yes"; right?

3 A. Yeah.

4 Q. You knew this was a 63-year-old property
5 at the time you were purchasing it; right?

6 A. Yes. I remember it's older building, then
7 they do the renovation. That's what I thought.

8 Q. Okay. So then we turn the page to page
9 38 --

10 A. Okay.

11 Q. -- "Explanations." "Any 'yes' to the
12 questions on pages 1 and 2 must be fully explained
13 here"; right?

14 A. Yes.

15 Q. And then it specified that one of the
16 units has brand-new kitchen cabinets installed.
17 It specifies that; right?

18 A. Yes.

19 Q. It says, "All three units have brand-new
20 AC installed within three months."

21 You see that? Yes?

22 A. Yes.

23 Q. Okay. And it says all three bathrooms are
24 redone within two years.

25 Do you see that? Yes?

1 A. Yes.

2 Q. You said, "Sprinklers or landscaping

3 doesn't work. All pipes are broken."

4 You see that? Yes.

5 A. Yes.

6 Q. Okay. "Please consider that there are no
7 sprinkler system."

8 Do you see that? Yes?

9 A. Yes.

10 Q. It says, "AC units are installed by
11 licensed contractor."

12 You see that? Yes?

13 A. Yes.

14 Q. And it says, "All other work are done by
15 owner's handyman."

16 You see that? Yes?

17 A. Yes.

18 Q. It says, "Owner never resided in the
19 property"; right?

20 A. Yes, yeah.

21 Q. And you never visited the property? Yes?

22 A. Yes.

23 Q. Okay. So when they disclosed that there
24 was construction and modification, alterations,
25 and/or repairs made without State, City, County

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. I was thinking
5 that the work is just like regular change to the AC.
6 And you have existing heat pump that doesn't work,
7 which we give that -- then we just hired the
8 licensed AC contract, replace the old one to the new
9 one. That's my --

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.

17 Q. Okay. When it specified that there were
18 construction, modification, alterations, and/or
19 repairs made without any State, City, or County
20 building or permits, you could have gone through and
21 had an inspection done on what the permits were for
22 the property; correct?

23 A. Could you repeat again?

24 Q. Nothing prohibited you from going and
25 pulling the permits for the property at any time;

1 BY MR. LEE:

2 Q. Do you have an understanding that you
3 could not get a copy of the permits that were done
4 on the property as a third party?

5 A. Yes, you can do that.

6 Q. Okay. So you could have pulled a copy of
7 any of the permits for the property at any time?
8 Yes?

9 A. Yes.

10 MR. CHILDS: Object as to the same thing
11 about the "pull." Just obtaining copies of the
12 permits I think is the confusing --

13 THE WITNESS: Yeah, yeah, this is correct.

14 BY MR. LEE:

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?

1 A. Yes.

2 Q. If we go to page 40 --

3 A. Mm-hmm.

4 Q. -- there's a bunch of Nevada statutes
5 here.

6 A. Mm-hmm.

7 Q. If you look at NRS 113.140 --

8 A. Mm-hmm.

9 Q. -- do you see that at the top of the page?

10 "Disclosure of unknown defects not required. Form
11 does not constitute warranty duty of buyer and
12 prospective buyer to exercise reasonable care."

13 Do you see that?

14 A. Yes.

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 A. Yeah.

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 Did I read that correctly?

25 A. Yes.

1 contaminants; right?

2 A. Exactly, yeah.

3 Q. What did you say?

4 A. Yes, I agree.

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. I just do the preliminary

17 inspection. I didn't see that because of the mold,

18 which is happen if you have wood on the wall and

19 also on the floor. I saw the other one is ceramic

20 tile and the concrete on the wall, so it's no issue

21 about the mold.

22 Q. This would be faster if you just answer

23 the questions I'm asking you; okay?

24 A. Okay. So I said yes, no problem.

25 Q. Okay. All right. So you believe that you

1 a professional of their choice regarding any
2 questions or concerns before its execution";
3 correct?

4 A. Yes.

5 Q. So you relied upon your own determination
6 related to the potential mold exposure of the
7 property; correct?

8 A. Yes.

9 Q. Okay. And you elected to proceed with
10 purchasing it without a professional mold
11 inspection; correct?

12 A. Yes.

13 Q. The next document, which is the trustee's
14 deed upon sale.

15 A. Yeah.

16 Q. Okay. This is Bates labeled page 14 of
17 166, page 15 of 166?

18 A. Yeah.

19 MR. LEE: We'll mark it as Exhibit 5.

20 (Exhibit 5 was marked for the record.)

21 BY MR. LEE:

22 Q. My only question is: Did you know at the
23 time that you purchased this property that the
24 investor bought the property at a foreclosure sale?

25 A. I think so. Yes.

1 this email. This email is I. It's me, it's me. I
2 send it to the Helen Chen. So I think Helen Chen
3 should disclose that one too. We require all the
4 email. She didn't disclosure that one.

5 Q. So let's just use Exhibit --

6 A. Yeah. I --

7 MR. CHILDS: Just wait until he asks a
8 question, Frank.

9 BY MR. LEE:

10 Q. Let's just use Exhibit 7 since it contains
11 more information; okay?

12 A. Okay.

13 Q. So we had previously talked about as it
14 related to the August 11th, 2017, residential
15 purchase agreement that you had asked for some
16 change order; right?

17 A. Yes. I asked them to change on the email
18 stuff, yeah.

19 Q. And then after your inspection, you
20 determined that what you needed to have repaired or
21 fixed included broken glass; is that fair?

22 A. Yeah.

23 Q. Repair and refinish the inside drywall
24 around the AC unit?

25 A. Yes.

1 Q. Repair and/or replace the broken
2 thermostat?

3 A. Yes.

4 Q. You also asked them to change the outlets
5 in the kitchen and the bathroom to GFI outlets; is
6 that correct?

7 A. Right, right.

8 Q. And you asked them to install carbon
9 dioxide alarms; is that right?

10 A. Yes.

11 Q. For a CO alarm, do you mean smoke detector
12 or carbon monoxide?

13 A. The smoke detector is a fire alarm, but
14 the CO alarm is sometimes, you know, they running on
15 the nitro gas appliance, they may have a CO2 -- or
16 CO can kill people.

17 Q. So monoxide, one oxide?

18 A. Yeah. Carbon monoxide, yeah.

19 Q. Okay. Then you also wanted \$1,000? Yeah?

20 A. Yeah. Then so -- we say, If -- they say
21 if the seller cannot do so, please provide
22 additional \$1,000 credit so we will install before
23 closing.

24 Q. So these are the only items that you
25 decided that needed to be changed under the original

1 purchase agreement; correct?

2 A. Yes.

3 Q. Okay. And then in response, I guess it's
4 August 24th, 2017, they rejected it and said they
5 would only agree to repair the broken glass; is that
6 correct?

7 A. Yeah, yeah.

8 Q. They would repair and refinish the inside
9 drywall around the inside AC unit?

10 A. Yeah.

11 Q. They would repair or replace the broken
12 thermostat?

13 A. Yeah.

14 Q. They would change the outlets that you
15 requested; correct?

16 A. Yes, yes. They said they change, but in
17 reality, no.

18 Q. Are you saying they didn't change them?

19 A. They didn't complete. Some still there
20 not changed. I changed them.

21 Q. Did you do a walk-through prior to the
22 close of escrow to see if they had changed them or
23 not?

24 A. That's what I said. The one doing the
25 walk-through, I point out to Helen Chen. They said

1 through, we didn't do the walk-through, but all
2 the -- we did a walk-through in December when we
3 finally purchased the property.

4 Q. Okay. So prior to December, you had a
5 right to do an additional walk-through at any time;
6 correct?

7 A. Yes.

8 Q. Okay. And then had you -- well, let me
9 ask the question.

10 So at any point any time prior to the
11 purchase, is there any email written communication
12 that they didn't address any of these issues?

13 A. I think this all address already. I don't
14 see any additional email.

15 Q. So after the time when you purchased the
16 property to when InvestPro took over as property
17 manager, is there any communication between you and
18 InvestPro that they didn't fix any of these issues?

19 A. No, I didn't.

20 Q. Okay. And is there any documentation or
21 communication from that time thereafter to the
22 present specifying that InvestPro didn't fix any of
23 these issues?

24 A. No. I don't have that document between me
25 and InvestPro.

1 property, had identified the scope of the
2 renovation, managed the renovation project from
3 soliciting bids to awarding bids and paying
4 contractors, was now selling the property under his
5 supervision and authority," what is this based on?

6 You have a reference here to the
7 promotional website. So is the website that you
8 found related to the flipping fund for this belief?

9 A. Flipping fund --

10 MR. CHILDS: Hold on, Frank. Don't get
11 these out of order.

12 BY MR. LEE:

13 Q. Yeah, you're right. The flipping fund is
14 eventually one of the exhibits, but what I'm asking
15 you now is: Did you rely upon the flipping fund in
16 order to form the basis for this belief?

17 A. This is -- belief is based on my
18 experience.

19 Q. Your experience with what?

20 A. Project manager doing the building house,
21 doing the -- you need this kind of scope, the
22 sequence.

23 Q. I'm sorry. I didn't understand any of
24 that.

25 A. Because of my experience, I build the

1 A. I believe InvestPro Manager is doing
2 the -- the -- this work. Then InvestPro Realty is
3 property manager. That InvestPro --

4 Q. So Realty is the property manager --

5 A. Huh?

6 Q. So Realty is the property manager --

7 A. Yeah.

8 Q. -- but Realty is not the flipping fund
9 manager, correct, or you don't know?

10 A. I don't know.

11 Q. Okay. So you don't know the structure of
12 which entity manages what -- which entity's scope of
13 work covers what area; right?

14 A. It's from the -- when I sign the contract
15 for the property manager contract, it's through the
16 InvestPro Realty.

17 Q. Realty, yeah?

18 A. Yeah. So property manager on this
19 property for me.

20 Q. So when you don't have the designation of
21 which InvestPro is which, are you not clear or you
22 don't know the role of each organization's structure
23 as it pertains to remodeling, property management,
24 flipping fund manager, or property management; is
25 that fair?

1 A. Yeah, but if --

2 MR. CHILDS: Don't get these out of order,
3 Frank, please.

4 THE WITNESS: Okay, okay, okay.

5 In the promotion material, I remember
6 the -- Kenny Lin said InvestPro Manager, right, and
7 also InvestPro Investment.

8 Now, the Invest --

9 BY MR. LEE:

10 Q. The promotional material, is that the
11 website information that you saw?

12 A. Right, right, right.

13 Q. And so then when you have additional
14 savings here, 25 percent profit, 75 percent
15 profit --

16 A. Yeah, yeah.

17 Q. -- this goes to the website? Yeah?

18 A. Yes, yes.

19 Q. And then here, "In addition to selling the
20 property, they find investors, buys the property
21 from auction, manages, identifies the scope of
22 renovation, manages renovations, paying contractors,
23 and obtaining the tenants and rentals," what is this
24 based on? Where is the foundation for this
25 statement?

1 the renovation.

2 Q. Fair to say that if it's based on your
3 experience, you can't say with certainty that that's
4 the actual process conducted by InvestPro or
5 whatever?

6 A. Right, right. I don't know what -- how
7 they conduct. But based on my experience, you need
8 to know which area need to do the renovation and
9 what kind of contractor need to hire to do the
10 renovation.

11 Q. So you're -- when you say your experience,
12 it's based on you speculating based on your own
13 belief; correct?

14 A. Based on my experience.

15 Q. Okay. So you're still speculating; right?

16 A. Okay. Yes.

17 Q. Yes.

18 So then you said, "In line with its
19 formula, InvestPro bought the subject property at a
20 foreclosure auction for \$95,100, and then found TKNR
21 as the investor."

22 Is this based on your experience?

23 A. I think that is during the -- I remember
24 the conversation is like the one during the
25 Christmas party. They said it's -- you know, they

1 found that Kenny Lin is -- go to they have to pay
2 the money to buy this apartment. Then they tell the
3 investor, then put the name of the investor name on
4 the property.

5 Q. When you write here, "Receipts for the
6 heat pump, et cetera," then it goes down to,
7 "Admittedly without using licensed electrical,
8 plumbing, and HVAC contractors or having required
9 permits," are you going back to the disclosures that
10 we had talked about earlier?

11 A. It's -- yes -- yes, yes.

12 Q. Okay. Then, "A licensed electrical
13 contractor and an electrical permit would have
14 required an upgrade of the electrical supply
15 system," is this based on your experience?

16 A. Yes, and also the -- when I talked to the
17 licensed HVAC. Because we did the one in our
18 current 728 North 11th Street, then they tell me
19 that actually AC contractor, their scope of work
20 only need to replace existing older unit to the new
21 unit. If anything changes the electrical work,
22 anything changes to the water plumbing work, they
23 need to hire a separate contractor for the plumbing
24 contract and electrical contract.

25 Q. I'm sorry. Who are you talking to?

1 don't know or not?

2 A. Yes. They did by the handyman, yes.

3 Q. That was disclosed in the seller's
4 disclosures; correct?

5 A. No, no.

6 Q. Just the fact that they used some handyman
7 was disclosed in the disclosures; correct?

8 A. Mm-hmm, yeah.

9 Q. What about the foundation here for -- I
10 think we already talked about this, about the
11 electrical lines, that you saw them in the pictures;
12 right? Is that what you're talking about here for
13 this next sentence?

14 A. Yeah.

15 MR. CHILDS: Wait, wait.

16 THE WITNESS: Okay. What do you say?

17 MR. CHILDS: He's asking about the next
18 sentence.

19 Can you start with the first couple of
20 words so we can get on it?

21 BY MR. LEE:

22 Q. Yeah. It's, like --

23 MR. CHILDS: "They opened new big holes,"
24 is that...

25 ///

1 potentially someone before InvestPro?

2 A. Well, this is -- I think it got to be
3 InvestPro otherwise the periods that -- InvestPro,
4 before they do that, they cannot have people living
5 there without heating.

6 Q. So you're speculating that it had to be
7 InvestPro based on your --

8 A. Right, right. Before, they use the swamp
9 cooler. The heating is rely on the wall heater,
10 yeah.

11 Q. So you don't know one way or the other; is
12 that fair?

13 A. Yeah. I'm pretty sure it's done by the
14 InvestPro.

15 Q. So you're basing that upon your experience
16 and speculation; right?

17 A. Based on my experience, yes.

18 Q. Without your speculation?

19 A. Yeah. Okay. Yes.

20 Q. Yes. Okay. You're speculating. Okay.
21 Thank you.

22 So in 2018 -- we already talked about
23 this. You were able to go and you could pull -- not
24 pull, to obtain the permit information; right?

25 A. Yes.

1 order.

2 (Exhibit 10 was marked for the record.)

3 BY MR. LEE:

4 Q. So a copy of the website, which we
5 basically looked at as --

6 A. Yeah, yeah, yeah.

7 Q. Would you agree this is a fair copy of the
8 website we just looked at?

9 A. Yes, yes.

10 Q. Your next paragraph here, you said during
11 your inspection, you pointed out several code
12 violations, which we've already talked about. And
13 then you have the GFCI outlets; right?

14 A. Yes, yes.

15 Q. That's ultimately a request that you had
16 made to the seller; correct?

17 A. Yes.

18 Q. And then you also noted that there were
19 exposed electrical wires at the time when you had
20 done your initial inspection; right?

21 A. Yes.

22 Q. And then you also noticed that there were
23 cracks in ceramic floor tiles; right?

24 A. Yeah.

25 Q. Okay. So you were aware of all these

1 issues prior to purchasing the property?

2 A. Yes.

3 Q. And you were also aware at the time that
4 you purchased the property that these problems would
5 not pass a City code enforcement inspection;
6 correct?

7 A. Yes.

8 Q. And you still elected to purchase the
9 property eventually; correct?

10 A. Yes.

11 Q. Go down to the next paragraph where it
12 specifies normal transactions. The common spaces is
13 something that you indicated, but you had the
14 ability to inspect the entire building; right?

15 A. Yes.

16 Q. Okay. And then you start talking about
17 the second residential purchase agreement, which is
18 dated September 5th, 2017, and why you guys have
19 elected to waive the inspections at that point;
20 right?

21 A. Yeah.

22 Q. You had access to the attic during your
23 inspection at any point in time; right?

24 A. No.

25 Q. You're saying you did not have access to

1 the attic?

2 A. We only can see the manhole open the area,

3 but --

4 Q. Did you request access to the attic?

5 A. It's -- we -- we cannot break the ceiling

6 drywall, so we only can see there is a hole, the

7 manhole. So I take out the -- look like the manhole

8 and I cannot see anything.

9 Q. Did you request access to the attic as
10 part of your inspection?

11 A. I -- Kenny Lin allowed me to go to the
12 manhole to take a look. I take a look.

13 Q. Okay. So you did have access?

14 A. Yeah, yeah.

15 Q. Okay.

16 A. But it's not the area which is have
17 problem. We cannot see that area. This is -- the
18 access is the -- you only see the manhole. Because
19 of the space, you cannot people go inside. Too
20 shallow.

21 Q. Do you know if, like, a professional
22 inspector would use some type of camera to do an
23 inspection of those type of spaces?

24 A. I don't -- to my knowledge, no. You have
25 to go inside yourself.

1 not performed by an active licensed contractor as
2 required by law."

3 How do you know that the defendants knew
4 about this alleged issue?

5 A. Well, I -- it's general knowledge. If you
6 have the rental property, right, you have to provide
7 the capability. So it means you have to provide the
8 heating during winter, like this time, or you have
9 to provide cooling during the summertime. So not
10 just required.

11 So I was thinking when they buy this
12 property, they should have this, otherwise they
13 cannot sale that one by previous owner; right? They
14 cannot rent as the rental property because Kenny Lin
15 bought this one as rental property. This is a
16 rental property.

17 Q. So no one ever told you that. It's just
18 based on your own personal belief?

19 A. Yes.

20 Q. Okay. And then, "Removal of natural gas
21 supply line was, which occurred with no permit or
22 inspection and was not performed by active licensed
23 contractor as required by law," this is also based
24 on your personal belief?

25 A. Yeah, because I don't see any permit

1 inspection result.

2 Q. Okay. And then, "Upgraded electrical
3 system to add additional lines and new power supply
4 with no permit or inspection and not performed by an
5 active licensed contractor as required by law," this
6 is also based on your personal belief?

7 A. It's based on personal belief and also the
8 fact we don't see any permit and also no inspection
9 on the line.

10 Q. No what on the line?

11 A. Inspection on the electrical addition
12 line, which is you can see on here they require the
13 permit.

14 Q. I'm sorry. You said -- oh, no permit
15 inspection on the line?

16 A. Yeah. No permit inspection on the line.

17 Q. It says, like, "The disclosure says
18 there's a problem with the cooling but provides no
19 details about the history or what the problem was."
20 Like, is it your belief, personal belief,
21 that they had additional information about what the
22 problem was?

23 A. Yes.

24 Q. And what else is that based on?

25 A. When they changed the swamp cooler and the

1 wall heater to the heat pump, they needed to hire
2 professional to do the electrical gas line. They
3 need to hire an electrician to do the -- add
4 additional electrical line and also --

5 Q. So this is based on your experience and
6 conversations with those contractors that we
7 described before; right?

8 A. Right, right, yeah.

9 Q. Okay.

10 A. And also they did this switch from 5-ton
11 heat pump to the 2-ton heat pump. They need to
12 disclosure that because all this added stuff need a
13 lot of calculation and inspection and the permit
14 review.

15 Q. Okay. Once again, this goes back to your
16 conversations with the contractors or your
17 experience; right?

18 A. Yes, yes.

19 Q. So at no point in any of these punch lists
20 items did any defendant say to you, Yes, we knew
21 about these things or we didn't do them?

22 A. Could you repeat it what your question?

23 Q. Yeah.

24 So as it relates to all these items here,
25 no defendant ever came up to you and said, Yes,

1 we're actually aware of these issues; right?

2 A. No.

3 Q. The remainder of this is basically stuff
4 that you already testified to today at some point or
5 another.

6 When we look at the bottom of page 4, it
7 says, "Due to roof structure being damaged, every
8 time it rains, the roof leaks. The rains in
9 January 2019 revealed that both bathroom vents were
10 not vented outside but just into the ceiling attic."

11 So at this point in time, you had
12 purchased or owned this property for almost two
13 years? Yeah?

14 Is this the first time that you became
15 aware of the -- this issue?

16 A. This is only one year.

17 Q. Oh, so you owned it for one year?

18 A. Yeah, yeah.

19 Q. This is the first time it ever became an
20 issue known to you; right?

21 A. Yeah, for the roof.

22 Q. How do you know that the defendants knew
23 about this issue?

24 A. I don't know -- I don't know the
25 defendant -- no. I don't know the defendant know

1 this issue or not.

2 Q. Okay. And then, "These violations were
3 also hidden behind drywall and could not have been
4 identified without invasive investigation."

5 Is it also fair to say -- how do you know
6 that the defendants are the ones who allegedly hid
7 it behind the drywall?

8 A. This is very strange. I just noticed
9 recently, right, if you take a look at all other
10 wall, they don't have wood panel. That, I just
11 found one room. All of a sudden they have wood
12 panel there. So out of curiosity so I take out the
13 wood panel because all other wall don't have wood
14 panel. Then I found out this big crack behind that
15 wood panel. I take the picture; right?

16 Q. How do you know that the defendants knew
17 about that issue?

18 MR. CHILDS: He's asking a different
19 question.

20 THE WITNESS: Yeah.

21 MR. CHILDS: I think he's asking about the
22 sentence above that. I think he's asking about
23 this.

24 But I don't want to tell you what question
25 you're asking, but I think he's answering about the

1 paragraph below.

2 THE WITNESS: Is that --

3 MR. CHILDS: He's asking about this.

4 THE WITNESS: Could you rephrase?

5 MR. LEE: I'm asking about both of these
6 issues.

7 MR. CHILDS: Okay.

8 BY MR. LEE:

9 Q. Like, the violations were hidden behind
10 the drywall, like, what information do you have that
11 the defendants hid it behind the drywall? You know
12 or you don't know?

13 A. I just know behind the drywall that put
14 the vent without -- that is a violation, but I don't
15 know who did that.

16 Q. Okay. So you don't know who did it?

17 A. Yeah, yes.

18 Q. Okay. So it's possible that the
19 defendants did not know about it or hide it; is that
20 fair?

21 A. Yes.

22 Q. Okay. And then you have this other thing
23 about the wood paneling. Same question. How do you
24 know the defendants knew about it?

25 A. I don't know defendants know about it. I

1 only found out this one.

2 Q. So it's possible they didn't know about
3 this issue as well; correct?

4 A. Yes.

5 Q. Okay. So was there ever a settlement
6 demand in this case for \$10,000?

7 A. No.

8 Q. No? It's just, like -- you never said,
9 I'll settle this case for ten grand to anybody?

10 A. I maybe tell the Kenny Lin before we
11 initial it, this litigation. When we first found
12 out this electrical issue or electrical packing
13 issue, so maybe I tell Lin, Just pay us \$10,000. We
14 don't file lawsuit against the electrical. You
15 sure, you know.

16 Q. Okay. So that's where the potential
17 conversation could have come from?

18 A. Yeah. That is before we file. After
19 that, I file this litigation lawsuit. I never talk
20 to Lin.

21 Q. Yeah. It's my understanding the
22 conversation was before litigation, so --

23 A. Yeah, before litigation, not the time --
24 we only have issue is electrical issue. This is
25 not -- every time we raise, we have more issue.

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

5 So you're basically speculating; right?

6 A. Yeah, yeah, yeah.

7 Q. We already talked about this Christmas
8 party.

9 Okay. The next exhibit is the one you
10 keep talking about, this "When do I need a permit?"

11 A. Okay.

12 (Exhibit 11 was marked for the record.)

13 BY MR. LEE:

14 Q. Exhibit 10 [sic] is identified as page 77
15 of 166 to page 83 of 166. You have page 78 of 166.
16 It says, of course in the middle of the bottom, "It
17 is a guide only and is not all inclusive. For more
18 accurate information, the homeowner should contact
19 their local building department."

20 Do you see that? Yes?

21 A. Yes.

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. I do went to there a lot of time.

1 Q. And then so you on the next page, page 79,
2 "Homeowners and Permits, 'When do I need a
3 permit?'" --

4 A. Mm-hmm.

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.

1 Q. Okay. On page 81, it says, "Homeowners
2 and Permits, 'What can I do without a permit?'"

3 Do you see that?

4 A. Yes.

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.

14 Q. So if you're installing new kitchen
15 cabinets, that does not require permits; correct?

16 A. Yes. But if you install the kitchen
17 countertop with the change of the location of the
18 sink, you need permit.

19 Q. It says here that countertops doesn't
20 require it; right?

21 A. Huh?

22 Q. It says countertops do not require a
23 permit? Yeah?

24 A. No. When you change the location of the
25 sink with the kitchen --

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.

5 Q. And then -- this is your exhibit, so the
6 "GFCI protected outlet is required by code and
7 permit is required," you underlined that; right?

8 A. Yes.

9 Q. Okay. And then I presume that you found
10 and printed this document; is that fair?

11 A. Yeah. I go to the -- on the -- print out
12 this one.

13 Q. Okay. And then so this GFCI protected
14 outlet, this is a request that you actually made for
15 the seller to change; correct?

16 A. Yes, yes.

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?

- 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.
- 25 Q. And then at the bottom of this, once

1 A. Yes. Yes, maybe.

2 Q. Okay. And that includes all the pictures
3 that were included of the property as well?

4 A. Yes, yes.

5 Q. Okay. If you can go to 112.

6 A. Yeah.

7 Q. 112 shows the concrete slab outside of --
8 for the property; fair?

9 A. Yes, yes. That is the backyard of Unit A.

10 Q. Okay. And that also showed that there
11 were cracks in the concrete that were visible in
12 2017; right?

13 A. Yeah, yes, yeah. That is on the concrete
14 flat on the floor. That's fine, yeah.

15 Q. Okay. So you're aware that there were
16 these cracks in the concrete in 2017 prior to your
17 purchase of the building; right?

18 A. I think so, yes.

19 Q. And then 113 also shows the cracks in the
20 concrete?

21 A. Yeah. It's on the floor. Concrete on the
22 floor.

23 Q. Okay. And then 120 shows the dryer and
24 the dryer vent; right?

25 A. Yes. That is a new one you see.

1 Q. These are the picture of -- as far as I
2 know, was this picture -- this is a new picture? Is
3 that what you're saying?

4 A. This is a picture of when they sell that
5 one, sell the property.

6 Q. When they sold?

7 A. When they sold, put the listing on the
8 market to try to sell this property to 2017, yeah.

9 Q. This is a picture you would have seen on
10 or about August 2017 related to the --

11 A. Yeah, yeah. I remember I talk to the Lin.
12 I said, Hey, this look like washer/dryer.

13 Oh, this is new appliance.

14 Q. And then 133, it also shows the cracks in
15 the floor of the cement as well?

16 A. Yeah, yes.

17 Q. And then 134 also shows all the cracks?
18 Yes?

19 A. Yes. Floor is -- crack is -- I don't
20 consider big issue at that time, yeah.

21 Q. So all those issues were open and obvious
22 prior to the time you purchased the building? Yeah?

23 A. If the floor issue, I think it's obvious,
24 yes. The cracking in the floor, yes.

25 Q. What's Exhibit -- we can mark it

1 reporter can't take down hand gestures.

2 THE WITNESS: Okay. Sure, sure. I'm
3 sorry.

4 MR. CHILDS: No. I'm...

5 BY MR. LEE:

6 Q. Okay. Let's move on.

7 The next exhibit is the flipping fund
8 website.

9 A. Yeah.

10 (Exhibit 16 was marked for the record.)

11 BY MR. LEE:

12 Q. So I presume you're the one that printed
13 out this document; right?

14 A. Yes.

15 Q. Okay. And you also note that the closeout
16 date that's specified on page 3 of 166 indicated
17 that whatever the flipping fund was would have
18 closed on December 31st, 2015; right?

19 A. Oh, I just find out today. Yes, yes.

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. That is -- you know, I noticed this
24 one when the name mentioned that in the Christmas
25 party in 2017, December 2017. So then I went to the

1 Q. So my question -- you're not listening to
2 my question; right?

3 Were you provided with any of those
4 materials? Don't look at the website.

5 A. Mm-hmm. Don't look at the website.

6 Okay. What do you say?

7 Q. Okay. So did you receive any information
8 about the flipping fund related to the -- you know,
9 like, a pro forma, the private placement
10 information, the calculations of profit and losses,
11 capital contributions, member shares and member
12 units, did you receive any of that type of
13 information --

14 A. No.

15 Q. -- at any time?

16 A. No. I didn't receive that.

17 Q. So all the information that you're making
18 about the flipping fund comes from, one, this
19 website; right?

20 A. Yeah.

21 Q. And then the conversations that you had at
22 the Christmas party; right?

23 A. Right, right.

24 Q. But there was never any subsequent
25 solicitation or anything to you that would have

1 beginning of your deposition? Yeah?

2 A. Yes.

3 Q. Okay. And then also in the parenthetical
4 she said here, she has, "Per buyer's request, will
5 waive licensed home inspector to do the home
6 inspection"? Yeah?

7 A. Which one? Which page you say that one?

8 Q. Like, the last sentence in the email and
9 then it's in parentheticals.

10 MR. CHILDS: Oh, here.

11 BY MR. LEE:

12 Q. "Per buyer's request, will waive licensed
13 home inspector to do home the inspection"?

14 A. Yes, yes, because this is Helen Chen write
15 that one; right? That -- I said I feel that, yes,
16 because we did the inspection already.

17 Q. Yeah. You did the inspection? Yeah?

18 A. Yeah, yeah.

19 Q. Okay. We already talked about this one;
20 okay?

21 A. Yes, yes.

22 MR. LEE: So next in order.

23 (Exhibit 18 was marked for the record.)

24 BY MR. LEE:

25 Q. Exhibit 18 is Bates labeled DEF400341,

1 paragraph 28, which was different than the first
2 residential purchase agreement, was essentially the
3 same information in the email which specified,

4 "Buyer agree to pay the difference in cash if
5 appraisal come in lower than purchase price, not to
6 exceed purchase price of 200,000"; right?

7 A. Yes.

8 Q. So this is consistent with your
9 understanding that you're guaranteeing \$200,000 for
10 the purchase?

11 A. Yes, yes.

12 Q. And then we go to Addendum 1, which is
13 DEF4000365.

14 A. Yeah.

15 Q. And this specifies, you know, a lot of
16 information where you're changing the close of
17 escrow to January 5th, 2018; right?

18 A. Right, right.

19 Q. And then from that, did you have to agree
20 to make an additional deposit of 60,000 subject to
21 forfeiture?

22 A. Yes.

23 Q. So you're agreeing to guarantee \$60,000 if
24 you didn't close on time; right?

25 A. Yeah, yeah.

1 Q. So you guys -- you guys really wanted this
2 property?

3 A. Yes, because we have 1031 already put this
4 property, so we cannot back out.

5 Q. Yeah. So you would have been subject to
6 some issues if you didn't get this done?

7 A. Yeah, yeah.

8 Q. And then you also agreed to pay the rent
9 for one of the units for 650 a month?

10 A. Yes.

11 Q. And then you also agreed to pay a tenant
12 placement fee -- or a lease fee to the current
13 property manager for 800 bucks? Yeah?

14 A. Right, right.

15 Q. Okay. And then the next page, 366, is
16 Addendum 2 and that changed the buyer from Marie Zhu
17 to WLAB; right?

18 A. Right, because of the -- yeah. The -- my
19 wife said it's -- you know, since we are not apply
20 to loan, we should put into the WLAB because we pay
21 cash to buy this.

22 Q. At one point in time, you tried to get on
23 the loan; isn't that right?

24 A. Huh?

25 Q. At one point in time, you tried to get on

1 would have asked them to print out, but I don't
2 think that one --

3 THE WITNESS: Is that one National Title
4 Corporation Authorization to Close of Escrow?

5 MR. LEE: No. I'll show it to you. I
6 don't think it made it because of the hiccup that we
7 had.

8 BY MR. LEE:

9 Q. Do you see the screen right here, Order of
10 Protection Notice?

11 A. I don't see that.

12 MR. CHILDS: No. It's up there. It's not
13 here.

14 THE WITNESS: Okay. Let me read. What it
15 said?

16 BY MR. LEE:

17 Q. This is part of the disclosures that were
18 done on September 5th, 2017. They're part of the
19 documents that Marie would have done. It's
20 disclosed as DEF0019.

21 A. Okay.

22 Q. Okay. Do you recall as part of the
23 residential purchase agreement that Marie elected to
24 agree not to have a home inspection performed?

25 A. Yes. I think she signed that one. I

1 agree because the -- I said we already inspect this

2 property so I said we don't need additional

3 inspection.

4 And also, appraisal do the inspection too,

5 so I was thinking, Hey, we already done the

6 inspection.

7 Q. Okay. So the next document in order
8 should be the National Title Company; is that right?

9 A. Yes.

10 (Exhibit 20 was marked for the record.)

11 BY MR. LEE:

12 Q. And this just makes it clear that Marie
13 Zhu was the authorized signer on behalf of WLAB as
14 the buyer of the property; right?

15 A. Yes.

16 MR. LEE: Go to the next in order.

17 What's the next document in order?

18 MADAM REPORTER: Expert testimony report.

19 MR. LEE: Okay. Great.

20 (Exhibit 21 was marked for the record.)

21 BY MR. LEE:

22 Q. Exhibit 21 is your expert's report. I
23 understand that you're the person who found your
24 expert; correct?

25 A. Yes.

1 time. And also I think we done some in the weekend.

2 Q. Do you agree that your expert didn't do
3 any destructive testing when he did his inspection?

4 A. Yeah. We didn't do any of the destructive
5 testing.

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.

17 Q. Okay. Did you provide him with any
18 commentary or directions related to his report while
19 he was doing the inspection?

20 A. Yeah. I tell him some point, yeah. I
21 point out some areas. I said, Do you see this
22 crack? I point out the areas, so he take a picture.

23 Q. Were they the same cracks that were
24 present in 2017?

25 A. Yeah, yeah. No. Some is not. Some is

1 new one.

2 Q. So when he inspected the HVAC, it's
3 something that you would have inspected in 2017;
4 right?

5 A. Yes.

6 Q. Okay. Then the fact that, you know,
7 there's, like, a 2-ton unit or a 5-ton unit is
8 something you would have also inspected in 2017;
9 correct?

10 A. No. I just said, in the 2017, we only can
11 see the 2-ton unit. The 5-ton unit is not there
12 anymore.

13 Q. In 2017, it's not there but it's there
14 now?

15 A. No.

16 Q. So your expert somehow inspected a 5-ton
17 unit that's not there now?

18 A. 5-ton unit is not there. It's after 2017.
19 They put up 2016, then they remove.

20 Q. Okay. So regardless, you were able to
21 inspect the same HVAC unit that your inspector did
22 during his inspection, whenever that happened;
23 right?

24 A. Yeah, yes. That -- I cleaned out
25 something.

1 Q. Okay. So this included the HVAC system;
2 correct?

3 A. Yes.

4 Q. And it would have been the HVAC system
5 that was installed at the time before purchase;
6 correct?

7 A. That is a 2-ton unit is installed before
8 the purchase.

9 Q. Whatever unit was on the property prior to
10 purchase you would have had -- you would have had
11 the ability to inspect at that time; right?

12 A. We don't have time to inspect the 5-ton
13 unit which is already moved.

14 Q. Okay. So whatever he inspected, you were
15 able to inspect; correct? I'm not asking about the
16 5-ton unit.

17 A. Yes.

18 Q. Okay. You were also able to inspect the
19 wall unit for the cooling or heating unit; right?

20 A. Heating unit wall unit, yes.

21 Q. Yeah. That's something you could have
22 inspected in 2017?

23 A. Yes.

24 Q. Okay. Here he has, "The moisture
25 condition behind both tile walls."

1 Do you have any information that shows the
2 defendants knew about this issue in 2017?

3 A. No.

4 Q. He was able to inspect the high-moisture
5 exhaust bathroom gas at some point in time during
6 his inspection. Is this something you could have
7 inspected in 2017?

8 A. No, I cannot.

9 Q. Okay. And that's because of the whole
10 wall ceiling drooping thing you were talking about?

11 A. Before it's all sealed by the drywall. We
12 cannot see.

13 Q. Okay. Just so I'm clear, there's nothing
14 here that shows that the defendants knew about this
15 issue in 2017; right?

16 A. I don't know, but I suspect that they know
17 that.

18 Q. But you're not sure?

19 A. I'm not sure. I strong suspect they did
20 know that.

21 Q. In terms of his findings related to
22 additional weight calculations, do you know if your
23 expert had done any calculations at all related to
24 what the additional weight would be?

25 A. No. I don't think so.

1 actually paid or not paid?

2 A. I haven't paid. Just asked them to give
3 me the quotation for doing that -- just doing
4 something using the existing wall.

5 Q. Okay. So the existing -- that I
6 understand it, it says here for Units A, B, C, it
7 essentially says \$26,600; right?

8 A. Yeah, yeah.

9 Q. And then your expert brought up that it's
10 actually going to cost \$70,000 to replace the entire
11 electrical system; right?

12 A. Yes. Because of the \$70,000, the Sani
13 tell me because we need to doing the change to the
14 wall from concrete block to the wood construction,
15 wood frame, then you need to wire the new wire,
16 everything. New electrical, all that, new line,
17 everything. That cost a lot more than just use
18 existing wall and existing outlet.

19 Q. So your expert goes on to have an opinion
20 about the plumbing system. Is the plumbing system
21 something that you could have inspected in 2017?

22 A. Yes or no. No.

23 Q. If you would have a qualified professional
24 with access to the equipment to inspect it in 2017,
25 could you have done that?

1 A. No. We didn't do that plumbing.

2 Q. But it's something you could have done in
3 2017; right?

4 A. Yes, we can do that one.

5 Q. Okay. Then you have no information here
6 that shows that the defendants knew about any of the
7 issues with the plumbing; correct?

8 A. I think they have information. He knows
9 some issue.

10 Q. Well, we know that there's a clogged sink
11 and it's something that, you know, they told you
12 about, and there's some type of clogged toilet;
13 right?

14 A. They didn't mention anything causing --
15 well, I just found out later -- recently they have
16 that disclosure, said they hire some handyman to do
17 the -- for the plumbing -- the sewage line; right?
18 And at that time, why need inspect? We only have
19 one tenant. So other building, they don't have use
20 that extent, like, recently, so we cannot see the --

21 Q. Okay. So there's no evidence here that
22 you knew that the defendants knew that there was any
23 cracking in the pipes for the plumbing system?

24 A. That time, I don't know. No.

25 Q. What about presently, do you know that

1 they knew that there was cracking in the plumbing
2 system?

3 A. According to my tenant, he hired from the
4 plumbing company, the plumbing company said there's
5 a cracking under line.

6 Q. If we look at your expert photographs that
7 are attached to his report, which are on pages 183
8 to the end of the report, you can see those?

9 A. Yes.

10 Q. Do you agree that these are all areas that
11 you would have had access to inspect as depicted in
12 these photographs?

13 A. Yes.

14 Q. And this would have been in 2017; correct?

15 A. Yes, but there's -- no, no, no. You see,
16 this is -- you talking about this photograph; right?

17 Q. I'm talking about all the photographs.

18 A. Something I pull out from Zillow is why he
19 inspect. I don't see that.

20 Q. These are your expert's photographs.

21 A. Yeah, but I tell them, I give to the
22 expert and this is photograph, but some people --
23 you see the oldest swamp cooler, that is the picture
24 on the Zillow, then currently is not there.

25 Q. Okay. And the picture of Zillow would

1 A. I -- I was thinking is pre- -- cause --
2 tenant cause damage because the pre-existing is it
3 shouldn't have cracking.

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

7 A. Maybe. Yes.

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

11 A. Yes.

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

14 A. Yes.

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

17 A. Yes.

18 Q. And then the same through for 145; is that
19 right?

20 A. Yes.

21 Q. Okay. If we look back at Exhibit --

22 A. No, no, no. This is -- that one is --
23 145, that is the -- we doing the -- our own estimate
24 of initially how much it cost doing that repair,
25 this one. It's not in relate to the Sani -- the

1 expert report, their estimate. They are the general
2 contractor. I'm not a general contractor. I just
3 put a preliminary cost, maybe cost this much. I got
4 some quotation from the Home Depot, Penny Electric,
5 ACLV, all that company.

6 Q. Okay. So you're just trying to figure out
7 the cost for repair for the building on your own;
8 right?

9 A. Yeah, at that time.

10 Q. And then so your independent estimate,
11 based on your conversations with subcontractors --

12 A. Right, right.

13 Q. -- would have been \$102,873?

14 A. Right, right.

15 Q. Then your expert opines that the cost to
16 repair for the building would be --

17 A. About 660,000 -- or \$600,000. Much higher
18 than this number.

19 Q. Okay. But your estimates are actually
20 based on your conversations with potential
21 subcontractors; right?

22 A. Right. It's very small scope. It's not a
23 big, like -- Sani think it's repair lot of things,
24 yeah.

25 Q. So in Exhibit 21 with some of these areas

1 Q. But you don't know for sure?

2 A. I'm pretty sure.

3 Q. Okay. So if I was a tenant and I decide
4 to take a sledgehammer to a wall, that could crack
5 it; right?

6 A. No. Then we'll see that the sledgehammer,
7 that mark. No, you cannot --

8 Q. Okay. I'm not going to argue with you
9 about this anymore, but there's a potential cause
10 that could cause a wall cracking, you don't know
11 what the source of it would be?

12 A. Yes.

13 Q. Okay. So the next exhibit is the Larkin
14 Plumbing and Heating invoice.

15 A. Yeah.

16 Q. No. It's it L -- ACLV.

17 A. Yeah. ACLV, yeah.

18 Q. What is this?

19 A. Okay. That -- that is the one that tenant
20 notify us there's water -- ceiling dripping the
21 water during summer. No ring; right?

22 So we all thought strange. We say, What's
23 happened? So we open that ceiling. Then we found
24 out when the InvestPro doing the renovation, by now
25 they supposed to put the new duct in the AC unit

1 THE WITNESS: Yeah. It's the -- put
2 the -- install the 5-ton heat pump, remove the swamp
3 cooler. That company is shut down now.

4 BY MR. LEE:

5 Q. How do you know that the defendants were
6 aware of the existing sheet metal ductwork issue?

7 A. This is common knowledge for the
8 defendant. If they doing the -- change from the
9 swamp cooler to the heat pump, by law they need to
10 do that.

11 Q. So are you speculating that they knew
12 about it or do you know or you don't know if they
13 knew about it?

14 A. I don't know what they know about it, but
15 I -- I -- based on my --

16 Q. You don't know --

17 A. Yeah.

18 Q. -- what they knew; okay?

19 A. Yeah, yeah.

20 Q. All right. This goes a lot faster if you
21 just simply say you don't know the basis; okay?

22 A. Okay. Yeah.

23 MADAM REPORTER: Counsel, I need a break.
24 I'm sorry.

25 MR. LEE: It's okay. Let's take a break,

1 Q. Have you read this report before?

2 A. I read this one before, yeah.

3 Q. And for the record, Bates label is
4 DEF5000367-401.

5 A. Mm-hmm.

6 Q. So on page 372 --

7 A. Okay.

8 Q. -- about the second line down, it says,
9 "Items complained about in the Sani report were open
10 and obvious in the roof area, attic area, and the
11 exterior and interior areas of the property."

12 Do you agree with this statement?

13 A. Which line? Which -- what did you say?

14 Q. On page 372.

15 A. Yeah.

16 Q. Are you there?

17 A. Yeah.

18 Q. Okay. Then under "Waive standard
19 inspection requirement," there's a section right
20 there; right?

21 A. Yeah.

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."

1 Do you see that?

2 A. Mm-hmm.

3 Q. Do you agree with this statement?

4 A. Yes.

5 Q. Okay. I'm not going to ask you about the
6 wall loads. Actually, did you look at the
7 calculations that Opfer had done in his report?

8 A. Yeah. I think it's not correct.

9 Q. Like, did you do your own calculations or
10 did you --

11 A. I based on -- I also engineer. I have
12 background in engineering; right? This wall is not
13 on the total dead weight. He calculate on the dead
14 weight. They also need to calculate the wind load
15 that -- because this is a shear wall cause that
16 cracking on the wall.

17 Q. So you said you didn't calculate the wind
18 load?

19 A. Wind load, yeah. And also you need the
20 shear, the -- force to -- towards the wall is
21 cracking, yeah.

22 Q. Okay. On page 373 -- actually, 372, same
23 page, goes to 373, last sentence, first full
24 sentence says, "There's no indication in the Sani
25 report that any destructive testing was performed,

1 so therefore an inspector or contractor could have
2 made the same obligations, albeit often incorrect,
3 that were made in the Sani report."

4 Do you agree with this?

5 A. No, no.

6 Q. Let's take it piece by piece.

7 Do you agree that there's no indication
8 that Sani had done any destructive testing?

9 A. Yes.

10 Q. Okay. Do you agree that an inspector or
11 contractor could have made the same observations?

12 A. No.

13 Q. Okay. Is that because of that attic issue
14 that we talked about earlier or what's that based
15 on?

16 A. Based on the outside, the attic issue we
17 talked about, and also outside the wall have more
18 cracking. Actually, the -- your defendant's expert,
19 I point out some wall cracking. He didn't record it
20 in his report. He take pictures.

21 Q. My expert's report, you accompanied him
22 during that time -- and I believe your attorney also
23 accompanied then; right?

24 A. Yeah.

25 Q. So you had access to all the same areas

1 that Dr. Opfer did at the time of his inspection?

2 Yes?

3 A. Yes, yeah.

4 Q. So going back to 2017, you would still

5 have access to all those areas as well; correct?

6 A. Right.

7 Q. Okay.

8 A. But I point out some of the wall crack to
9 the Dr. Opfer. I don't see his -- in his report.

10 Q. Okay.

11 A. So his report is not in -- is not complete
12 information.

13 Q. So on page DEF53 -- 5000376 --

14 A. Okay.

15 Q. -- "Structural Defects" --

16 A. Yeah.

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?

22 THE WITNESS: Which one?

23 MR. CHILDS: I don't know.

24 THE WITNESS: Could you tell me which
25 line?

1 MR. CHILDS: Here.

2 THE WITNESS: (Reading document.)

3 Yes, yes.

4 BY MR. LEE:

5 Q. You agree with that? Okay.

6 A. Agree.

7 Q. Well, you're an engineer, so basically he
8 said -- further down the page, "While it is true
9 that there is an opening that was created for this
10 LG unit in the wall, it was below the window glass,
11 which, of course, is not carrying a structural load,
12 therefore there is no structural impact."

13 Do you agree with this statement?

14 A. No.

15 Q. Do you believe that there is a structural
16 load when it's below the window instead of above it?

17 A. They take out the concrete block on that
18 window unit. Before, there is a concrete block
19 underneath and -- underneath the window unit. They
20 take out the concrete block, which is the change of
21 the structure.

22 Q. So how do you know they took out a
23 concrete block?

24 A. Huh?

25 Q. How do you know they took out a concrete

1 A. From the observation, no.

2 Q. Okay. I'm trying to get everybody out of
3 here. That's why I'm just shortening it.

4 You don't know, you don't know; okay?

5 A. Mm-hmm.

6 Q. Do you agree that a property that is 63
7 years old would have various issues like plumbing
8 issues?

9 A. Yes. Maybe.

10 Q. So it's also possible that a property
11 that's 63 years old may have had issues but wasn't a
12 direct result of the actions by defendants?

13 A. Maybe.

14 Q. Maybe yes, maybe no, you don't know?

15 A. Yeah.

16 Q. Okay. Then for -- in terms of the vents
17 into the duct into the attic, do you agree that
18 he -- with his observation, that there's no
19 indication that this work was performed by the
20 defendants if they did not perform any attic work?

21 A. No. I think they did.

22 Q. So you think that they did.

23 A. Yeah.

24 Q. Based on what?

25 A. Based on the new dryer and new duct they

1 put in there. Do you see the picture? It's new
2 one.

3 Q. So based on your impression of the new
4 dryer and the new duct?

5 A. Yeah. New duct, brand-new duct put into
6 the ceiling.

7 Q. Is it possible that someone prior to the
8 foreclosure had installed a new dryer and a new
9 duct?

10 A. Before the foreclosure?

11 Q. Do you know one way or the other?

12 A. No. I don't think so. This is done --

13 Q. My question was: Do you know, yes or no,
14 one way or the other?

15 A. Could you rephrase again? Tell me.

16 Q. Do you know one way or another if someone
17 other than the defendants could replace the dryer
18 and the dryer duct?

19 A. I don't know, but -- I don't know what --
20 yeah.

21 Q. You don't know; okay? I'm trying to get
22 you out of here; okay?

23 A. Mm-hmm.

24 Q. Generally, you're someone who rents
25 low-income property; is that fair?

1 A. No.

2 Q. No. I mean, like, a lot of the properties
3 that you have in Las Vegas are in bad neighborhoods;
4 fair?

5 A. I don't say that. I don't think all in
6 bad neighborhood.

7 Q. Do you provide washer and dryers in all
8 your rental units?

9 A. No.

10 Q. Because the tenants damage them sometimes;
11 right?

12 A. This is only unit have the washer/dryer.
13 All my other units, no.

14 Q. So in general, like, you know, with your
15 properties, there's no benefit to adding a
16 washer/dryer unit; correct?

17 A. Yeah. Normally we don't provide.

18 Q. Yeah. Okay. And then what was the basis
19 for that?

20 A. Because you get more liability on that and
21 also -- no, we don't provide. Cost more and cause
22 most issue, so we don't provide.

23 Q. So if I represented to you that the
24 defendants in this context also don't provide
25 washers and dryers for the same reason, would you be

1 surprised by that?

2 A. I don't surprise they don't provide

3 washer/dryer, but I surprise they provide a

4 washer/dryer.

5 Q. You don't know if they provide the washer

6 and dryer; right?

7 A. Huh?

8 Q. You don't know if they did or didn't?

9 A. I don't know. I say that in this

10 property, when I bought this one, I was saying, Hey,

11 good. You have the washer/dryer in the unit because

12 my other -- all the rental property I have, I don't

13 have a washer/dryer in the unit.

14 Q. Okay. Let's just move on. You already

15 answered my question; okay?

16 A. Okay.

17 Q. You don't know at what point in time the

18 vent duct could have been disconnected from the roof

19 jack outlet; is that fair?

20 A. Huh?

21 Q. You don't know at what point in time the

22 vent duct became disconnected from the roof jack

23 outlet?

24 A. Roof jack outlet? I don't know that. We

25 cannot --

1 Q. Could you have taken the tape off the
2 wires and seen it?

3 A. No.

4 Q. Do you agree that the defendants had not
5 done any inside-the-wall plumbing changes to the
6 property?

7 A. No. I think they did done inside.

8 Q. Do you have any evidence that showed that
9 they'd done inside work or is this something you're
10 speculating about?

11 A. When I see the wall and tower -- the
12 shower tub is all new faucet; right? The other
13 shower tub, the faucet, if it's new, they have to do
14 that behind the wall. Otherwise you cannot do that
15 faucet.

16 Q. Do you know if the faucets were already
17 there prior to defendants doing the renovations?

18 A. Yeah. That's old one, but that one we saw
19 is new one.

20 Q. Do you know who installed the new shower
21 faucets?

22 A. I don't know. I don't know.

23 Q. Do you think that rental properties
24 experience more severe service issues because of
25 lack of care of tenants for the property?

1 A. Depend.

2 Q. So you have -- like, there could be good
3 tenants, there could be bad tenants?

4 A. Yes.

5 Q. So tenants could cause damage to a
6 property; right?

7 A. Yes. Yeah.

8 Q. At the present time, you're actively
9 trying to rent out all three units; is that right?

10 A. Huh?

11 Q. You're actively trying to rent out all
12 three units --

13 A. No.

14 Q. -- for the building?

15 A. No. I needed to fix something right now.
16 We found out that Unit B, last time your defendant
17 inspector to inspect, I go to the unit, there's the
18 sewage issue.

19 Q. Okay. So prior to the sewage issue, were
20 you actively trying to rent out all three of the
21 units?

22 A. Yes, I tried. We have tenant there
23 before.

24 Q. Okay. So from the time that you purchased
25 the building to the present, you had actively tried

1 to rent out all three of the units; right?

2 A. Yes.

3 Q. Okay. And then had you done all of the
4 repairs that were noted in the Sani report?

5 A. Yes. Sani report all this. We didn't do
6 the inside of the repair.

7 Q. Okay. So you haven't done all those
8 repairs as listed by Sani; correct?

9 A. No. Yes. No. We don't have any report
10 listed on the Sani one. We don't do anything yet.

11 Q. You haven't done anything?

12 A. Yeah.

13 Q. Okay. I did notice that it showed by
14 Dr. Neil, that you allowed the tenants to park their
15 vehicles next to the house -- the property; is that
16 true?

17 A. I didn't allow it. I don't know that
18 until I saw the one picture there.

19 Q. Okay. Because when we were there, I
20 believe there was a car parked right next to the
21 property when we did our inspection; right?

22 A. It's on the wall on the other side.

23 Q. And then there was a -- wasn't there,
24 like, a car dolly or a towing --

25 A. A towing truck -- a trailer.

1 Q. Trailer?

2 A. Yeah. That's my trailer.

3 Q. Your trailer. So is it possible that some
4 of your tenants hit the building?

5 A. No. That is the -- in the wall between my
6 property to other neighborhood property. It's far
7 away from building.

8 Q. No, no, no. There are cars that were
9 parked next to the building that we've seen in some
10 of the pictures; right?

11 A. This one picture, the -- it's -- I think
12 the they found from the Google Earth or Google Map,
13 yeah.

14 Q. Okay. So it's possible that these cars
15 hit the building; right?

16 A. Hit the building? Possible. But if they
17 hit the building, the tenant would have notified me
18 because they will see the damage on their car.

19 Q. Okay. But if they don't notify you, then
20 you wouldn't know; right?

21 A. Yeah. That I will know that. That's a
22 weird area. If they hit, then they have crack, dent
23 in the wall, all that stuff; right?

24 Q. No. If they don't notify you, you
25 wouldn't notice it unless you actually inspected the

1 area; right?

2 A. Yes, yes.

3 Q. Okay. If someone impacted the building
4 hard enough, it would just cause the cracks?

5 A. No. They would cause the breaking in the
6 concrete, the break.

7 Q. So if I hit a building at 40 miles per
8 hour, is it possible I could cause cracks in the
9 wall?

10 A. No. You damage the whole concrete block.
11 Contrate block is broken.

12 Q. Okay. So there would be some type of
13 damage; right?

14 A. Yeah, yeah. With that impact, you can see
15 very easy the impact damage. The concrete block can
16 be the one hole there.

17 Q. You were up on the roof with Dr. Neil;
18 right?

19 A. Yes.

20 Q. You agree with him saying that during his
21 inspection, he found no noticeable sagging on the
22 roof area related to the installation of these
23 rooftop heat pump units?

24 A. Yeah. I point out that the roof is very
25 soft. I point out to him there. I said, Do you see

1 this is very soft? It looks like -- because you can
2 see multiple holes there.

3 Q. Well, what he said is he found no
4 noticeable sagging.

5 Do you agree with that or disagree?

6 A. What does "sagging" mean? What's
7 "sagging" means?

8 Q. That means it sags.

9 A. Yeah. No noticeable this one, but it's
10 soft, very soft.

11 Q. Soft, but you didn't notice any sagging;
12 right?

13 A. No, no, no.

14 Q. Okay. And just for the record, I was
15 using my hands and taking them down to show sagging.

16 A. Yeah.

17 Q. Is there a reason why your expert didn't
18 do an itemized cost for repair and he only did a
19 lump sum repair cost?

20 A. I don't know. It's very expensive you do
21 the itemized.

22 MR. LEE: Next in order. We're almost
23 done. I promise.

24 (Exhibits 28 and 29 were marked for the record.)

25 ///

1 MR. LEE: Let's just go off record for
2 five minutes and then we should be able to wrap up;
3 okay?

4 (A short break was taken.)

5 BY MR. LEE:

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

9 A. No.

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

13 A. No.

14 Q. Okay.

15 A. You mean asking the -- my tenant?

16 Q. You give it to them?

17 A. No. I didn't give them these things.

18 Q. Okay. Did you tell them about it?

19 A. We tell them about the -- we have
20 litigation and the defendant's side want to inspect
21 that.

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

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

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 _____

FRANK MIAO

25 Witness

Date

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss
3 COUNTY OF CLARK)

4 I, Trina K. Sanchez, a duly certified
5 court reporter licensed in and for the State of
6 Nevada, do hereby certify:

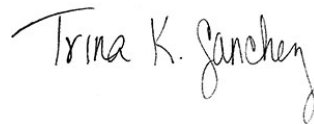
7 That I reported the taking of the
8 deposition of the witness, FRANK MIAO, at the time
9 and place aforesaid;

10 That prior to being examined, the witness
11 was by me duly sworn to testify to the truth, the
12 whole truth, and nothing but the truth;

13 That I thereafter transcribed my shorthand
14 notes into typewriting and that the typewritten
15 transcript of said deposition is a complete, true
16 and accurate record of testimony provided by the
17 witness at said time to the best of my ability.

18 I further certify (1) that I am not a
19 relative, employee or independent contractor of
20 counsel or of any of the parties; nor a relative,
21 employee or independent contractor of the parties
22 involved in said action; nor a person financially
23 interested in the action; nor do I have any other
24 relationship with any of the parties or with counsel
25 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 NRCP 30(e) was requested.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand in the County of Clark, State of Nevada, this
21 23rd day of January, 2021.

22 

23 TRINA K. SANCHEZ, RPR, CCR NO. 933

1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE

2 Litigation Services is committed to compliance with applicable federal

3 and state laws and regulations ("Privacy Laws") governing the

4 protection and security of patient health information. Notice is

5 hereby given to all parties that transcripts of depositions and legal

6 proceedings, and transcript exhibits, may contain patient health

7 information that is protected from unauthorized access, use and

8 disclosure by Privacy Laws. Litigation Services requires that access,

9 maintenance, use, and disclosure (including but not limited to

10 electronic database maintenance and access, storage, distribution/

11 dissemination and communication) of transcripts/exhibits containing

12 patient information be performed in compliance with Privacy Laws.

13 No transcript or exhibit containing protected patient health

14 information may be further disclosed except as permitted by Privacy

15 Laws. Litigation Services expects that all parties, parties'

16 attorneys, and their HIPAA Business Associates and Subcontractors will

17 make every reasonable effort to protect and secure patient health

18 information, and to comply with applicable Privacy Law mandates,

19 including but not limited to restrictions on access, storage, use, and

20 disclosure (sharing) of transcripts and transcript exhibits, and

21 applying "minimum necessary" standards where appropriate. It is

22 recommended that your office review its policies regarding sharing of

23 transcripts and exhibits - including access, storage, use, and

24 disclosure - for compliance with Privacy Laws.

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EXHIBIT P

DECLARATION OF KENNY LIN

KENNY LIN, being first duly sworn, deposes and says that he has personal knowledge and is competent to testify to the facts below. 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.

1. I have personal knowledge of the events related to WLAB Investment, LLC's ("Plaintiff") case against 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") related to the purchase of 2132 Houston Drive, Las Vegas, NV 89104 ("Property").

2. I personally reviewed the Motion for Summary Judgment, or in the alternative, Partial Summary Judgment ("MSJ") including the exhibits attached thereto.

3. Exhibit A to the MSJ is a true and correct copy of the MLS Listing for the Property.

4. Exhibit B to the MSJ is a true and correct copy of the Residential Purchase Agreement for the Property.

5. Exhibit C to the MSJ is a true and correct copy of the Seller's Disclosures for the sale of the Property.

6. Exhibit D to the MSJ is a true and correct copy of the September 5, 2017 Email Chain between Helen Chen and Frank Miao.

7. Exhibit E to the MSJ is a true and correct copy of the September 5, 2017 Cancellation Addendum.

8. Exhibit F to the MSJ is a true and correct copy of the second Residential Purchase Agreement for the Property, including all addendums, dated September 5, 2017.

9. Exhibit G to the MSJ is a true and correct copy of Defendant's Expert Report.

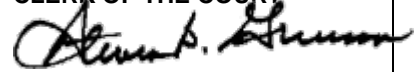
MICHAEL B. LEE, P.C.
1820 E. SAHARA
AVE., SUITE 110
LAS VEGAS,
NEVADA 89104
TEL - (702)
477.7030; FAX -
(702) 477.0096

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

10. Exhibit H to the MSJ is a true and correct copy of the Air Team Invoice.
11. Exhibit I to the MSJ is a true and correct copy of my declaration in support of the MSJ.
12. Exhibit J to the MSJ is a true and correct copy of a permit search conducted online for the Property.
13. Exhibit K to the MSJ is a true and correct copy of the Limited Opposition to Defendants' Motion to File Amended Answer, Counterclaim and Third-Party Claim filed with the court on November 16, 2020.
14. Exhibit L to the MSJ is a true and correct copy of the Order granting Defendants' Motion for Leave to File Amended Answer, Counterclaim and Third-Party Claim filed on December 2, 2020.
15. Exhibit M to the MSJ is a true and correct copy of Plaintiff's Calculation of Damages.
16. Exhibit N to the MSJ is a true and correct copy of Plaintiff's Answers to Kenny Lin's Second Set of Interrogatories.
17. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NAUGHT
DATED this 29th day of April, 2021.


KENNY LIN



1 **REM**

2 Steven L. Day, Esq.
3 Nevada Bar No. 3708

4 **DAY & NANCE**

5 1060 Wigwam Parkway

6 Henderson, NV 89074

7 Tel. (702) 309-3333

8 Fax (702) 309-1085

9 sday@daynance.com

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 W L A B INVESTMENT, LLC,

14 Plaintiff,

15 v.

16 TKNR, INC., a California Corporation, and
17 CHI ON WONG aka CHI KUEN WONG, an
18 individual, and KENNY ZHONG LIN, aka KEN
19 ZHONG LIN aka KENNETH ZHONG LIN aka
20 WHONG K. LIN aka CHONG KENNY LIN aka
21 ZHONG LIN, an individual, and LIWE HELEN
22 CHEN aka HELEN CHEN, an individual and
23 YAN QIU ZHANG, an individual and
24 INVESTPRO LLC dba INVESTPRO REALTY, a
25 Nevada Limited Liability Company, and MAN
26 CHAU CHENG, an individual, and JOYCE A.
27 NICKRANDT, an individual, and INVESTPRO
28 INVESTMENTS LLC, a Nevada Limited
Liability Company, and INVESTPRO
MANAGER LLC, a Nevada Limited Liability
Company and JOYCE A. NICKDRANDT, an
individual and does 1 through 15 and roe
corporation I-XXX,

Defendants.

Case No: A-18-785917-C

Dept No: 14

PLAINTIFF'S REPLY TO
DEFENDANTS' OPPOSITION TO
MOTION FOR RECONSIDERATION

Hearing Date: May 18, 2021

Hearing Time: 10:00 a.m.

26 COMES NOW Plaintiff, by and through his attorneys, Day & Nance, and submits the
27 following Reply to Defendants' Opposition to Plaintiff's Motion for Reconsideration.
28

ARGUMENT

A. Plaintiff's Motion for Reconsideration was timely as it was filed within 10 days of Notice of Entry of Amended Order Granting Defendants' Motion for Summary Judgment.

Defendants submit that Plaintiff's motion is untimely as it was filed 16 days after Notice of Entry of Order Granting Defendants' Motion for Summary Judgment. (*See* Defendants' Opposition to Plaintiff's Motion for Reconsideration, p. 2, ll. 9-12). However, as Defendants have conveniently omitted and as the Court is aware, an Amended Order was filed with Notice of Entry of Order on April 8th. Plaintiff's Motion for Reconsideration was filed April 16th, well within the time allotted in EDCR § 2.24(b). It is the Amended Order that Plaintiff is asking this Court to reconsider and from which Plaintiff has filed its appeal.

B. As illustrated in Defendants' opposition, there are numerous issues of fact which should preclude the granting of summary judgment in this case.

1. Defendants' contend that Plaintiff waived the due diligence condition by failing to inspect the subject property. However, as Plaintiff has pointed out, this property was inspected on multiple occasions. The property was inspected prior to Ms. Zhu signing the Purchase Agreement.

Q. Do you recall if this was the same day that you viewed the property on Zillow?

A. I don't know exactly same day or maybe couple of days later I saw property. Anyway, I set up appointment with the Kenny Lin, then we went together in the one afternoon – whole afternoon with Kenny Lin. I think the August 10th.

...

Q. So you go. He meets you at the property; is that fair?

A. Right, right, right.

Q. Okay. Then tell me what happened.

- 1 A. Then I just go over the property all of detail, surrounding area. I just
2 check the other building. Then this – at that time, there’s one tenant
3 there. So other two --
- 4 Q. So you had the ability to walk through the property with Kenny Lin?
- 5 A. Right, right.
- 6 Q. Okay. Like, do you recall all the areas that you looked at?
- 7 A. I looked at a lot of things. For example, like, the – I point out some
8 drywall is not finished; right? And the – some of the smoke alarm is not
9 – is missing and – which is law required to put in for smoke alarm.
10 Then no carbon monoxide alarm, so I ask them to put in.
11 Then in the kitchen, lot of electrical, the outlet is not a GFCI outlet, so I
12 tell them I said, you need to change this GFCI. Right now this outlet is
13 not meet code. You probably have problem. Then the tenant get
14 electrocuted somehow in the one area. So I –
- 15 Q. What else did you inspect.
- 16 A. Then I inspected – I found out there’s a lot of cabinets is new, so I said,
17 Well, you got all this new. They said, yeah, we just did the renovation
18 for the kitchen cabinet and the fixtures on the vanity are new. Then he
19 also point out you see all the shower, the ceramic tile is new shower.
20 Bathtub is new tile, all that one. He said he did all new. Then –
- 21 Q. Okay.
- 22 A. So I check that washer/dryer.
- 23 Q. Was there a sink that was clogged during the time you did your
24 inspection?
- 25 A. No. No, no clog.
- 26 Q. So there was never a clogged sink issue at all?
- 27 A. I was inspect new tenant. Only one tenant. Unit A have people. Other
28 units, B and C, at that time I think is vacant. Then I opened the faucet,
the water go through. Okay. then checked the ceiling – actually, I
mention to the Kenny Lin I saw the ceiling, one whole ceiling is popcorn
ceiling in Unit C. I said, Well, you know, this popcorn ceiling have issue
if we have asbestos. They said, no, no, no, no problem because – I said,
this is older house. Then he said, if you don’t touch that one, it’s okay.

(See Frank Miao deposition, p. 157, ll. 11-25; p. 158-160 attached hereto as Exhibit “1”).

1 Mr. Miao also inspected the home several other times during the due diligence period. (See
2 Exhibit “1”, p. 163). Mr. Miao spoke with the tenant about his unit. (Exhibit “1”, p. 163). He
3 inspected all structures and did recall seeing only a few cracks. (Exhibit “1”, p. 166). He
4 checked the electrical system, plumbing, heating/air conditioning and the roof. (Exhibit “1”,
5 pp. 166-168). As stated, several items that needed repair were pointed out to Mr. Lin
6 including the proper installation of GFCI outlets and combustible gas and CO detectors.
7 (See Miao affidavit, ¶ 3, attached to Plaintiff’s Motion for Reconsideration). Mr. Miao
8 inspected the property with Mr. Lin on August 10, 2017. (See Miao affidavit, ¶ 3). The
9 Purchase Agreement, which was prepared beforehand by Kenny Lin and Le Wei Chen of
10 InvestPro, was e-signed on August 11, 2017, by Ms. Zhu. (See Miao affidavit, ¶ 3). Due
11 diligence was not waived as the property had already been inspected. **Again, Plaintiff’s**
12 **issue with Defendants is not what was discoverable during the inspection but**
13 **what was hidden by Defendants which they had an obligation to disclose.**
14

15
16 Defendants seem to rely upon their belief that due diligence was waived and the
17 property was not inspected. While this is not true, whether or not due diligence was waived
18 is not the entire issue in this case. Even if Plaintiff had waived due diligence, this does not
19 alleviate Defendants of their responsibility to disclose conditions in the property of which
20 they are aware. NRS 113.130.

21
22 2. Defendants’ contend that Seller disclosed all known conditions with the
23 property. By way of example, they point out that they disclosed that three air conditioning
24 units were installed within three months of the sale. (See Defendants’ Opposition to Motion
25 for Reconsideration, p. 4, ll. 2-5). However, what Defendants failed to disclose was that
26 proper insulated air conditioning ducting had not been installed and the AC electrical wiring
27 had been piggybacked on an electrical circuit in one of the units so that the electrical fuse
28 kept failing. (See Miao affidavit, ¶ 7). In an attempt to insulate them from any issues with

1 the property, Defendants add that the “owner never resided in the property and never
2 visited the property.” However, what Mr. Lin further failed to disclose to Mr. Miao or Ms.
3 Zhu is that the “owner” was actually a group of investors put together by Mr. Lin as part of a
4 “flipping fund.” Mr. Lin further failed to disclose that he had an interest in the property as
5 well as he was to receive a percentage of the profit from the sale. Suggesting that the “seller”
6 never visited the property in the Purchase Agreement is an intentional misrepresentation as
7 it was “seller” who allegedly renovated the property prior to sale and it was the “seller” who
8 covered up issues with the property that should have been disclosed to the buyer.

10 3. On page 5, lines 24-26, Defendants assert that Plaintiff had access to inspect
11 the entire property and conduct non-invasive, non-destructive inspections. Defendants
12 seem to rest their case on what would have been and what was discoverable during Mr.
13 Miao’s inspection of the property. However, again as Plaintiff points out, it is what was not
14 discoverable during the non-destructive inspection that is at issue. The following are some
15 of the items of which Defendants were aware which were not discoverable during Mr. Miao’s
16 non-destructive, non-invasive inspection of the property.

18 a. The piggybacked AC wiring which was only discoverable after the
19 electrical panel was pulled from the wall. The tenant had complained that the fuse kept
20 blowing. Mr. Miao hired an electrical contractor who learned of the piggybacked wiring
21 when attempting to resolve the electrical issue. The wiring which was a code violation was
22 completed by seller’s handyman. When the tenant complained to InvestPro, the property
23 manager, the handyman’s fix was to disconnect other circuits to the fuse which resulted in
24 the tenant not being able to use all outlets. (See Miao affidavit, ¶ 7). When the licensed
25 electrician was hired by Mr. Miao to fix the problem, it was discovered that the electrical
26 panel did not have sufficient electrical wattage to power the AC units. (See Miao affidavit, ¶
27 7). None of this was disclosed by sellers. After discovering the electrical issue and what it
28

1 would cost to fix the problem, Mr. Miao approached Mr. Linn requesting that Linn and
2 InvestPro pay \$10,000.00 to fix the problem. (See Miao affidavit, ¶ 16(mm)).

3 b. Sellers had vented high moisture dryer exhaust to the attic instead of
4 outside the building as was required by law. Sellers had also used the uninsulated swamp
5 cooler ducting for the AC units installed. The combination of these two unlawful acts
6 resulted in water leaking through the unit C ceiling from condensation in the attic. Sellers
7 failure to install insulated ducting along with the dryer venting into the attic was not
8 discovered until the ceiling was opened up in an effort to finding the source of the water
9 leak. (See Miao affidavit, ¶ 8). Sellers failure to properly vent the dryers and install
10 insulated ducting with the installation of the AC units was not disclosed to Plaintiff.

11 c. Sellers had installed laminate and ceramic flooring throughout the
12 units. In doing so, Sellers covered up significant foundation issues with the building. After
13 Plaintiff's purchase of the triplex, the flooring in the units began buckling. During February
14 and March of 2021, Mr. Miao pulled up the flooring in an attempt to determine the cause of
15 the buckling. (See Miao affidavit, ¶ 9). What he discovered were significant foundation
16 issues with the building which Sellers had attempted to hide by installing new flooring
17 throughout the building. (See photographs attached as Exhibit "3" to Plaintiff's Motion for
18 Reconsideration). The severe foundation issues explained the cracking that began
19 appearing in the walls after the purchase of the property. Sellers/Defendants had covered
20 up the cracking during the "renovation" but the cracks again appeared over time because of
21 the issues with the foundation. (See Miao affidavit, ¶ 9). Sellers/Defendants failed to
22 disclose the issues with the foundation to the Buyer/Plaintiff.

23 d. As early as May or June of 2020, the tenants in units B and C had
24 complained of drainage issues. Nicholas Quioz, the tenant in Unit A, explained to Mr. Miao
25 that he had reported to InvestPro that sewage water had overflowed into his unit. InvestPro
26

1 had spent weeks trying to open the sewer line. The handyman report to Mr. Quioz that the
2 sewer line was broken. The next-door neighbor reported to Mr. Miao that when he was a
3 tenant of the building during 2016 or 2017, the floor to his unit had buckled and sewage had
4 backed up. When InvestPro failed to fix the problem, he moved out. (See Miao affidavit, ¶
5 10). Sellers/Defendants failed to disclose the broken sewer line to the Buyer/Plaintiff.
6

7 On page 7, lines 13-14, Defendants suggest that the defects could have been
8 discovered at the time of the original purchase. As stated, Plaintiff suggests and argues
9 otherwise. **Whether or not the stated defects could have been discovered during**
10 **Mr. Miao's inspections of the subject property is an issue of fact.**

11 Defendants point to Mr. Miao's deposition testimony that the conditions identified by
12 Defendants' expert were "open and obvious." Plaintiff acknowledges that the conditions
13 observed by Mr. Opfer were "open and obvious" but contends that those conditions were not
14 "open and obvious" or present at the time of Mr. Miao's inspection during August of 2017.
15

16 Defendants argue that permits were not required for the cosmetic work completed by
17 Sellers' handyman. (Defendants' Opposition, p. 8, ll. 4-10). While this may be true, Plaintiff
18 contends that permits were required when the electrical wiring and plumbing were changed
19 when the AC units were originally installed by Sellers. These changes should have been
20 performed by a licensed electrician and plumber.

21 Defendants again refer to Mr. Miao's deposition testimony wherein Mr. Miao admits
22 that third parties could have damaged the property. (Defendants' Opposition, p. 8, ll. 21-
23 25). However, Plaintiff submits that third parties did not cause the improper installation of
24 dryer venting, air conditioning ducting, air conditioning electrical wiring nor did they cause
25 the sewer line to fail or the present condition of the foundation.
26

27 Defendants argue that there is no evidence suggesting that Defendants knew about
28 the conditions of the property. (Defendants' Opposition, p. 8, ll. 27-28). Mr. Lin reported to

1 Mr. Miao that the entire property had been renovated. Walls had been painted and
2 plastered. New flooring had been laid throughout all units. Dryer venting had been
3 installed. AC units had been installed which had replaced swamp coolers. There is an
4 invoice from the handyman for patching the floor; “remove 2 rooms laminate and level
5 concrete. (DEF 23). Tenants had complained to InvestPro years prior about the drainage
6 problems and sewage back-up. Defendants’ handyman had investigated and concluded that
7 the sewer line was broken. Defendants were more than aware of the condition of the
8 property. The extent of Defendants’ knowledge of the condition of the property prior to the
9 sale to Plaintiff is an issue of fact.

11 Defendants are critical of Plaintiff’s expert and the expert’s cost of repair. The cost of
12 repair is again an issue of fact for a jury to decide.

13 Defendants refer to Plaintiff’s offer to settle the matter for \$10,000.00 early on after
14 the purchase of the property as an example of bad faith. What Defendants failed to tell the
15 Court is that the \$10,000.00 offer was after Mr. Miao discovered the problem with the
16 electrical wiring. The \$10,000.00 offer was to pay an electrician to fix the electrical wiring
17 installed by Defendants. Plaintiff was not aware at the time of the numerous other issues
18 with the building. (*See* Miao affidavit, ¶ 16(mm)).

20 Defendants contend that Sellers disclosed issues with, among other things, the
21 heating and cooling systems. (Defendants’ Opposition, p. 10, ll. 26-28). However, a close
22 examination of Sellers’ disclosure would suggest otherwise. Specifically, Defendants had
23 checked “no” to, among other things, structural defects, moisture condition and/or water
24 damage, modifications made without required permits, foundation “sliding, settling,
25 movement, upheaval or earth stability problems,” drainage issues or environmental
26 hazards. The sum total of Defendants’ disclosure concerning the air conditioning units was
27 “3 units has brand new AC installed within 3 months. . . . AC units are installed by licensed
28

1 contractor, all other work are done by owner's handyman." (*See* Exhibit "6" attached to
2 Plaintiff's Motion for Reconsideration). There is nothing in this disclosure about the failure
3 to properly duct the AC units. There is nothing in this disclosure stating that the electrical
4 wiring was piggybacked onto an electrical circuit that did not have sufficient electrical
5 wattage to power the installed unit. An inspector would have been required to pull the
6 electrical paneling off the wall at the time of inspection to find the faulty electrical wiring.
7

8 Defendants seem to rest their defense on their belief that a professional inspection
9 would have uncovered the many issues with this building that had been covered up by
10 Defendants. Defendants suggest that a professional inspection would have discovered the
11 condition of the foundation that had been covered up with laminate and ceramic flooring.
12 Defendants contend that a professional inspection would have discovered the faulty AC
13 wiring in the wall, would have uncovered the fact that the sewer line was broken, would have
14 revealed that the AC was installed with uninsulated ducting, would have found cracks in the
15 walls that had been covered with plaster, would have discovered that Defendants had vented
16 dryer exhaust into the attic, etc. What a professional inspection would have uncovered
17 versus what Mr. Miao found during his inspection is also an issue of fact for a jury to decide.
18 What Defendants knew about the building, what Defendants were obligated to disclose,
19 what a professional inspection would have revealed versus what Mr. Miao found during his
20 inspection are all issues of fact.
21

22 Defendants characterize Mr. Miao's affidavit as "self-serving testimony." Plaintiff is
23 not sure exactly what is meant by this and would submit that any testimony offered by Mr.
24 Miao is "self-serving" from the standpoint of supporting Plaintiff's case. Mr. Miao's affidavit
25 is not "deleterious" as Defendants suggest but is offered simply to show that numerous
26 factual issues exist in the case. Plaintiff simply submits that there were significant issues
27 with the subject property later discovered by Plaintiff and that Defendants were aware of
28

1 these issues and had an obligation to disclose to Plaintiff before Plaintiff purchased the
2 property. Plaintiff further submits that there is nothing in Mr. Miao's affidavit which
3 contradicts his deposition testimony.

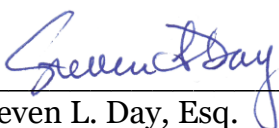
4 Defendants again ask for Rule 11 sanctions. Apparently, it is the opinion of
5 Defendants that any time an attorney advocates for Plaintiff in this case, Defendants are
6 entitled to Rule 11 sanctions. Counsel for Plaintiff has been litigating in the Nevada Eighth
7 Judicial District and in other jurisdictions around the country for over 32 years and has
8 never been the subject of Rule 11 sanctions nor has he previously dealt with opposing
9 counsel that continually asks for Rule 11 sanctions as defense counsel has done in this case.
10 (See affidavit of Steven L. Day, Esq., attached hereto as Exhibit "2"). The fact that counsel
11 for the Defendants asks for Rule 11 sanctions in response to counsel advocating for the
12 Plaintiff in Plaintiff's Motion for Reconsideration is offensive and should be ignored by the
13 Court.
14
15

16 **CONCLUSION**

17 Based on the foregoing, Plaintiff respectfully asks this Court to reconsider the
18 granting of Defendants' Motion for Summary Judgment. Plaintiff and counsel further ask
19 the Court to reconsider its Rule 11 sanctions order.

20 DATED this 11th day of May, 2021.

21 DAY & NANCE

22
23 
24 _____
25 Steven L. Day, Esq.
26 Nevada Bar No. 3708
27 1060 Wigwam Parkway
28 Henderson, NV 89074
Attorneys for Plaintiff

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Pursuant to NRCP 5(b), on the 11th day of May, 2021, service of this PLAINTIFF'S

made upon each of the parties listed below, via electronic service through the Eighth

Michael B. Lee, Esq.
Michael Mathis, Esq.
Michael B. Lee, P.C.
1820 E. Sahara Ave., Suite 110
Las Vegas, NV 89104
Attorneys for Defendants

Phone: 702-477-7030 Fax: 702-477-0096
mike@mblnv.com
matthis@mblnv.com

Phone: 702-477-7030

Fax: 702-477-0096

mike@mblnv.com

matthis@mblnv.com

Las Vegas, NV 89104

Attorneys for Defendants

Phone: 702-251-0000

Fax: 702-384-1119

ben@benchilds.com

Las Vegas, NV 89101

An Employee of Day & Nance

EXHIBIT “1”

1 IN THE EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 WLAB INVESTMENT, LLC,)
)
5 Plaintiff,)
)
6 vs.) CASE NO.: A-18-785917-C
) DEPT NO.: 14

7 TKNR INC., a California)
Corporation, and CHI ON WONG)
8 aka CHI KUEN WONG, an)
individual, and KENNY ZHONG)
9 LIN, aka KEN ZHONG LIN aka)
KENNETH ZHONG LIN aka WHONG)
10 K. LIN aka CHING KENNY LIN)
aka ZHONG LIN, an)
11 individual, and LIWE HELEN)
CHEN aka HELEN CHEN, an)
12 individual and YAN QIU)
ZHANG, an individual, and)
13 INVESTPRO LLC dba INVESTPRO)
REALTY, a Nevada Limited)
14 Liability Company, and MAN)
CHAU CHENG, an individual,)
15 and JOYCE A. NICKRANDT, an)
individual, and INVESTPRO)
16 INVESTMENTS LLC, a Nevada)
Limited Liability Company,)
17 and INVESTPRO MANAGER LLC, a)
Nevada Limited Liability)
18 Company, and JOYCE A.)
NICKRANDT, an individual and)
19 Does 1 through 15 and Roe)
Corporation I-XXX,)
20)
21 Defendants.)

22 Job Number. 697915

23 DEPOSITION OF FRANK MIAO

24

25

Page 2		Page 3	
1		1 APPEARANCES:	
2		2 For the Defendants via videoconference:	
3		3	
4		4 MICHAEL B. LEE, ESQ.	
5	DEPOSITION OF FRANK MIAO	4 MICHAEL B. LEE, P.C.	
6	PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC	5 1820 East Sahara Avenue, Suite 110	
7		5 Las Vegas, Nevada 89104	
8	Taken at Litigation Services	6 (702) 477-7030	
9	on Tuesday, January 12, 2021	6 mike@mblnv.com	
10	at 9:00 a.m.	7	
11	at 3960 Howard Hughes Parkway, Suite 700	8 For the Plaintiff:	
12	Las Vegas, Nevada 89169	9 BENJAMIN B. CHILDS, ESQ.	
13		10 318 South Maryland Parkway	
14		10 Las Vegas, Nevada 89101	
15		11 (702) 251-0000	
16		11 ben@benchilds.com	
17		12	
18		13 Also present via videoconference: Helen Chen	
19		14	
20		15	
21		16	
22		17	
23		18	
24	Reported by: Trina K. Sanchez, CCR No. 933, RPR	19	
25	Job No.: 697915	20	
		21	
		22	
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24	EXHIBIT 10 Permit/Application Status 249	24	to NRCP 34
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<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 154</p> <p>1 year, definitely we have cash to buy that.</p> <p>2 Q. Okay. So it's very important for you, you</p> <p>3 understood you weren't going to make the close of</p> <p>4 escrow, but you wanted to preserve your earnest</p> <p>5 money deposit in the purchase of this property for</p> <p>6 the tax purposes?</p> <p>7 A. Yeah. Yes, yes.</p> <p>8 Q. Okay. So part of this paragraph says that</p> <p>9 the buyer's obligation is conditioned on the buyer's</p> <p>10 due diligence as defined in Section 7A below;</p> <p>11 correct?</p> <p>12 A. Yeah. Which page?</p> <p>13 Q. It's Item 7. There's, like, a line 24</p> <p>14 that's right next to it.</p> <p>15 A. Yeah.</p> <p>16 Q. Yeah.</p> <p>17 So then your wife, I presume, used</p> <p>18 DocuSign --</p> <p>19 A. Yes.</p> <p>20 Q. -- which is why it's her initials that are</p> <p>21 computer print; right?</p> <p>22 A. Yes, yes, yeah. She's in San Diego so she</p> <p>23 can't --</p> <p>24 Q. Did you read this document with your wife</p> <p>25 at any time?</p>	<p style="text-align: right;">Page 155</p> <p>1 A. What?</p> <p>2 Q. Did you read this document with your wife</p> <p>3 or did she do this on her own?</p> <p>4 A. I think the docs sign she do on her own.</p> <p>5 Q. No, no, no. Did you read this with your</p> <p>6 wife or did you read it independently or did she</p> <p>7 read it by herself? Who read this document?</p> <p>8 A. This document is prepared by the Helen</p> <p>9 Chen.</p> <p>10 Q. Okay. So you used DocuSign before;</p> <p>11 correct?</p> <p>12 A. Right. So she signed in San Diego. I was</p> <p>13 in Vegas -- at that time I was not in the Vegas. I</p> <p>14 was in Barstow.</p> <p>15 Q. Okay. So my question is: When your wife</p> <p>16 was using DocuSign to read this document, right,</p> <p>17 like, do you know if she actually was reading it?</p> <p>18 A. I think so. She read that.</p> <p>19 Q. Okay. Did you read the document as well?</p> <p>20 A. I think so.</p> <p>21 Q. Okay. Did you guys read it together at</p> <p>22 any point in time?</p> <p>23 A. I don't think so.</p> <p>24 Q. No.</p> <p>25 Did you guys discuss the document?</p>
<p style="text-align: right;">Page 156</p> <p>1 A. No.</p> <p>2 Q. No.</p> <p>3 Okay. So, like, your wife's impressions</p> <p>4 would be something I would have to ask her about</p> <p>5 individually?</p> <p>6 A. That's fine, yeah.</p> <p>7 Q. You understand that the obligations</p> <p>8 related to the buyer's due diligence to be done in</p> <p>9 14 days of acceptance, though; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And that's the reason why you are the</p> <p>12 person who generally does the inspection of a</p> <p>13 property?</p> <p>14 A. Yeah. We do the -- I said that --</p> <p>15 actually, my wife asked her -- usually I tell them,</p> <p>16 I did the inspection. Because before, for the</p> <p>17 purchase agreement, I go there personally to inspect</p> <p>18 the property and do the very detailed inspection.</p> <p>19 Then after that, I went to the property</p> <p>20 several times too to the tenant and also other</p> <p>21 things. Check the --</p> <p>22 Q. Let's do it this way.</p> <p>23 A. Okay.</p> <p>24 Q. On -- when did you find the property? Do</p> <p>25 you recall what date?</p>	<p style="text-align: right;">Page 157</p> <p>1 A. No. I don't recall date. But I set</p> <p>2 appointment, I think, is August 10th.</p> <p>3 Q. Where did you find the property? Did you</p> <p>4 find it on Zillow?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then when you found it on</p> <p>7 Zillow, then what did you do?</p> <p>8 A. Then the phone number on the listing</p> <p>9 agent, right, so I called the listing agent, set up</p> <p>10 appointment. Then go to see the property.</p> <p>11 Q. Do you recall if this was the same day</p> <p>12 that you viewed the property on Zillow?</p> <p>13 A. I don't know exactly same day or maybe</p> <p>14 couple of days later I saw property. Anyway, I set</p> <p>15 up appointment with the Kenny Lin, then we went to</p> <p>16 together in the one afternoon -- whole afternoon</p> <p>17 with Kenny Lin. I think the August 10th.</p> <p>18 Q. Okay. So on August 10th, you set up an</p> <p>19 appointment with Kenny. Do you remember the time of</p> <p>20 day that was?</p> <p>21 A. I think is afternoon.</p> <p>22 Q. Afternoon.</p> <p>23 So you go. He meets you at the property;</p> <p>24 is that fair?</p> <p>25 A. Right, right, right.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. Okay. Then tell me what happened.</p> <p>2 A. Then I just go over the property all of</p> <p>3 detail, surrounding area. I just check the other</p> <p>4 building. Then this -- at that time, there's one</p> <p>5 tenant there. So other two --</p> <p>6 Q. So you had -- let me pause you.</p> <p>7 So you had the ability to walk the</p> <p>8 property with Kenny Lin?</p> <p>9 A. Right, right.</p> <p>10 Q. Okay. Like, do you recall all the areas</p> <p>11 that you looked at?</p> <p>12 A. Yeah. Actually, I walked the Unit B, C.</p> <p>13 I go to there too. Now, Unit --</p> <p>14 Q. So when you walked through them, what did</p> <p>15 you look at?</p> <p>16 A. I looked at a lot of things. For example,</p> <p>17 like, the -- I point out some drywall is not</p> <p>18 finished; right? And the -- some of smoke alarm is</p> <p>19 not -- is missing and -- which is law required to</p> <p>20 put in for smoke alarm. Then no carbon monoxide</p> <p>21 alarm, so I ask them to put in.</p> <p>22 Then in the kitchen, lot of electrical,</p> <p>23 the outlet is not a GFCI outlet, so I tell them, I</p> <p>24 said, You need to change this GFCI. Right now this</p> <p>25 outlet is not meet code. You probably have problem.</p>	<p style="text-align: right;">Page 159</p> <p>1 Then the tenant get electrocuted somehow in the one</p> <p>2 area. So I --</p> <p>3 Q. What else did you inspect?</p> <p>4 A. Then I inspected -- I found out there's a</p> <p>5 lot of cabinets is new, so I said, Well, you got all</p> <p>6 this new. They said, Yeah, we just did the</p> <p>7 renovation for the kitchen cabinet and the fixtures</p> <p>8 on the vanity are new. Then he also point out you</p> <p>9 see all the shower, the ceramic tile is new shower.</p> <p>10 Bathtub is new tile, all that one. He said he did</p> <p>11 all new.</p> <p>12 Then --</p> <p>13 Q. Okay.</p> <p>14 A. So I check that washer/dryer.</p> <p>15 Q. Was there a sink that was clogged during</p> <p>16 the time you did your inspection?</p> <p>17 A. No. No, no clog.</p> <p>18 Q. So there was never a clogged sink issue at</p> <p>19 all?</p> <p>20 A. I was inspect new tenant. Only one</p> <p>21 tenant. Unit A have people. Other units, B and C,</p> <p>22 at that time I think is vacant. Then I opened the</p> <p>23 faucet, the water go through.</p> <p>24 Okay. Then checked the ceiling --</p> <p>25 actually, I mention to the Kenny Lin I saw the</p>
<p style="text-align: right;">Page 160</p> <p>1 ceiling, one whole ceiling is popcorn ceiling in</p> <p>2 Unit C. I said, Well, you know, this popcorn</p> <p>3 ceiling have issue if we have asbestos. They said,</p> <p>4 No, no, no, no problem because -- I said, This is</p> <p>5 older house. Then he said, If you don't touch that</p> <p>6 one, it's okay.</p> <p>7 Q. So you noticed that the property had</p> <p>8 popcorn ceiling. What were you concerned about,</p> <p>9 potentially asbestos?</p> <p>10 A. Yeah, because I have experience when I</p> <p>11 build my house in Arcadia, so I told them, If we got</p> <p>12 popcorn ceiling there, then they may have asbestos.</p> <p>13 Then they said, If you don't expose and disturb</p> <p>14 that, that's okay. I said, Okay. I know that is</p> <p>15 some people say that way too. So I just said --</p> <p>16 ask, We don't disturbing that one, it's okay.</p> <p>17 Q. But although you had this concern about</p> <p>18 potential asbestos, did you do an inspection for</p> <p>19 asbestos?</p> <p>20 A. I didn't do the inspection, but I just</p> <p>21 said -- he tell me if we're not disturbing that one,</p> <p>22 it's not issue, so I just -- I said -- because he</p> <p>23 already rental to tenant, so what's the point for me</p> <p>24 to argue that.</p> <p>25 Q. So Mr. Lin, did he ever tell you to get an</p>	<p style="text-align: right;">Page 161</p> <p>1 inspection done on the property?</p> <p>2 A. I was -- Lin's thinking, sir. I was doing</p> <p>3 the inspection there.</p> <p>4 Q. But did he tell you you needed to get a</p> <p>5 professional inspection done?</p> <p>6 A. I don't think so. Because after that,</p> <p>7 after the -- Lin assigned this property to the Helen</p> <p>8 Chen. Helen Chen become the contact. After that, I</p> <p>9 don't talk to the Lin. Mostly it's Helen Chen with</p> <p>10 us to communicate with each other.</p> <p>11 Q. So when you say you don't think so, is it</p> <p>12 possible that Mr. Lin told you to get a professional</p> <p>13 inspection done on or about August --</p> <p>14 A. I don't think so. I don't think it's</p> <p>15 possible because usually we have email</p> <p>16 communication; right? And I don't think we receive</p> <p>17 the Mr. Lin email said we need to do the</p> <p>18 professional inspection.</p> <p>19 Q. So are you also saying that Ms. Chen never</p> <p>20 told you to do a professional inspection?</p> <p>21 A. I don't know exactly because most time</p> <p>22 she's the communicator with my wife.</p> <p>23 Q. So it's possible that she told your wife</p> <p>24 or you that you need to get a professional</p> <p>25 inspection done?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. Not that we -- we noticed that this is 2 multi-family house. We don't need to do the 3 professional inspection. Even they ask us, This 4 is -- because this is dealing with the tenant -- 5 with the owner or seller issue. 6 Q. Okay. So my question was: Was it 7 possible that Ms. Chen had told either you or your 8 wife that you needed to get a professional 9 inspection done? 10 A. Maybe. Maybe. I don't know. I just said 11 I cannot say on behalf of my wife because my wife, 12 she maybe received email from Chen. 13 Q. Okay. And as far as you know, do you 14 recall or not if she told you that you needed to get 15 a professional inspection done? 16 A. I don't think that I recall the memory on 17 that because I always tell my wife, I said, We 18 already done the inspection. That's the reason we 19 decide to buy this property; right? 20 Q. So if I break it down, you don't remember 21 if that happened; is that fair? 22 A. I don't remember, yes. 23 Q. Okay. And then the second thing is you 24 told your wife that you had already done the 25 inspection so you didn't need a professional</p>	<p style="text-align: right;">Page 163</p> <p>1 inspection? 2 A. Yes. 3 Q. Okay. So if we go back to the residential 4 purchase agreement, which is Exhibit 2, it was 5 conditioned originally on you having the ability to 6 complete your due diligence. So is it your 7 understanding that when you did your inspection on 8 August 10th, 2017, that that was your -- you doing 9 your due diligence? 10 A. Yes, yeah. That is on the understanding 11 we do the due diligence. 12 In addition to the initial inspection in 13 August 10th, I went to the site a couple of times. 14 I think another two times. Then take a look at the 15 surrounding environment, talk to the tenant Unit 1 16 also. 17 Q. And this is some -- like, can you estimate 18 the time frame when you talked to the tenants? 19 A. Just between the -- we purchase that one 20 in the 30 days, the due diligence period. I went to 21 there. 22 Q. Do you recall what those -- what you 23 learned during those conversations? 24 A. No. At that time, the tenant is very 25 happy. He said that, Yeah, I like this. We living</p>
<p style="text-align: right;">Page 164</p> <p>1 very good, and that's the reason he got my phone 2 number. 3 Q. Okay. Do you remember the name of this 4 tenant? 5 A. Yeah, Nicholas. He's the guy that's still 6 living there, Unit A. I give his phone number. I 7 said, Well, if we go to buy this property, I'm the 8 new owner, so I gave him his phone number. 9 Q. Okay. If we go back to Exhibit B, page 10 28, 7A, Property Inspection/Conditions, it says, 11 "During the due diligence period, buyer shall take 12 the actions buyer deems necessary to determine 13 whether the property is dissatisfactory to the 14 buyer." It goes on, but I'm going to stop there. 15 Based on what you've described, you 16 believe that you took the actions necessary to 17 determine if a property was satisfactory to you, 18 WLAB, to purchase it? 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</p>	<p style="text-align: right;">Page 165</p> <p>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. 4 Q. So with the rent that you described, did 5 you receive rent rolls about what the current rental 6 rates were for the property -- 7 A. At that time only one tenant. 8 Q. One tenant. 9 But around that time, you already received 10 all the lease agreements and everything; correct? 11 A. I didn't receive leasing agreement until I 12 purchase it. 13 Q. Okay. So you did receive the lease 14 agreements that were for the property? 15 A. Yeah, yeah, yeah, yeah. After that, yeah. 16 Q. Okay. So if we keep reading on 7A, it 17 says -- line 36 on the left-hand side. "During such 18 period, buyer shall have the right to conduct 19 noninvasive, nondestructive inspections of all 20 structural, roofing, mechanical, plumbing, 21 heating/air conditioning, water/well/septic, 22 pool/spa, survey square footage, and any other 23 property or systems through licensed and bonded 24 contractors or other qualified professionals." 25 Did I read that correctly?</p>

<p style="text-align: right;">Page 166</p> <p>1 A. Yes, yes.</p> <p>2 Q. So at the time when you did your</p> <p>3 diligence, you had a right to conduct noninvasive,</p> <p>4 nondestructive inspection; correct?</p> <p>5 A. Yes, I did.</p> <p>6 Q. And you had the opportunity to inspect all</p> <p>7 the structures?</p> <p>8 A. I check the other one -- on the walk, I</p> <p>9 don't see the new cracking, so the -- some older</p> <p>10 cracking. I check the neighbor who also have that</p> <p>11 one. I think it's okay; right? Then the --</p> <p>12 Q. Okay. So can you spell --</p> <p>13 A. I can see. I'm the professional at that</p> <p>14 time, so --</p> <p>15 MADAM REPORTER: One at a time, please.</p> <p>16 BY MR. LEE:</p> <p>17 Q. Can you spell that last word? You can see</p> <p>18 the packing?</p> <p>19 A. No. I can see. I'm the -- also</p> <p>20 professional.</p> <p>21 Q. Yes.</p> <p>22 A. So that's -- I'm thinking in here they</p> <p>23 said, "Qualified the professional inspection";</p> <p>24 right? Other qualified professional, so I'm</p> <p>25 thinking, Yeah, we did other one.</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. Okay. So my question related to you had</p> <p>2 the opportunity to inspect the structure of the</p> <p>3 property; correct?</p> <p>4 A. Usually inspect the structure, no -- and</p> <p>5 the invasive is you just look around the wall, make</p> <p>6 sure wall is no big crack there, right, that kind of</p> <p>7 thing.</p> <p>8 Q. So you had the right to inspect the</p> <p>9 structure; correct?</p> <p>10 A. Yes, yes, I did that.</p> <p>11 Q. You had the right to inspect the roof; is</p> <p>12 that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you do that?</p> <p>15 A. I forgot. I maybe did that because</p> <p>16 usually I go to the roof.</p> <p>17 Q. Okay. Did -- you had a right to inspect</p> <p>18 the mechanical systems; correct?</p> <p>19 A. That's a Kenny Lin that point out, said</p> <p>20 there's a new one, so I didn't go there. It's a</p> <p>21 brand-new one.</p> <p>22 Q. You had the right to inspect the</p> <p>23 mechanical system; correct?</p> <p>24 A. Right. Yes, yes.</p> <p>25 Q. You had the right to inspect the</p>
<p style="text-align: right;">Page 168</p> <p>1 electrical systems; correct?</p> <p>2 A. I check the electrical system, yes.</p> <p>3 Q. You had a right to inspect the plumbing</p> <p>4 systems; correct?</p> <p>5 A. Yes.</p> <p>6 Q. You had the right to inspect the</p> <p>7 heating/air conditioning system; correct?</p> <p>8 A. Yes.</p> <p>9 Q. You had a right to inspect the</p> <p>10 water/well/septic systems; correct?</p> <p>11 A. Yes. This is not applicable.</p> <p>12 Q. Yeah. Like, pool or spa, there's no pool</p> <p>13 or spa; right?</p> <p>14 A. Yeah.</p> <p>15 Q. You didn't do a survey. You didn't go out</p> <p>16 there with a little land --</p> <p>17 A. No, no, no, no. This is nothing land, you</p> <p>18 know, yeah.</p> <p>19 Q. Did you -- I'm sure you didn't -- like,</p> <p>20 you had the right to inspect the square footage, but</p> <p>21 I'm sure you didn't go out there with a tape</p> <p>22 measure.</p> <p>23 A. No, I didn't. I just -- it's rental</p> <p>24 property, you know.</p> <p>25 Q. Yeah. But you had the right to inspect</p>	<p style="text-align: right;">Page 169</p> <p>1 the square footage if you wanted?</p> <p>2 A. Yeah.</p> <p>3 Q. And then you could have inspected any</p> <p>4 other property or system within the property itself;</p> <p>5 correct?</p> <p>6 A. Yes, yes.</p> <p>7 Q. Okay. Now, I understand that you did the</p> <p>8 inspection and you think you're a qualified</p> <p>9 professional; right?</p> <p>10 A. Yes.</p> <p>11 Q. But you're not licensed; is that right?</p> <p>12 A. Yeah. I'm not licensed, yeah.</p> <p>13 Q. And you're not bonded; right?</p> <p>14 A. No. Yes.</p> <p>15 Q. Okay. Then it also says down here on line</p> <p>16 43, "Buyer is advertised to" -- excuse me. "Buyer</p> <p>17 is advised to consult with appropriate professionals</p> <p>18 regarding neighborhood or property conditions."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Did you consult with any other</p> <p>22 appropriate professionals?</p> <p>23 A. Actually, that is -- I went to the second</p> <p>24 time, a third time, I take a look at the</p> <p>25 neighborhood surrounding, talk to tenant and talk to</p>

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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.
 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

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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

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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

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1 REPORTER'S CERTIFICATE
 2 STATE OF NEVADA)
) ss
 3 COUNTY OF CLARK)
 4 I, Trina K. Sanchez, a duly certified
 court reporter licensed in and for the State of
 5 Nevada, do hereby certify:
 6 That I reported the taking of the
 deposition of the witness, FRANK MIAO, at the time
 7 and place aforesaid;
 8 That prior to being examined, the witness
 was by me duly sworn to testify to the truth, the
 9 whole truth, and nothing but the truth;
 10 That I thereafter transcribed my shorthand
 notes into typewriting and that the typewritten
 11 transcript of said deposition is a complete, true
 and accurate record of testimony provided by the
 12 witness at said time to the best of my ability.
 13 I further certify (1) that I am not a
 relative, employee or independent contractor of
 14 counsel or of any of the parties; nor a relative,
 employee or independent contractor of the parties
 15 involved in said action; nor a person financially
 interested in the action; nor do I have any other
 16 relationship with any of the parties or with counsel
 of any of the parties involved in the action that
 17 may reasonably cause my impartiality to be
 questioned; and (2) that transcript review pursuant
 18 to NRPC 30(e) was requested.
 19 IN WITNESS WHEREOF, I have hereunto set my
 hand in the County of Clark, State of Nevada, this
 20 23rd day of January, 2021. *Trina K. Sanchez*
 21
 22 TRINA K. SANCHEZ, RPR, CCR NO. 933
 23
 24
 25

<p>Page 342</p> <p>1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE</p> <p>2 Litigation Services is committed to compliance with applicable federal</p> <p>3 and state laws and regulations ("Privacy Laws") governing the</p> <p>4 protection and security of patient health information. Notice is</p> <p>5 hereby given to all parties that transcripts of depositions and legal</p> <p>6 proceedings, and transcript exhibits, may contain patient health</p> <p>7 information that is protected from unauthorized access, use and</p> <p>8 disclosure by Privacy Laws. Litigation Services requires that access,</p> <p>9 maintenance, use, and disclosure (including but not limited to</p> <p>10 electronic database maintenance and access, storage, distribution/</p> <p>11 dissemination and communication) of transcripts/exhibits containing</p> <p>12 patient information be performed in compliance with Privacy Laws.</p> <p>13 No transcript or exhibit containing protected patient health</p> <p>14 information may be further disclosed except as permitted by Privacy</p> <p>15 Laws. Litigation Services expects that all parties, parties'</p> <p>16 attorneys, and their HIPAA Business Associates and Subcontractors will</p> <p>17 make every reasonable effort to protect and secure patient health</p> <p>18 information, and to comply with applicable Privacy Law mandates,</p> <p>19 including but not limited to restrictions on access, storage, use, and</p> <p>20 disclosure (sharing) of transcripts and transcript exhibits, and</p> <p>21 applying "minimum necessary" standards where appropriate. It is</p> <p>22 recommended that your office review its policies regarding sharing of</p> <p>23 transcripts and exhibits - including access, storage, use, and</p> <p>24 disclosure - for compliance with Privacy Laws.</p> <p>25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>	

EXHIBIT “2”

AFFIDAVIT OF STEVEN L. DAY

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

STEVEN L. DAY, being first duly sworn upon his oath, deposes and says:

1. That affiant was prior counsel for the Plaintiff in Eighth Judicial District Court Case No. A-18-785917-C styled *WLAB Investment, LLC v. TKNR, Inc., et al.*

2. Affiant was retained by Plaintiff on March 10, 2021, one day prior to the hearing on Defendants' Motion for Summary Judgment. Affiant argued the opposition to Defendants' motion and has subsequently filed Plaintiff's Motion for Reconsideration.

3. That affiant takes the responsibility of advocating for his clients very seriously. In over 32 years of litigating in the Eighth Judicial District and in other jurisdictions around the United States and while advocating for literally thousands of clients, affiant has never been subjected to Rule 11 sanctions.

4. That affiant in this case in the preparation and filing of Plaintiff's Motion for Reconsideration believes that the arguments made on behalf of Plaintiff are presented with a proper purpose and not for the purpose of causing unnecessary delay or harassment.

///

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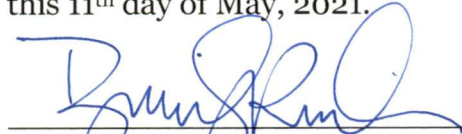
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5. That is this case, affiant is simply advocating on behalf of his client.

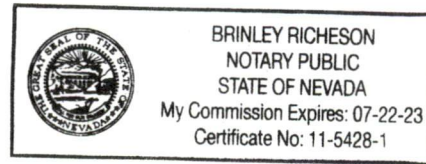
FURTHER AFFIANT SAYETH NAUGHT.

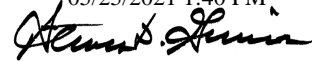

STEVEN L. DAY

SUBSCRIBED AND SWORN to before me
this 11th day of May, 2021.



NOTARY PUBLIC in and
for said County and State.





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.

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

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

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

This matter being set for hearing before the Honorable Court on May 18, 2021 at 10:00
a.m., on W L A B INVESTMENT, LLC ("WLAB" or "Plaintiff"), Motion to Reconsider
("Motion"), by and through its attorney of record, DAY & NANCE. Defendants' TKNR INC.,
CHI ON WONG aka CHI KUEN WONG, KENNY ZHONG LIN, aka KEN ZHONG LIN aka
KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN,
LIWE HELEN CHEN aka HELEN CHEN, YAN QIU ZHANG, INVESTPRO LLC dba
INVESTPRO REALTY, MAN CHAU CHENG, JOYCE A. NICKRANDT, INVESTPRO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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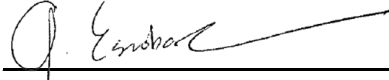
28 ////

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

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

Dated this 25th day of May, 2021



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

Date: May 18, 2021.

Respectfully Submitted By:

MICHAEL B. LEE, P.C.

Approved of as to Form and Content By:

DAY & NANCE

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

/s/ Stephen Day
STEPHEN DAY, ESQ. (NSB 3708)
1060 Wigwam Pkwy
Las Vegas, Nevada 89074
Tel - (702) 309.3333
Fax - (702) 309.1085
sday@daynance.com
Attorney for Plaintiff

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

From: Steve Day (sday@dayattorneys.com)

To: matthis@mblnv.com

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

Looks okay. Okay to use my e-sig. Correct name: Steven L. Day

Steve

Steven L. Day, Esq.

DAY&ASSOCIATES

1060 Wigwam Parkway

Henderson, NV 89074

Tel. (702) 309-3333

Fax (702) 309-1085

Mobile (702) 596-5350

sday@dayattorneys.com

From: Michael Matthis <matthis@mblnv.com>

Sent: Wednesday, May 19, 2021 2:06 PM

To: Steve Day <sday@dayattorneys.com>

Cc: Mike Lee <mike@mblnv.com>

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

Dear Mr. Day,

Please see the attached proposed order denying Plaintiff's Motion to Reconsider and advise if I can affix your e-signature. If not, I have left the proposed order in word and would ask that you track any proposed edits in redline. If we do not receive a response by 3:00 p.m. on Monday, May 24, we will submit absent your signature.

Sincerely,

Mike Matthis, Esq.

matthis@mblnv.com



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

Main Line: 702.477.7030 Fax: 702.477.0096

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 matthis@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.

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 Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/25/2021

15 Brinley Richeson bricheson@daynance.com

16 Steven Day sday@daynance.com

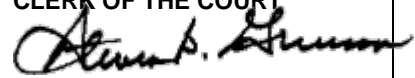
17 Michael Matthis matthis@mblnv.com

18 Nikita Burdick nburdick@burdicklawnv.com

19 Michael Lee mike@mblnv.com

20 Bradley Marx brad@marxfirm.com

21 Frank Miao frankmiao@yahoo.com



NOAS

Steven L. Day, Esq.
Nevada Bar No. 3708

DAY & NANCE

1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702) 309-3333
Fax (702) 309-1085
sday@daynance.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

v.

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

Defendants.

Case No: A-18-785917-C

Dept No: 14

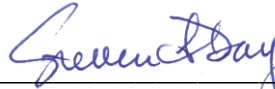
NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff WLAB INVESTMENT, LLC, hereby
appeals to the Supreme Court of Nevada from the certain ORDER GRANTING IN PART
AND DENYING IN PART PLAINTIFF'S MOTION TO RECONSIDER AND JUDGMENT

1 AGAINST PLAINTIFF AND PREVIOUS COUNSEL entered in this action on the 25th day of
2 May, 2021.

3 DATED this 8th day of June, 2021.

4 DAY & NANCE

5
6 

7 Steven L. Day, Esq.
8 Nevada Bar No. 3708
9 1060 Wigwam Parkway
10 Henderson, NV 89074
11 *Attorneys for Plaintiff*

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5(b), on the 8th day of June, 2021, service of this NOTICE OF
14 APPEAL made upon each of the parties listed below, via electronic service through the
15 Eighth Judicial District Court's Odyssey E-File and Serve system:

16 Michael B. Lee, Esq.
17 Michael Mathis, Esq.
18 Michael B. Lee, P.C.
19 1820 E. Sahara Ave., Suite 110
20 Las Vegas, NV 89104
21 *Attorneys for Defendants*

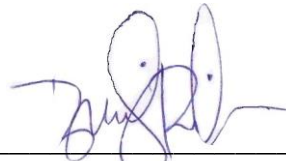
22 Phone: 702-477-7030
23 mike@mblnv.com
24 matthis@mblnv.com

25 Fax: 702-477-0096

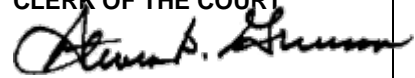
26 Benjamin B. Childs, Esq.
27 318 S. Maryland Pkwy.
28 Las Vegas, NV 89101

Phone: 702-251-0000
ben@benchilds.com

Fax: 702-384-1119



An Employee of Day & Nance



ASTA
Steven L. Day, Esq.
Nevada Bar No. 3708
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702) 309-3333
Fax (702) 309-1085
sday@daynance.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

v.

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

CASE APPEAL STATEMENT

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

Defendants.

1. Name of appellant filing this case appeal statement: WLAB INVESTMENT,
LLC.

2. Identify the judge issuing the decision, judgment or order appealed from:
Judge Adriana Escobar.

3. Identify each appellant and the name and address of counsel for each appellant: WLAB INVESTMENT, LLC; Steven L. Day, Day & Nance, 1060 Wigwam Parkway, Henderson, NV 89074.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent: TKNR, INC., a California Corporation, and CHI ON WONG aka CHI KUEN WONG, an individual, and KENNY ZHONG LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN, an individual, and LIWE HELEN CHEN aka HELEN CHEN, an individual and YAN QIU ZHANG, an individual and INVESTPRO LLC dba INVESTPRO REALTY, a Nevada Limited Liability Company, and MAN CHAU CHENG, an individual, and JOYCE A. NICKRANDT, an individual, and INVESTPRO INVESTMENTS LLC, a Nevada Limited Liability Company, and INVESTPRO MANAGER LLC, a Nevada Limited Liability Company and JOYCE A. NICKDRANDT; Respondents' appellant counsel unknown; counsel in District Court action was Michael B. Lee, Esq., 1820 East Sahara Ave., Suite 110, Las Vegas, NV 89104.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42: all are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: appellant was represented by retained counsel.

7. Indicated whether appellant is represented by appointed or retained counsel on appeal: retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: no.

9. Indicate the date the proceedings commenced in the district court: Complaint filed 12/11/18.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: The underlying case concerns, among other things, alleged acts of fraud and breach of contract arising out of the sale of real property in Clark County, Nevada. Appellant is appealing from an order denying Appellant's Motion for Reconsideration.


11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: yes

12. Indicate whether this appeal involves child custody or visitation: no.

13. If this is a civil case, indicate whether this appeal involved the possibility of settlement: unknown.


DATED this 8th day of June, 2021.

DAY & NANCE


Steven L. Day, Esq.
Nevada Bar No. 3708
1060 Wigwam Parkway
Henderson, NV 89074
Tel. (702) 309-3333
Attorneys for Plaintiff

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Michael B. Lee, Esq. Phone: 702-731-0244 Fax: 702-477-0096
Michael N. Matthis, Esq.
Michael B. Lee, P.C. mike@mblnv.com
1820 E. Sahara Ave., Suite 110 matthis@mblnv.com
Las Vegas, NV 89104
Attorneys for Defendant


An Employee of Day & Nance