

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

DESERT VALLY CONTRACING, INC., A  
NEVADA CORPORATION,  
Appellant,  
v.  
IN-LO PROPERTIES, A NEVADA LIMITED  
LIABILITY COMPANY, EUGENE INOSE,  
AN INDIVIDUL

No. 83338  
Electronically Filed  
Aug 19 2021 02:07 p.m.  
DOCKETING Elizabeth N Brown  
CIVIL APPEALS Clerk of Supreme Court

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 15  
County Clark Judge Joe Hardy  
District Ct. Case No. A-16-734351-C

**2. Attorney filing this docketing statement:**

Attorney Jonathon R. Patterson Telephone 702-966-5200  
Firm Hurtik Law and Associates  
Address 6767 West Tropicana Ave., Suite #200, Las Vegas, NV 89103

Client(s) Desert Valley Contracting, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Brian W. Boshee Telephone (702) 791-0308  
Firm Holley, Driggs, Walch, Fine, Wray, Puzey, & Thompson  
Address 400 South Fourth Street, Third Floor  
Las Vegas, NV 89103

Client(s) In-Lo Properties, Eugene Inose, and Jeffrey Louie

Attorney N/A Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Prior Pleadings: No. 79751

DESERT VALLEY CONTRACTING, INC. a Nevada corporation,  
Appellant,,

vs.

IN-LO PROPERTIES, a Nevada limited liability company; EUGENE INOSE, an individual;  
JEFFREY LOUIE, an individual; DOES 1 through 10; and ROE ENTITIES 1 through 10,

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

In the underlying District Court Case A-16-734351-C, there is a pending Motion for Supplemental attorney's fees.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The subject matter of this case concerns issues surrounding contractual repairs at 587 Saint Croix, Henderson, NV 89012. Plaintiff DESERT VALLEY CONTRACTING, INC. was contracted to serve as General Contractor overseeing the repairs to be performed at 587 Saint Croix, Henderson, NV 89012 with Defendant INOSE. The above referenced contract states, among other things, that all work beyond any insurance claims would be paid by defendant within Ten (10) days. The contract further states that if the Defendant INOSE terminates the contract he is liable for all fees, costs, and profit the Plaintiff would have earned had the contract not been repudiated. Plaintiff contracted with several sub-contractors to perform the repairs at 587 Saint Croix, Henderson, NV 89012 Defendant INOSE breached the contract multiple times by failing to pay for upgrades and by failing to pay fees, costs, and profit after repudiating the contract.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The issues on Appeal will center on damages, whether the District Courts ruling following remand, including the determination that Desert Valley Contracting breached their Contractual obligations first, therefore precluding recover.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: N/A

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

NRAP 17(b)(6) precludes jurisdiction because this matter is a contract matter in excess of \$75,000.00 dollars.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 8 \_\_\_\_\_

Was it a bench or jury trial? Bench \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Appellant does not intend to file a Motion to Disqualify.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** 07/06/2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** \_\_\_\_\_

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing N/A

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** 08/05/2021

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N.A.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

---

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

A final Judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Desert Valley Contracting Inc. A Nevada Corporation, Appellant

Eugene Inose, an individual, In-Lo Properties, a Nevada Limited Liability Company, Respondents.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Jeffrey Louie, an Individual was dismissed on 07/28/2019

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

-Desert Valley Contracting, Inc.-alleges Breach of Contract, Convant of Good Faith and Fair Dealing, Unjust Enrichmetn, and Interference with Contract.

-Eugene Inose and In-Lo Properties allege Breach of Contract, Covenant of Good Faith and Fair Dealing, Unjust Enrichment and Intentional Interference with Economic Advantage. All claims were disposed of on July 6, 2021.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

3A(b)(1) A final judgment entered in an action or proceeding commenced in the Court in which the Judgment is rendered.

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Desert Valley Contracting, Inc.  
Name of appellant

Jonathon R. Patterson, Esq.  
Name of counsel of record

August 19, 2021  
Date

/s/ Jonathan Patterson  
Signature of counsel of record

Jonathon Patterson  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 19th day of AUGUST, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

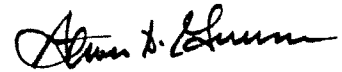
☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Holly Driggs  
Brian Boschee Esq.  
400 S 4th St, Las Vegas, NV 89101

Hon. William Turner  
Settlement Judge  
59 Oakmarsh Drive  
Henderson, NV 89074

Dated this 8/19/2021 day of August, 2021

/s/ Jonathan Patterson  
Signature



CLERK OF THE COURT

1 **COMP**  
2 **CARRIE E. HURTIK, ESQ.**  
3 Nevada Bar No. 7028  
4 **RACHEL L. SHELSTAD, ESQ.**  
5 Nevada Bar No. 13399  
6 **HURTIK LAW & ASSOCIATES**  
7 7866 West Sahara Avenue  
8 Las Vegas, Nevada 89117  
9 (702) 966-5200 Telephone  
10 (702) 966-5206 Facsimile  
11 churtik@hurtiklaw.com  
12 rshelstad@hurtiklaw.com  
13 Attorney for Plaintiff,  
14 **DESERT VALLEY CONTRACTING, INC.**

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **DESERT VALLEY CONTRACTING, INC., a**  
12 **Nevada Corporation,**

13 **Plaintiff,**

14 **vs.**

15 **IN-LO PROPERTIES, LLC, a Nevada Limited**  
16 **Liability Company, EUGENE INOSE, an**  
17 **Individual, and JEFFREY LOUIE, an**  
18 **Individual, DOES 1 through 10; and ROE**  
19 **ENTITIES 1 through 10,**

20 **Defendant(s).**

**CASE NO. A- 16 - 734351 - C**  
**DEPT NO.**

**XV**

**COMPLAINT**

**Arbitration Exemption Claimed – Involves**  
**an Amount in Excess of \$50,000.00**

21 **COMES NOW, Plaintiff, DESERT VALLEY CONTRACTING, INC. (hereinafter “DVC”),**  
22 **an individual, by and through its attorneys of record CARRIE E. HURTIK, ESQ., and RACHEL L.**  
23 **SHELSTAD, ESQ., and for its causes of action against Defendants, IN-LO PROPERTIES, LLC,**  
24 **EUGENE INOSE, JEFFREY LOUIE, DOES 1 through 10; and ROE ENTITIES 1 through 10,**  
25 **inclusive, hereby files its Complaint and complains, alleges, avers and states as follows:**

26 **///**

27 **///**

28 **///**

1 I.

2 PARTIES

3 1. Plaintiff, DESERT VALLEY CONTRACTING, INC., was and is at all times relevant  
4 a Nevada Corporation, duly authorized and qualified to do business in the State of Nevada, as a  
5 contractor holding a Nevada State Contractor's license, which license is in good standing.

6 2. Upon information and belief, Defendant, IN-LO PROPERTIES, LLC, is a Nevada  
7 Limited-Liability Company, duly authorized and qualified to do business in the State of Nevada  
8 since on or about November 5, 2004. The Registered Agent on file for Defendant, IN-LO  
9 PROPERTIES, LLC, is Eugene Inose, and is located at 587 Saint Croix Street, Henderson, Nevada  
10 89012.

11 3. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either  
12 directly or indirectly through its agents, employees, subsidiaries and/or related companies held,  
13 serviced and/or engaged in transactions related to real property within the State of Nevada.

14 4. Upon information and belief, Defendant, EUGENE INOSE is a resident of Clark  
15 County, State of Nevada, and during all relevant times herein was a registered manager of  
16 Defendant, IN-LO PROPERTIES, LLC.

17 5. Upon information and belief, Defendant, JEFFREY LOUIE is a resident of Clark  
18 County, State of Nevada, and during all relevant times herein was a registered manager of  
19 Defendant, IN-LO PROPERTIES, LLC.

20 6. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either  
21 directly or indirectly through its agents, employees, subsidiaries and/or related companies held,  
22 serviced and/or engaged in transactions related to real property within the State of Nevada.

23 7. That the true names and capacities, whether individual, corporate, partnership,  
24 associate or otherwise, of defendant DOES 1 through 10 and ROE Entities 1 through 10, inclusive,  
25 are unknown to Plaintiff, who therefore, sue said defendants by such fictitious names. Plaintiff is  
26 informed and believes and thereon alleges that each of the defendants designated herein as DOE and  
27 ROE is responsible in some manner for the events and happenings referred to herein, and as a result  
28 proximately caused damages to Plaintiff as herein alleged. That Plaintiff will ask leave of this court

1 to amend this Complaint to insert the true names and capacities of DOES 1 through 10 and ROE  
2 Corporations or Business Entities 1 through 10, inclusive, when the same have been ascertained, and  
3 to join such defendants in this action.

## 4 II.

### 5 JURISDICTION

6 8. The amount of controversy is in excess of Ten Thousand Dollars and Zero Cents  
7 (\$10,000.00), plus prejudgment interest and costs of suit.

8 9. The occurrences complained of herein transpired in the State of Nevada, County of  
9 Clark. The events that give rise to this Complaint occurred in the State of Nevada, County of Clark.

10 10. Venue is proper in the State of Nevada, Clark County, as the occurrences at issue in  
11 this lawsuit occurred there, the events or omissions giving rise to the claim occurred there and  
12 Plaintiff's damages were suffered there.

## 13 III.

### 14 GENERAL ALLEGATIONS

15 11. On or about November 8, 2005, Defendant, IN-LO PROPERTIES, LLC, purchased  
16 the residential home located at 587 Saint Croix Street, Henderson, Nevada 89012 (APN: 178-27-  
17 114-001) (hereinafter "Subject Property").

18 12. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either  
19 directly or indirectly through its agents, including Defendant, EUGENE INOSE, employees,  
20 subsidiaries and/or related companies held, serviced and/or engaged in transactions related to real  
21 property within the State of Nevada.

22 13. On August 8, 2014, Plaintiff, DVC, and Defendant, EUGENE INOSE, executed a  
23 valid Work Authorization and Contract for Plaintiff, DVC to perform a scope of work as provided  
24 by approved estimates (hereinafter "Contract"). Specifically, the Contract provides that Defendant,  
25 EUGENE INOSE, the undersigned (insured):

26 Represents that he/she/they are collectively or individually agents for the hereinafter  
27 specified property (and/or its contents) and hereby authorize and direct Desert Valley  
28 Contracting, Inc. (Contractor) to provide all labor, equipment and materials required to  
properly repair the specified real property or structure common known as [Subject Property.]

1           14. Pursuant to the Contract, Defendant, EUGENE INOSE authorized and transferred and  
2 assigned and conveyed to Plaintiff DVC, his right, title and interest in and to the insurance policy  
3 proceeds and all drafts for work performed by Plaintiff, DVC.

4           15. Pursuant to the Contract, Defendant, EUGENE INOSE authorized the applicable  
5 insurer to pay Plaintiff, DVC for work performed on the property and agreed to endorse and tender  
6 all drafts as produced to the Plaintiff, DVC.

7           16. Pursuant to the Contract, Defendant, EUGENE INOSE if either party terminates the  
8 Contract prior to completion, Defendant, EUGENE INOSE is to pay Plaintiff, DVC, prior to the  
9 actual work beginning and all costs and fees associated with preparation for beginning the job, such  
10 as estimates, permits, materials ordered, or any and all such fees and costs for services performed.

11           17. Pursuant to the Contract, Defendant, EUGENE INOSE is responsible for any and all  
12 fees and costs associated with the work performed, plus the profit that Plaintiff, DVC would have  
13 made on the job had Defendant, EUGENE INOSE not repudiated the contract.

14           18. Pursuant to the Contract, upon termination of the Plaintiff, DVC'S services,  
15 Defendant, EUGENE INOSE is responsible to pay all fees and costs incurred by Plaintiff, DVC,  
16 within five (5) business days of termination by either party.

17           19. Pursuant to the Contract, if any requests for additional work to be performed were  
18 made during the scope of the job, all such requests were required to be put in writing so that these  
19 costs will be added to the Scope of work.

20           20. Pursuant to the Contract, if the scope of the work is beyond any insurance claim, the  
21 owner, agent or authorized party, including Defendant, EUGENE INOSE, agreed to pay all claims  
22 within ten (10) days of completion of work, and agreed to pay for any materials prior to the  
23 additional work being performed.

24           21. Pursuant to the Contract, all insurance work performed by Plaintiff, DVC was subject  
25 to approval of the terms of the Defendant, EUGENE INOSE'S policy of insurance.

26           22. Pursuant to the Contract, any code-upgrade work or upgrades to the Subject Property  
27 were not covered pursuant to the applicable insurance policy.

1           23.     During performance of valid Contract, Defendant, EUGENE INOSE chose to have  
2 several upgrades in materials and work added onto the Contract's scope of work, which increased  
3 the original Contract's scope of work.

4           24.     All subcontractors were selected at the direction of Defendant, EUGENE INOSE,  
5 who insisted that he have the original subcontractors that built the home.

6           25.     Defendant, EUGENE INOSE dictated who the superintendent would be for the  
7 jobsite.

8           26.     The superintendent was paid over One Hundred Thousand Dollars and Zero Cents  
9 (\$100,000.00), and during the performance of the Contract the superintendent quit coming to the  
10 jobsite.

11          27.     The main subcontractors who have performed work on the Subject Property are as  
12 follows, without limitation: Diversified Protections Systems, Inc.; Desert Home Electric, Inc.;  
13 Sunrise Service, Inc.; Plumbing S.S. Inc; ARX LLC dba ARX Engineering; Ferguson; Firehouse  
14 Electric; Artesia Kitchen & Bath; Creative Closets & Cabinetry LLC; Diva Interior Concepts LLC;  
15 Eagle Sentry; Summit Tile & Stone LLC; Flooring Encounters, LLC; Walker & Zanger, Inc.; Latin  
16 Glass; HY-BAR Las Vegas; Picture Perfect TV Repair; Eazy Lift Elevators; and Custom Landau.

17          28.     Plaintiff, DVC paid all of its subcontractors for work performed, but the additional  
18 change orders made by Defendant, EUGENE INOSE, were significant and materials for certain  
19 trades needed to be ordered and paid for in advance.

20          29.     Defendant, EUGENE INOSE settled out the claim with the insurance company and  
21 contrary to the contractual terms of the Contract, had all funds paid directly to him which was  
22 contrary to the terms of the Contract.

23          30.     As you may know, most of these type of claims have the insurer remain in the matter  
24 until the project is complete in case any contingencies, so that the funds if covered would be made  
25 available for contingencies that were unknown or not discovered initially.

26          31.     Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO  
27 PROPERTIES, LLC, is responsible for the upgrades and change orders that he caused to happen on  
28



1 this Subject Property, due to his choices and changing his mind in several instances as to what  
2 products were to be installed.

3 32. Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO  
4 PROPERTIES, LLC, has failed to pay Plaintiff, DVC the monies owed and due for the upgrades and  
5 change orders of the Subject Property.

6 33. On or about December of 2015, Defendant, EUGENE INOSE, individually and as a  
7 manager of Defendant, IN-LO PROPERTIES, LLC, breached his duties, obligations, and  
8 responsibilities under the Contract by denying Plaintiff, DVC's ability to complete the terms and  
9 conditions Contract, and by precluding Plaintiff, DVC from gaining access to the Subject Property,  
10 and by failing to pay Plaintiff, DVC the monies owed and due for the upgrades and change orders of  
11 the Subject Property.

#### 12 IV.

#### 13 FIRST CAUSE OF ACTION

#### 14 (Breach of Contract against Defendant, EUGENE INOSE)

15 34. Plaintiff, DVC hereby repeats, re-alleges and incorporates by this reference each and  
16 every allegation set forth in Paragraphs 1 through 33 above, as though fully set forth herein.

17 35. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either  
18 directly or indirectly through its agents, including Defendant, EUGENE INOSE, employees,  
19 subsidiaries and/or related companies held, serviced and/or engaged in transactions related to real  
20 property within the State of Nevada.

21 36. On August 8, 2014, Plaintiff, DVC, and Defendant, EUGENE INOSE, executed a  
22 valid Work Authorization and Contract for Plaintiff, DVC to perform a scope of work as provided  
23 by approved estimates (hereinafter "Contract"). Specifically, the Contract provides that Defendant,  
24 EUGENE INOSE, the undersigned (insured):

25 Represents that he/she/they are collectively or individually agents for the hereinafter  
26 specified property (and/or its contents) and hereby authorize and direct Desert Valley  
27 Contracting, Inc. (Contractor) to provide all labor, equipment and materials required to  
28 properly repair the specified real property or structure common known as [Subject Property.]

1           37. Pursuant to the Contract, Defendant, EUGENE INOSE authorized and transferred and  
2 assigned and conveyed to Plaintiff DVC, his right, title and interest in and to the insurance policy  
3 proceeds and all drafts for work performed by Plaintiff, DVC.

4           38. Pursuant to the Contract, Defendant, EUGENE INOSE authorized the applicable  
5 insurer to pay Plaintiff, DVC for work performed on the property and agreed to endorse and tender  
6 all drafts as produced to the Plaintiff, DVC.

7           39. Pursuant to the Contract, Defendant, EUGENE INOSE if either party terminates the  
8 Contract prior to completion, Defendant, EUGENE INOSE is to pay Plaintiff, DVC, prior to the  
9 actual work beginning and all costs and fees associated with preparation for beginning the job, such  
10 as estimates, permits, materials ordered, or any and all such fees and costs for services performed.

11           40. Pursuant to the Contract, Defendant, EUGENE INOSE is responsible for any and all  
12 fees and costs associated with the work performed, plus the profit that Plaintiff, DVC would have  
13 made on the job had Defendant, EUGENE INOSE not repudiated the contract.

14           41. Pursuant to the Contract, upon termination of the Plaintiff, DVC'S services,  
15 Defendant, EUGENE INOSE is responsible to pay all fees and costs incurred by Plaintiff, DVC,  
16 within five (5) business days of termination by either party.

17           42. Pursuant to the Contract, if any requests for additional work to be performed were  
18 made during the scope of the job, all such requests were required to be put in writing so that these  
19 costs will be added to the Scope of work.

20           43. Pursuant to the Contract, if the scope of the work is beyond any insurance claim, the  
21 owner, agent or authorized party, including Defendant, EUGENE INOSE, agreed to pay all claims  
22 within ten (10) days of completion of work, and agreed to pay for any materials prior to the  
23 additional work being performed.

24           44. Pursuant to the Contract, all insurance work performed by Plaintiff, DVC was subject  
25 to approval of the terms of the Defendant, EUGENE INOSE'S policy of insurance.

26           45. Pursuant to the Contract, any code-upgrade work or upgrades to the Subject Property  
27 were not covered pursuant to the applicable insurance policy.

1           46. During performance of valid Contract, Defendant, EUGENE INOSE chose to have  
2 several upgrades in materials and work added onto the Contract's scope of work, which increased  
3 the original Contract's scope of work.

4           47. All subcontractors were selected at the direction of Defendant, EUGENE INOSE,  
5 who insisted that he have the original subcontractors that built the home.

6           48. Defendant, EUGENE INOSE dictated who the superintendent would be for the  
7 jobsite.

8           49. The superintendent was paid over One Hundred Thousand Dollars and Zero Cents  
9 (\$100,000.00), and during the performance of the Contract the superintendent quit coming to the  
10 jobsite.

11          50. The main subcontractors who have performed work on the Subject Property are as  
12 follows, without limitation: Diversified Protections Systems, Inc.; Desert Home Electric, Inc.;  
13 Sunrise Service, Inc.; Plumbing S.S. Inc; ARX LLC dba ARX Engineering; Ferguson; Firehouse  
14 Electric; Artesia Kitchen & Bath; Creative Closets & Cabinetry LLC; Diva Interior Concepts LLC;  
15 Eagle Sentry; Summit Tile & Stone LLC; Flooring Encounters, LLC; Walker & Zanger, Inc.; Latin  
16 Glass; HY-BAR Las Vegas; Picture Perfect TV Repair; Eazy Lift Elevators; and Custom Landau.

17          51. Plaintiff, DVC paid all of its subcontractors for work performed, but the additional  
18 change orders made by Defendant, EUGENE INOSE, were significant and materials for certain  
19 trades needed to be ordered and paid for in advance.

20          52. Defendant, EUGENE INOSE settled out the claim with the insurance company and  
21 contrary to the contractual terms of the Contract, had all funds paid directly to him which was  
22 contrary to the terms of the Contract.

23          53. Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO  
24 PROPERTIES, LLC, is responsible for the upgrades and change orders that he caused to happen on  
25 this Subject Property, due to his choices and changing his mind in several instances as to what  
26 products were to be installed.

54. Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO PROPERTIES, LLC, has failed to pay Plaintiff, DVC the monies owed and due for the upgrades and change orders of the Subject Property, and overhead and contingencies.

55. On or about December of 2015, Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO PROPERTIES, LLC, breached his duties, obligations, and responsibilities under the Contract by denying Plaintiff, DVC's ability to complete the terms and conditions Contract, and by precluding Plaintiff, DVC from gaining access to the Subject Property, and by failing to pay Plaintiff, DVC the monies owed and due for the upgrades and change orders of the Subject Property.

56. As a direct and proximate result of Defendant, EUGENE INOSE'S breach(es) of contract(s), Plaintiff, DVC has incurred and continues to incur costs and expenses including, but not limited to, litigation costs, attorney fees and costs in connection with the Complaint filed by Plaintiff, DVC in the instant action to the general damages of Plaintiff, DVC as will be shown according to proof at the time of trial of this matter but alleged to be in excess of Ten Thousand Dollars and Zero Cents (\$10,000.00).

57. Plaintiff, DVC has suffered additional damages in the form of attorneys' fees and costs as a proximate and foreseeable result of Defendant, EUGENE INOSE'S breach.

## SECOND CAUSE OF ACTION

**(Breach of the Implied Covenant of Good Faith and Fair Dealing  
against Defendant EUGENE INOSE)**

58. Plaintiff, DVC hereby repeats, re-alleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 57 above, as though fully set forth herein.

59. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. This implied covenant of good faith and fair dealing requires that no party will do anything that will have the effect of impairing, destroying, or injuring the rights of the other party to receive the benefits of their agreement. The covenant implies that in all contracts

1 each party will do all things reasonably contemplated by the terms of the contract to accomplish it  
2 purpose. This covenants protects the benefits of the contract that the parties reasonably  
3 contemplated by the terms contract to accomplish its purpose. This covenant protects the benefits of  
4 the contract that the parties reasonably contemplated when they entered into the agreement.

5 60. Defendants, EUGENE INOSE breached the contracts/agreements by failing to  
6 adequately or accurately disclose the beneficiary or trustee.

7 61. Defendant, EUGENE INOSE, individually and as an agent for Defendant, IN-LO  
8 PROPERTIES, LLC, had a duty to act in good faith and fair dealing in the execution of his  
9 obligations under the Contract.

10 62. That the covenant of good faith and fair dealing required Defendant, EUGENE  
11 INOSE, to fairly, honestly and reasonably deal with Plaintiff, DVC, including the relationship and  
12 actions undertaken performance of the Contract. That the covenant of good faith and fair dealing is  
13 inherent in every agreement and is implied in the dealings between the parties of this action, as well.

14 63. That Defendant, EUGENE INOSE, enjoyed substantial discretionary power affecting  
15 the rights of Plaintiff, DVC, during the events alleged in this Complaint.

16 64. That Defendant, EUGENE INOSE, was required to exercise such power in good  
17 faith.

18 65. That Defendant, EUGENE INOSE did not act in good faith and did not deal fairly  
19 with Plaintiff, DVC, in connection with the Contract.

20 66. That Defendant, EUGENE INOSE bad faith has caused damages to Plaintiff, DVC in  
21 an amount in excess of Ten Thousand Dollars and Zero Cents (\$10,000.00), and Plaintiff, DVC is  
22 entitled to recover the same.

23 67. Plaintiff, DVC has suffered additional damages in the form of attorneys' fees and  
24 costs as a proximate and foreseeable result of Defendant, EUGENE INOSE'S breach.

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**THIRD CAUSE OF ACTION**

**(Unjust Enrichment against Defendants, IN-LO PROPERTIES, LLC, and JEFFREY LOUIE)**

68. Plaintiff, DVC hereby repeats, re-alleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 67 above, as though fully set forth herein.

69. Upon information and belief, Defendant, IN-LO PROPERTIES, LLC, is a Nevada Limited-Liability Company, duly authorized and qualified to do business in the State of Nevada since on or about November 5, 2004. The Registered Agent on file for Defendant, IN-LO PROPERTIES, LLC, is Eugene Inose, and is located at 587 Saint Croix Street, Henderson, Nevada 89012.

70. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either directly or indirectly through its agents, employees, subsidiaries and/or related companies held, serviced and/or engaged in transactions related to real property within the State of Nevada.

71. Upon information and belief, Defendant, EUGENE INOSE is a resident of Clark County, State of Nevada, and during all relevant times herein was a registered manager of Defendant, IN-LO PROPERTIES, LLC.

72. Upon information and belief, Defendant, JEFFREY LOUIE is a resident of Clark County, State of Nevada, and during all relevant times herein was a registered manager of Defendant, IN-LO PROPERTIES, LLC.

73. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either directly or indirectly through its agents, employees, subsidiaries and/or related companies held, serviced and/or engaged in transactions related to real property within the State of Nevada.

74. Plaintiff, DVC is informed and believes and on that basis alleges that each Defendant, including, EUGENE INOSE, IN-LO PROPERTIES, LLC, and JEFFREY LOUIE owed a duty of good faith to Plaintiff, DVC.

1           75. Plaintiff, DVC is informed and believes and thereon alleges that Defendants,  
2 EUGENE INOSE, IN-LO PROPERTIES, LLC, and JEFFREY LOUIE breached that duty by  
3 performing in a manner that was unfaithful to the purpose of the contract.

4           76. Plaintiff, DVC is informed and believes and thereon alleges that Plaintiff, DVC'S  
5 justified expectations were thus denied.

6           77. During all relevant times herein, Defendant, IN-LO PROPERTIES, LLC, either  
7 directly or indirectly through its agents, including Defendants, EUGENE INOSE and JEFFREY  
8 LOUIE, employees, subsidiaries and/or related companies held, serviced and/or engaged in  
9 transactions related to real property within the State of Nevada.

10           78. On August 8, 2014, Plaintiff, DVC, and Defendant, EUGENE INOSE, executed a  
11 valid Work Authorization and Contract for Plaintiff, DVC to perform a scope of work as provided  
12 by approved estimates (hereinafter "Contract"). Specifically, the Contract provides that Defendant,  
13 EUGENE INOSE, the undersigned (insured):

14           Represents that he/she/they are collectively or individually agents for the hereinafter  
15 specified property (and/or it contents) and hereby authorize and direct Desert Valley  
16 Contracting, Inc. (Contractor) to provide all labor, equipment and materials required to  
17 properly repair the specified real property or structure common known as [Subject Property.]

18           79. Pursuant to the Contract, Defendant, EUGENE INOSE authorized and transferred and  
19 assigned and conveyed to Plaintiff DVC, his right, title and interest in and to the insurance policy  
20 proceeds and all drafts for work performed by Plaintiff, DVC.

21           80. Pursuant to the Contract, Defendant, EUGENE INOSE authorized the applicable  
22 insurer to pay Plaintiff, DVC for work performed on the property and agreed to endorse and tender  
23 all drafts as produced to the Plaintiff, DVC.

24           81. Pursuant to the Contract, Defendant, EUGENE INOSE if either party terminates the  
25 Contract prior to completion, Defendant, EUGENE INOSE is to pay Plaintiff, DVC, prior to the  
26 actual work beginning and all costs and fees associated with preparation for beginning the job, such  
27 as estimates, permits, materials ordered, or any and all such fees and costs for services performed.

1           82. Pursuant to the Contract, Defendant, EUGENE INOSE is responsible for any and all  
2 fees and costs associated with the work performed, plus the profit that Plaintiff, DVC would have  
3 made on the job had Defendant, EUGENE INOSE not repudiated the contract.

4           83. Pursuant to the Contract, upon termination of the Plaintiff, DVC'S services,  
5 Defendant, EUGENE INOSE is responsible to pay all fees and costs incurred by Plaintiff, DVC,  
6 within five (5) business days of termination by either party.

7           84. Pursuant to the Contract, if any requests for additional work to be performed were  
8 made during the scope of the job, all such requests were required to be put in writing so that these  
9 costs will be added to the Scope of work.

10          85. Pursuant to the Contract, if the scope of the work is beyond any insurance claim, the  
11 owner, agent or authorized party, including Defendant, EUGENE INOSE, agreed to pay all claims  
12 within ten (10) days of completion of work, and agreed to pay for any materials prior to the  
13 additional work being performed.

14          86. Pursuant to the Contract, all insurance work performed by Plaintiff, DVC was subject  
15 to approval of the terms of the Defendant, EUGENE INOSE'S policy of insurance.

16          87. Pursuant to the Contract, any code-upgrade work or upgrades to the Subject Property  
17 were not covered pursuant to the applicable insurance policy.

18          88. During performance of valid Contract, Defendant, EUGENE INOSE chose to have  
19 several upgrades in materials and work added onto the Contract's scope of work, which increased  
20 the original Contract's scope of work.

21          89. All subcontractors were selected at the direction of Defendant, EUGENE INOSE,  
22 who insisted that he have the original subcontractors that built the home.

23          90. Defendant, EUGENE INOSE dictated who the superintendent would be for the  
24 jobsite.

25          91. The superintendent was paid over One Hundred Thousand Dollars and Zero Cents  
26 (\$100,000.00), and during the performance of the Contract the superintendent quit coming to the  
27 jobsite.



1           92.     The main subcontractors who have performed work on the Subject Property are as  
2 follows, without limitation: Diversified Protections Systems, Inc.; Desert Home Electric, Inc.;  
3 Sunrise Service, Inc.; Plumbing S.S. Inc; ARX LLC dba ARX Engineering; Ferguson; Firehouse  
4 Electric; Artesia Kitchen & Bath; Creative Closets & Cabinetry LLC; Diva Interior Concepts LLC;  
5 Eagle Sentry; Summit Tile & Stone LLC; Flooring Encounters, LLC; Walker & Zanger, Inc.; Latin  
6 Glass; HY-BAR Las Vegas; Picture Perfect TV Repair; Eazy Lift Elevators; and Custom Landau.

7           93.     Plaintiff, DVC paid all of its subcontractors for work performed, but the additional  
8 change orders made by Defendant, EUGENE INOSE, were significant and materials for certain  
9 trades needed to be ordered and paid for in advance.

10          94.     Defendant, EUGENE INOSE settled out the claim with the insurance company and  
11 contrary to the contractual terms of the Contract, had all funds paid directly to him which was  
12 contrary to the terms of the Contract.

13          95.     As you may know, most of these type of claims have the insurer remain in the matter  
14 until the project is complete in case any contingencies, so that the funds if covered would be made  
15 available for contingencies that were unknown or not discovered initially.

16          96.     Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO  
17 PROPERTIES, LLC, is responsible for the upgrades and change orders that he caused to happen on  
18 this Subject Property, due to his choices and changing his mind in several instances as to what  
19 products were to be installed.

20          97.     Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO  
21 PROPERTIES, LLC, has failed to pay Plaintiff, DVC the monies owed and due for the upgrades and  
22 change orders of the Subject Property.

23          98.     That Defendants, EUGENE INOSE, IN-LO PROPERTIES, LLC, and JEFFREY  
24 LOUIE unjustly benefited when they refused to pay Plaintiff, DVC, the outstanding monies owed.

25          99.     As a result of Defendants, EUGENE INOSE'S, IN-LO PROPERTIES, LLC'S, and  
26 JEFFREY LOUIE'S breach, Plaintiff, DVC has unjustly suffered damages in the amount of Ten  
27 Thousand Dollars and Zero Cents (\$10,000.00).

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FOURTH CAUSE OF ACTION

(INTENTIONAL INTERFERENCE WITH CONTRACT against

Defendants, EUGENE INOSE and IN-LO PROPERTIES, LLC,)

100. Plaintiff, DVC hereby repeats, re-alleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 99 above, as though fully set forth herein.

101. After August 8, 2014, Plaintiff DVC had a valid and enforceable contract with the following subcontractors including: Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-BAR Las Vegas; and Eazy Lift Elevators.

102. That Defendant, EUGENE INOSE, knew of the existence of the subcontracts between Plaintiff DVC and Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-BAR Las Vegas; and Eazy Lift Elevators as it pertains to the Subject Property.

103. That Defendant, EUGENE INOSE, was fully aware that knew Plaintiff DVC had a business relationship with Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-BAR Las Vegas; and Eazy Lift Elevators as it pertains to Subject Property, which were likely to result in economically advantageous relationship for Plaintiff, DVC.

104. On or about December of 2015, Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO PROPERTIES, LLC, precluded Plaintiff, DVC from gaining access to the Subject Property to complete the contractual and sub-contractual work.

105. Upon information and belief, On or about December of 2015, Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-LO PROPERTIES, LLC, made disparaging remarks to Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-BAR Las Vegas; and Eazy Lift Elevators, and instructed Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit

1 Tile & Stone LLC; Efficient Space Planning, HY-BAR Las Vegas; and Eazy Lift Elevators to cease  
2 its performance of the DVC's valid and enforceable subcontracts and/or business relationship with  
3 Plaintiff, DVC as it pertains to the Subject Property. agreements and/or business relationships with  
4 QUINCEANERA MAGAZINE NEVADA, INC.

5 106. Upon information and belief, On or about December of 2015, Defendant, EUGENE  
6 INOSE, individually and as a manager of Defendant, IN-LO PROPERTIES, LLC, engaged in  
7 conduct that tortiously interfered with Plaintiff, DVC'S contractual rights with Diversified  
8 Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.; Artesia Kitchen & Bath;  
9 Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-BAR Las Vegas; and Eazy  
10 Lift Elevators.

11 107. Thereafter, Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise  
12 Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space  
13 Planning, HY-BAR Las Vegas; and Eazy Lift Elevators refused to honor the terms and conditions of  
14 the contracts with Plaintiff, DVC.

15 108. That Defendant, EUGENE INOSE, individually and as a manager of Defendant, IN-  
16 LO PROPERTIES, LLC, engaged in conduct alleged herein with the intent to harm Plaintiff, DVC  
17 and induce Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.;  
18 Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-  
19 BAR Las Vegas; and Eazy Lift Elevators to terminate their subcontracts and/or business relationship  
20 with Plaintiff, DVC.

21 109. The actions of Defendant, EUGENE INOSE, individually and as a manager of  
22 Defendant, IN-LO PROPERTIES, LLC, constitute an intentional and unprivileged interference with  
23 the Diversified Protections Systems, Inc.'s Desert Home Electric, Inc., Sunrise Service, Inc.'s,  
24 Artesia Kitchen & Bath's, Eagle Sentry's, Summit Tile & Stone LLC's, Efficient Space Planning's,  
25 HY-BAR Las Vegas's, and Eazy Lift Elevators's subcontracts with Plaintiff, DVC.

26 110. The conduct by Defendant, EUGENE INOSE, individually and as a manager of  
27 Defendant, IN-LO PROPERTIES, LLC, as alleged herein was a purposeful and intentional  
28 interference, that was engaged in for the sole purpose to deprive Plaintiff, DVC of earnings and/or

1 causing injury intended and/or designed to disrupt the contractual relationships between Plaintiff,  
2 DVC and Diversified Protections Systems, Inc.; Desert Home Electric, Inc.; Sunrise Service, Inc.;  
3 Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient Space Planning, HY-  
4 BAR Las Vegas; and Eazy Lift Elevators.

5 111. As a direct and proximate result Defendant, EUGENE INOSE, individually and as a  
6 manager of Defendant, IN-LO PROPERTIES, LLC's intentional interference with Plaintiff, DVC's  
7 subcontractual relationships with Diversified Protections Systems, Inc.; Desert Home Electric, Inc.;  
8 Sunrise Service, Inc.; Artesia Kitchen & Bath; Eagle Sentry; Summit Tile & Stone LLC; Efficient  
9 Space Planning, HY-BAR Las Vegas; and Eazy Lift Elevators, Plaintiff, DVC has suffered, and will  
10 continue to suffer, monetary damage and irreparable injury, in an amount exceeding Ten Thousand  
11 Dollars (\$10,000.00), plus pre-judgment and post judgment interest.

12 112. Based on the intentional, willful and malicious nature of Defendant, EUGENE  
13 INOSE, individually and as a manager of Defendant, IN-LO PROPERTIES, LLC's actions,  
14 Plaintiff, DVC is entitled to exemplary damages and reasonable attorneys' fees and costs incurred in  
15 connection with this action.

#### 16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, DESERT VALLEY CONTRACTING INC., expressly reserves the  
18 right to amend this Complaint at or before the time of trial of the action herein to include all items of  
19 damages not yet ascertained, and demands judgment against the Defendant as follows, upon each  
20 cause of action:

- 21 1. Find for Plaintiff and against the Defendant on all causes of action;
- 22 2. Award general damages in favor of Plaintiff and against Defendants in an  
23 amount to be determined at trial, in excess of \$10,000.00;
- 24 3. Award special damages in favor of Plaintiff and against Defendants in an  
25 amount to be determined at trial, in excess of \$10,000.00;

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- 1 4. Award reasonable attorney's fees, costs of suit and pre-judgment interest in  
2 favor of Plaintiff and against Defendants; and,  
3 5. Award such other relief as this Court deems just and proper in this matter.

4 DATED this 30<sup>th</sup> day of March, 2016.

5 **HURTIK LAW & ASSOCIATES**

6  
7   
8 **CARRIE E. HURTIK, ESQ.**

9 Nevada Bar No. 7028

10 **RACHEL L. SHELSTAD, ESQ.**

11 Nevada Bar No. 13399

12 7866 West Sahara Avenue

13 Las Vegas, Nevada 89117

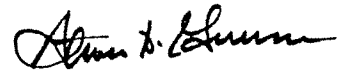
14 (702) 966-5200 Telephone

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16 churtik@hurtiklaw.com

17 Attorney for Plaintiff,

18 DESERT VALLEY CONTRACTING, INC.  
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CLERK OF THE COURT

1 **AACC**  
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5 Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
6 Facsimile: 702/791-1912  
*Attorneys for Defendants*

7  
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DESERT VALLEY CONTRACTING, INC. a  
Nevada corporation,

11 Plaintiff,

12 v.

13 IN-LO PROPERTIES, a Nevada limited liability  
company; EUGENE INOSE, an individual;  
14 JEFFREY LOUIE, an individual; DOES I  
through 10; and ROE ENTITIES 1 through 10,

15 Defendants.

16 EUGENE INOSE, an individual;

17 Counterclaimant.

18 v.

19 DESERT VALLEY CONTRACTING, INC., a  
Nevada corporation; DOES I through X,  
20 inclusive, and ROE CORPORATIONS I through  
X, inclusive,

21 Counterdefendants.

Case No.: A-16-734351-C  
Dept. No.: XV

**EUGENE INOSE'S ANSWER TO  
COMPLAINT AND COUNTERCLAIM**

22  
23 Defendant/Counterclaimant EUGENE INOSE ("Inose"), by and through his attorneys of  
24 record, the law firm of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, hereby: (1)  
25 responds to, admits, denies, and answers the allegations of Plaintiff/Counterdefendant DESERT  
26 VALLEY CONTRACTING, INC.'s ("Desert Valley") Complaint; and (2) counterclaims against  
27 Desert Valley as follows:

28 . . .

**PARTIES**

1. Answering Paragraph 1 of Desert Valley's Complaint (the "Complaint"), Inose admits that Desert Valley is a Nevada corporation. Inose is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore, denies each and every remaining allegation of this Paragraph.

2. Answering Paragraph 2 of the Complaint, Inose admits the allegations contained in this Paragraph.

3. Answering Paragraph 3 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

4. Answering Paragraph 4 of the Complaint, Inose denies the allegations contained in this Paragraph.

5. Answering Paragraph 5 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

6. Answering Paragraph 6 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

7. Answering Paragraph 7 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

**JURISDICTION**

8. Answering Paragraph 8 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

9. Answering Paragraph 9 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

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1           16.     Answering Paragraph 16 of the Complaint, Inose states that the Contract is a  
2 written document which speaks for itself. Inose is without sufficient knowledge or information  
3 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
4 denies each and every remaining allegation of this Paragraph.

5           17.     Answering Paragraph 17 of the Complaint, Inose states that the Contract is a  
6 written document which speaks for itself. Inose is without sufficient knowledge or information  
7 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
8 denies each and every remaining allegation of this Paragraph.

9           18.     Answering Paragraph 18 of the Complaint, Inose states that the Contract is a  
10 written document which speaks for itself. Inose is without sufficient knowledge or information  
11 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
12 denies each and every remaining allegation of this Paragraph.

13           19.     Answering Paragraph 19 of the Complaint, Inose states that the Contract is a  
14 written document which speaks for itself. Inose is without sufficient knowledge or information  
15 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
16 denies each and every remaining allegation of this Paragraph.

17           20.     Answering Paragraph 20 of the Complaint, Inose states that the Contract is a  
18 written document which speaks for itself. Inose is without sufficient knowledge or information  
19 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
20 denies each and every remaining allegation of this Paragraph.

21           21.     Answering Paragraph 21 of the Complaint, Inose states that the Contract is a  
22 written document which speaks for itself. Inose is without sufficient knowledge or information  
23 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
24 denies each and every remaining allegation of this Paragraph.

25           22.     Answering Paragraph 22 of the Complaint, Inose states that the Contract is a  
26 written document which speaks for itself. Inose is without sufficient knowledge or information  
27 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
28 denies each and every remaining allegation of this Paragraph.

1           23.     Answering Paragraph 23 of the Complaint, Inose denies the allegations contained  
2 in this paragraph.

3           24.     Answering Paragraph 24 of the Complaint, Inose denies the allegations contained  
4 in this paragraph.

5           25.     Answering Paragraph 25 of the Complaint, Inose denies the allegations contained  
6 in this paragraph.

7           26.     Answering Paragraph 26 of the Complaint, Inose is without sufficient knowledge  
8 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
9 denies the allegations of this Paragraph.

10          27.     Answering Paragraph 27 of the Complaint, Inose is without sufficient knowledge  
11 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
12 denies the allegations of this Paragraph.

13          28.     Answering Paragraph 28 of the Complaint, Inose is without sufficient knowledge  
14 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
15 denies the allegations of this Paragraph.

16          29.     Answering Paragraph 29 of the Complaint, Inose denies the allegations contained  
17 in this paragraph.

18          30.     Answering Paragraph 30 of the Complaint, Inose is without sufficient knowledge  
19 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
20 denies the allegations of this Paragraph.

21          31.     Answering Paragraph 31 of the Complaint, Inose denies the allegations contained  
22 in this paragraph.

23          32.     Answering Paragraph 32 of the Complaint, Inose denies the allegations contained  
24 in this paragraph.

25          33.     Answering Paragraph 33 of the Complaint, Inose denies the allegations contained  
26 in this paragraph.

27     ...

28     ...

**FIRST CAUSE OF ACTION**

**(Breach of Contract against Defendant EUGENE INOSE)**

34. Answering Paragraph 34 of the Complaint, Inose adopts, repeats, and realleges its responses to the prior allegations and the preceding paragraphs in the Answer as though fully set forth herein.

35. Answering Paragraph 35 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

36. Answering Paragraph 36 of the Complaint, Inose admits that he and Desert Valley entered into the Contract and further states that this agreement is a written document which speaks for itself. Inose is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore, denies each and every remaining allegation of this Paragraph.

37. Answering Paragraph 37 of the Complaint, Inose states that the Contract is a written document which speaks for itself. Inose is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore, denies each and every remaining allegation of this Paragraph.

38. Answering Paragraph 38 of the Complaint, Inose states that the Contract is a written document which speaks for itself. Inose is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore, denies each and every remaining allegation of this Paragraph.

39. Answering Paragraph 39 of the Complaint, Inose states that the Contract is a written document which speaks for itself. Inose is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore, denies each and every remaining allegation of this Paragraph.

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1           40.     Answering Paragraph 40 of the Complaint, Inose states that the Contract is a  
2 written document which speaks for itself. Inose is without sufficient knowledge or information  
3 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
4 denies each and every remaining allegation of this Paragraph.

5           41.     Answering Paragraph 41 of the Complaint, Inose states that the Contract is a  
6 written document which speaks for itself. Inose is without sufficient knowledge or information  
7 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
8 denies each and every remaining allegation of this Paragraph.

9           42.     Answering Paragraph 42 of the Complaint, Inose states that the Contract is a  
10 written document which speaks for itself. Inose is without sufficient knowledge or information  
11 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
12 denies each and every remaining allegation of this Paragraph.

13           43.     Answering Paragraph 43 of the Complaint, Inose states that the Contract is a  
14 written document which speaks for itself. Inose is without sufficient knowledge or information  
15 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
16 denies each and every remaining allegation of this Paragraph.

17           44.     Answering Paragraph 44 of the Complaint, Inose states that the Contract is a  
18 written document which speaks for itself. Inose is without sufficient knowledge or information  
19 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
20 denies each and every remaining allegation of this Paragraph.

21           45.     Answering Paragraph 45 of the Complaint, Inose states that the Contract is a  
22 written document which speaks for itself. Inose is without sufficient knowledge or information  
23 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
24 denies each and every remaining allegation of this Paragraph.

25           46.     Answering Paragraph 46 of the Complaint, Inose denies the allegations contained  
26 in this paragraph.

27           47.     Answering Paragraph 47 of the Complaint, Inose denies the allegations contained  
28 in this paragraph.

1           48.     Answering Paragraph 48 of the Complaint, Inose denies the allegations contained  
2 in this paragraph.

3           49.     Answering Paragraph 49 of the Complaint, Inose is without sufficient knowledge  
4 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
5 denies the allegations of this Paragraph.

6           50.     Answering Paragraph 50 of the Complaint, Inose is without sufficient knowledge  
7 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
8 denies the allegations of this Paragraph.

9           51.     Answering Paragraph 51 of the Complaint, Inose is without sufficient knowledge  
10 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
11 denies the allegations of this Paragraph.

12          52.     Answering Paragraph 52 of the Complaint, Inose denies the allegations contained  
13 in this paragraph.

14          53.     Answering Paragraph 53 of the Complaint, Inose denies the allegations contained  
15 in this paragraph.

16          54.     Answering Paragraph 54 of the Complaint, Inose denies the allegations contained  
17 in this paragraph.

18          55.     Answering Paragraph 55 of the Complaint, Inose denies the allegations contained  
19 in this paragraph.

20          56.     Answering Paragraph 56 of the Complaint, Inose denies the allegations contained  
21 in this paragraph.

22          57.     Answering Paragraph 57 of the Complaint, Inose denies the allegations contained  
23 in this paragraph.

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**SECOND CAUSE OF ACTION**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant  
EUGENE INOSE)**

58. Answering Paragraph 58 of the Complaint, Inose adopts, repeats, and realleges its responses to the prior allegations and the preceding paragraphs in the Answer as though fully set forth herein.

59. Answering Paragraph 59 of the Complaint, Inose states that the allegations contained therein are legal conclusions. Notwithstanding this however, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore deny the allegations of this Paragraph.

60. Answering Paragraph 60 of the Complaint, Inose denies the allegations contained in this paragraph.

61. Answering Paragraph 61 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

62. Answering Paragraph 62 of the Complaint, Inose states that the allegations contained therein are legal conclusions. Notwithstanding this however, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore deny the allegations of this Paragraph.

63. Answering Paragraph 63 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

64. Answering Paragraph 64 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

65. Answering Paragraph 65 of the Complaint, Inose denies the allegations contained in this paragraph.

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1           66.     Answering Paragraph 66 of the Complaint, Inose denies the allegations contained  
2 in this paragraph.

3           67.     Answering Paragraph 67 of the Complaint, Inose denies the allegations contained  
4 in this paragraph.

5                               **THIRD CAUSE OF ACTION**

6           **(Unjust Enrichment against Defendants IN-LO PROPERTIES and JEFFREY LOUIE)**

7           68.     Answering Paragraph 68 of the Complaint, Inose adopts, repeats, and realleges its  
8 responses to the prior allegations and the preceding paragraphs in the Answer as though fully set  
9 forth herein.

10          69.     Answering Paragraph 69 of the Complaint, Inose admits the allegations contained  
11 in this Paragraph.

12          70.     Answering Paragraph 70 of the Complaint, Inose is without sufficient knowledge  
13 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
14 denies the allegations of this Paragraph.

15          71.     Answering Paragraph 71 of the Complaint, Inose denies the allegations contained  
16 this Paragraph.

17          72.     Answering Paragraph 72 of the Complaint, Inose is without sufficient knowledge  
18 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
19 denies the allegations of this Paragraph.

20          73.     Answering Paragraph 73 of the Complaint, Inose is without sufficient knowledge  
21 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
22 denies the allegations of this Paragraph.

23          74.     Answering Paragraph 74 of the Complaint, Inose states that the allegations  
24 contained therein are legal conclusions. Notwithstanding this however, Inose is without  
25 sufficient knowledge or information to form a belief as to the truth of the allegations in this  
26 Paragraph, and therefore deny the allegations of this Paragraph.

27          75.     Answering Paragraph 75 of the Complaint, Inose states that the allegations  
28 contained therein are legal conclusions. Notwithstanding this however, Inose is without

1 sufficient knowledge or information to form a belief as to the truth of the allegations in this  
2 Paragraph, and therefore deny the allegations of this Paragraph.

3 76. Answering Paragraph 76 of the Complaint, Inose states that the allegations  
4 contained therein are legal conclusions. Notwithstanding this however, Inose is without  
5 sufficient knowledge or information to form a belief as to the truth of the allegations in this  
6 Paragraph, and therefore deny the allegations of this Paragraph.

7 77. Answering Paragraph 77 of the Complaint, Inose is without sufficient knowledge  
8 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
9 denies the allegations of this Paragraph.

10 78. Answering Paragraph 78 of the Complaint, Inose admits that he and Desert  
11 Valley entered into the Contract and further states that this agreement is a written document  
12 which speaks for itself. Inose is without sufficient knowledge or information to form a belief as  
13 to the truth of the remaining allegations in this Paragraph, and, therefore, denies each and every  
14 remaining allegation of this Paragraph.

15 79. Answering Paragraph 79 of the Complaint, Inose states that the Contract is a  
16 written document which speaks for itself. Inose is without sufficient knowledge or information  
17 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
18 denies each and every remaining allegation of this Paragraph.

19 80. Answering Paragraph 80 of the Complaint, Inose states that the Contract is a  
20 written document which speaks for itself. Inose is without sufficient knowledge or information  
21 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
22 denies each and every remaining allegation of this Paragraph.

23 81. Answering Paragraph 81 of the Complaint, Inose states that the Contract is a  
24 written document which speaks for itself. Inose is without sufficient knowledge or information  
25 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
26 denies each and every remaining allegation of this Paragraph.

27 82. Answering Paragraph 82 of the Complaint, Inose states that the Contract is a  
28 written document which speaks for itself. Inose is without sufficient knowledge or information



1 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
2 denies each and every remaining allegation of this Paragraph.

3 83. Answering Paragraph 83 of the Complaint, Inose states that the Contract is a  
4 written document which speaks for itself. Inose is without sufficient knowledge or information  
5 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
6 denies each and every remaining allegation of this Paragraph.

7 84. Answering Paragraph 84 of the Complaint, Inose states that the Contract is a  
8 written document which speaks for itself. Inose is without sufficient knowledge or information  
9 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
10 denies each and every remaining allegation of this Paragraph.

11 85. Answering Paragraph 85 of the Complaint, Inose states that the Contract is a  
12 written document which speaks for itself. Inose is without sufficient knowledge or information  
13 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
14 denies each and every remaining allegation of this Paragraph.

15 86. Answering Paragraph 86 of the Complaint, Inose states that the Contract is a  
16 written document which speaks for itself. Inose is without sufficient knowledge or information  
17 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
18 denies each and every remaining allegation of this Paragraph.

19 87. Answering Paragraph 87 of the Complaint, Inose states that the Contract is a  
20 written document which speaks for itself. Inose is without sufficient knowledge or information  
21 to form a belief as to the truth of the remaining allegations in this Paragraph, and, therefore,  
22 denies each and every remaining allegation of this Paragraph.

23 88. Answering Paragraph 88 of the Complaint, Inose denies the allegations contained  
24 in this paragraph.

25 89. Answering Paragraph 89 of the Complaint, Inose denies the allegations contained  
26 in this paragraph.

27 90. Answering Paragraph 90 of the Complaint, Inose denies the allegations contained  
28 in this paragraph.

1           91.     Answering Paragraph 91 of the Complaint, Inose is without sufficient knowledge  
2 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
3 denies the allegations of this Paragraph.

4           92.     Answering Paragraph 92 of the Complaint, Inose is without sufficient knowledge  
5 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
6 denies the allegations of this Paragraph.

7           93.     Answering Paragraph 93 of the Complaint, Inose is without sufficient knowledge  
8 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
9 denies the allegations of this Paragraph.

10          94.     Answering Paragraph 94 of the Complaint, Inose denies the allegations contained  
11 in this paragraph.

12          95.     Answering Paragraph 95 of the Complaint, Inose is without sufficient knowledge  
13 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
14 denies the allegations of this Paragraph.

15          96.     Answering Paragraph 96 of the Complaint, Inose denies the allegations contained  
16 in this paragraph.

17          97.     Answering Paragraph 97 of the Complaint, Inose denies the allegations contained  
18 in this paragraph.

19          98.     Answering Paragraph 98 of the Complaint, Inose denies the allegations contained  
20 in this paragraph.

21          99.     Answering Paragraph 99 of the Complaint, Inose is without sufficient knowledge  
22 or information to form a belief as to the truth of the allegations in this Paragraph, and therefore  
23 denies the allegations of this Paragraph.

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**FOURTH CAUSE OF ACTION**

**(Intentional Interference with Contract against Defendants EUGENE INOSE and IN-LO PROPERTIES)**

100. Answering Paragraph 100 of the Complaint, Inose adopts, repeats, and realleges its responses to the prior allegations and the preceding paragraphs in the Answer as though fully set forth herein.

101. Answering Paragraph 101 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

102. Answering Paragraph 102 of the Complaint, Inose denies the allegations contained in this paragraph.

103. Answering Paragraph 103 of the Complaint, Inose denies the allegations contained in this paragraph.

104. Answering Paragraph 104 of the Complaint, Inose denies the allegations contained in this paragraph.

105. Answering Paragraph 105 of the Complaint, Inose denies the allegations contained in this paragraph.

106. Answering Paragraph 106 of the Complaint, Inose denies the allegations contained in this paragraph.

107. Answering Paragraph 107 of the Complaint, Inose is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations of this Paragraph.

108. Answering Paragraph 108 of the Complaint, Inose denies the allegations contained in this paragraph.

109. Answering Paragraph 109 of the Complaint, Inose denies the allegations contained in this paragraph.

110. Answering Paragraph 110 of the Complaint, Inose denies the allegations contained in this paragraph.

111. Answering Paragraph 111 of the Complaint, Inose denies the allegations contained in this paragraph.

112. Answering Paragraph 112 of the Complaint, Inose denies the allegations contained in this paragraph.

### **AFFIRMATIVE DEFENSES**

Inose asserts and alleges the following non-exclusive list of defenses to this action. These defenses have been labeled as "Affirmative" defenses regardless of whether, as a matter of law, such defenses are truly affirmative defenses. Such designation should in no way be construed to constitute a concession on the part of Inose that it bears the burden of proof to establish such defenses.

1. Inose denies each and every allegation of the Complaint not specifically admitted or otherwise pled to herein.

2. The Complaint fails to state a claim against Inose upon which relief can be granted.

3. At all times relevant to the allegations contained in the Complaint, Inose acted with due care, circumspection, and good faith in the performance of any and all duties imposed on him, if any.

4. Desert Valley's claims are barred by the doctrine of equitable estoppel.

5. Desert Valley's claims are barred by the doctrine of equitable rescission.

6. Desert Valley's claims are barred because it did not incur any injury or damages cognizable at law.

7. Desert Valley, by its own acts and conduct, waived its rights to assert any claim.

8. Desert Valley is barred from obtaining any relief from any claim by operation of the doctrine of unclean hands.

9. Desert Valley claims are barred by the doctrine of laches.

10. Each and every action contained in the Complaint is barred by Desert Valley's breach of the implied covenant of good faith and fair dealing.

...

11. Desert Valley breached or failed to perform any agreement alleged in the Complaint and is therefore not entitled to any relief under any agreement.

12. Damages and injuries suffered by Desert Valley, if any, are not attributable to any act, conduct, or omission on the part of Inose.

13. The conduct of the Inose was privileged.

14. Inose performed on his part, each and every term and condition owed by him, if any, to Desert Valley.

15. Desert Valley's alleged damages, if any, should be offset by monies due and owing by Desert Valley to Inose.

16. Because of Desert Valley's breach of the agreement, Inose had to hire replacement subcontractors to complete/correct Desert Valley's work on the subject property.

17. Desert Valley has pleaded mutually exclusive claims.

18. The conduct of Inose alleged to be wrongful was induced by Desert Valley's own wrongful conduct.

19. By virtue of the acts, conduct, mismanagement and/or omissions to act of the Desert Valley under the circumstances, Inose is released, excused, and discharged from any liability whatsoever to Desert Valley, which liability is expressly denied.

20. Desert Valley is barred from obtaining any relief from any claim by operation of the doctrine of waiver.

21. Desert Valley's claims are barred by the doctrines of mutual mistake, unilateral mistake, impossibility, or impracticability.

22. Desert Valley is barred from obtaining any relief from any claim by operating of the doctrine of accord and satisfaction.

23. Desert Valley's claims for relief are barred on the grounds that Inose has a valid justification for any alleged nonperformance of any alleged agreement.

24. Any damages which Desert Valley may have sustained by reason of the allegations of the Complaint were proximately caused, in whole or in part, by sets of persons other than Inose and, therefore, Desert Valley is not entitled to any relief from Inose.

1           25.     To the extent Desert Valley's claims are based in whole or in part on alleged oral  
2 promises or statements, such claims are barred by the lack of acceptance, lack of mutuality,  
3 failure of consideration, and/or the statute of frauds.

4           26.     Desert Valley ratified, approved, or acquiesced in the actions of Inose.

5           27.     Desert Valley has failed to mitigate its damages, if any exist or were incurred, the  
6 existence of which is expressly denied by Inose.

7           28.     Desert Valley's claims for relief are barred on the grounds that any assent to any  
8 alleged contract was obtained by Desert Valley's misrepresentations, concealment,  
9 circumvention, and unfair practices.

10          29.     Desert Valley materially breached any agreement between the parties, thereby  
11 excusing the future performance thereof by Inose.

12          30.     Desert Valley brings its claims in bad faith, with an ulterior motive to harass  
13 Inose, abuse the litigation process, and otherwise raise frivolous and unfounded claims against  
14 Inose causing Inose to incur damages.

15          31.     Desert Valley has acted in bad faith in his dealings with Inose.

16          32.     Desert Valley's claims are barred by the economic loss doctrine.

17          33.     Desert Valley's claims are barred by the statute of limitations.

18          34.     Inose hereby incorporates by reference those affirmative defenses enumerated in  
19 NRCP 8 as though fully set forth herein. Such defenses are herein incorporated by reference for  
20 the specific purpose of not waiving the same.

21          35.     It has been necessary for Inose to employ the services of an attorney to defend  
22 this Complaint and reasonable sums should be allowed as and for attorneys' fees, together with  
23 the costs expended in this action.

24          36.     Pursuant to the provisions of NRCP 11, at the time of the filing of this Answer, all  
25 possible affirmative defenses may not have been alleged inasmuch as insufficient facts and  
26 relevant information may not have been available after reasonable inquiry. Therefore, Inose  
27 reserves the right to amend this Answer to allege additional affirmative defenses if subsequent  
28 investigation so warrants.

1 **WHEREFORE**, Inose prays for the following relief:

2 1. That Desert Valley takes nothing by way of the Complaint and that the same be  
3 dismissed with prejudice;

4 2. That Inose be awarded all costs and expenses, including reasonable attorneys'  
5 fees, incurred by Inose in connection with this action; and

6 3. For such other and further relief as the Court deems just and proper.

7 **COUNTERCLAIM**

8 Defendant/Counterclaimant EUGENE INOSE ("Inose"), by and through his attorneys of  
9 record, the law firm of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, hereby alleges  
10 and complains against Plaintiff/Counterdefendant DESERT VALLEY CONTRACTING, INC.  
11 ("Desert Valley") as follows:

12 **THE PARTIES**

13 1. Inose is, and was at all times relevant to this action, an individual.

14 2. Upon information and belief, at all times relevant to this this action, Desert Valley  
15 was a Nevada corporation.

16 3. Inose does not know the true names of the individuals, corporations, partnerships,  
17 and entities sued and identified in fictitious names as DOES I through X and ROE Corporations I  
18 through X. Inose will request leave of this Honorable Court to amend this Counterclaim to  
19 allege the true names and capacities of each fictitious defendants when Inose discovers the  
20 information.

21 **JURISDICTION AND VENUE**

22 4. This Court has subject matter jurisdiction over this case and venue is proper in  
23 Clark County, because the Contract (defined below) was entered in Nevada, and the Property  
24 (defined below) is located in Clark County, Nevada.

25 ...

26 ...

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28 ...

**GENERAL ALLEGATIONS**

5. On or about October 10, 2005, Defendant IN-LO PROPERTIES ("IN-LO") purchased the real property located at 587 St. Croix Street, Henderson, Nevada 89012, APN Number 178-27-114-001 (the "Property") and since that date, IN-LO has been the owner of the Property.

6. On or about August 2, 2014, the Property was flooded and damaged to the core, and Inose was unable to reside in the Property.

7. On or about August 24, 2014, Inose and Desert Valley entered into a Work Authorization and Contract to Perform (the "Contract") to fix and repair the Property.

8. Pursuant to the Contract, Desert Valley, as the general contractor, was required to repair the Property back to its original condition.

9. Additionally, pursuant to the Contract, among other things:

- a. Desert Valley had to perform its work on the Property in good and workmanlike manner;
- b. Desert Valley agreed to perform its work on the Property for the amount of insurance proceeds (the "Insurance Proceeds") for the Property, absent written authorization for additional amounts; and
- c. If any requests for additional work was needed to be performed during the scope of the work on the Property, all such requests had to be in writing.

10. Shortly after entering into the Contract, Desert Valley began its work under the Contract.

11. Around that same time, Desert Valley told Inose that the work on the Property was supposed to only take approximately eight months and should be fully completed by approximately April 2015.

12. Thus, Desert Valley confirmed that Inose would be able to reside back in the Property by April 2015.

13. April 2015 came and went and Desert Valley's work was nowhere near complete on the Property.



1           14.     On or about July 3, 2015, Desert Valley confirmed that there were no change  
2 orders on the Property.

3           15.     In October 2015, approximately fourteen months after the Contract was signed,  
4 Inose was still unable to reside in the Property, as the work was not complete on the Property,  
5 resulting in considerable damages to Inose.

6           16.     On or about December 8, 2015, because Desert Valley had breached its duties,  
7 obligations, and responsibilities under the Contract, Inose terminated the Contract for cause,  
8 effective immediately.

9           17.     More specifically, Desert Valley breached the Contract, as it did not perform its  
10 work in "good and workmanlike manner" and did not complete its scope of work on the Property  
11 in fifteen months, a considerable delay, harming Inose by keeping him out of the Property.

12           18.     Additionally, as noted above, pursuant to the Contract, Desert Valley agreed to  
13 perform the work on the Property for the amount of Insurance Proceeds for the Property, absent  
14 written authorization for additional amounts; since Desert Valley is claiming, in its Complaint,  
15 more than the Insurance Proceeds, it has breached the Contract as well.

16           19.     Further, Desert Valley was also grossly negligent and intentionally malicious in  
17 its oversight and work on the Property throughout the entire term of the Contract.

18           20.     Moreover, throughout the entire term of the Contract, there was no urgency on  
19 Desert Valley's part to get Inose back in his Property, as well as there was no full time, or even  
20 part time, supervisor that had been assigned to the Property since approximately April 2015,  
21 causing the process of repairing the Property to be extremely inefficient and causing inexcusable  
22 delay hereto.

23           21.     Further, Inose was told that Desert Valley had ordered certain items for  
24 installation in the Property, only to find out months later that no such items were ordered, and  
25 therefore, not installed.

26           22.     This resulted in massive delays and costs, directly to the detriment of Inose.

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1           23.     Before the instant dispute arose between Plaintiff and Inose, Desert Valley never  
2 presented any change orders to Inose, and therefore, Inose never signed off or approved any  
3 change orders before the instant dispute arose.

4           24.     Due to Desert Valley's breach of the Contract, and after Inose terminated the  
5 Contract for cause, Inose had no other alternative but to hire replacement subcontractors on the  
6 Property to complete/correct Desert Valley's work on the Property.

7           25.     Regarding these subcontractors, Desert Valley knew many of them, as many of  
8 them were working on the Property during the time period of the Contract, and also knew about  
9 the prospective relationship between Inose and the replacement subcontractors.

10          26.     Desert Valley intended to harm Plaintiff by preventing such relationship between  
11 Plaintiff and the replacement subcontractors, by sending letters to them and instructing them not  
12 to work on the Property.

13          27.     Desert Valley had no privilege or justification in preventing such relationship.

14          28.     In June 2015, Inose, with Desert Valley's express consent, confirmation and  
15 approval, settled out the claim with the insurance company for \$1,321,133.12, the Insurance  
16 Proceeds.

17          29.     More specifically, the insurance company and Desert Valley negotiated the total  
18 amount of Insurance Proceeds that would be available for the construction of the Property, and  
19 once an agreement was reached between them, then and only then, did Desert Valley approach  
20 Inose and instruct/recommend Inose to except the settlement amount that the insurance company  
21 offered.

22          30.     Inose would have never settled out the amount of the claim with the insurance  
23 company without Desert Valley's express consent, confirmation and approval.

24          31.     As of date, Desert Valley has been paid \$1,123,734.48 out of the Insurance  
25 Proceeds.

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1           32.     Because Desert Valley has materially breached the Contract and has damaged  
2 Inose, as noted above, Desert Valley should not be entitled to any of the Insurance Proceeds, but  
3 rather, Inose should be entitled to this, so he can pay replacement subcontractors to  
4 complete/contract Desert Valley's work on the Property.

5           33.     Thus, as a direct and proximate result of Desert Valley's aforementioned conduct,  
6 Inose had to hire these aforementioned replacement subcontractors to complete/correct Desert  
7 Valley's work on the Property.

8           34.     As of date, Inose has had to pay at least \$250,000.00 to hire these aforementioned  
9 replacement subcontractors to complete/correct Desert Valley's work on the Property; however,  
10 this amount continuously is increasing, as Inose is continuing to have to pay other replacement  
11 subcontractors to complete/correct Desert Valley's work on the Property.

12           35.     Pursuant to the Contract, and since the outset of the Contract, Inose has performed  
13 all of his duties, obligations, and responsibilities under the Contract.

14           36.     Since the outset of the Contract, Desert Valley has materially breached its duties,  
15 obligations, and responsibilities under the Contract, by among other things, not performing its  
16 work in good and workmanlike manner, not completing its scope of work on the Property in  
17 fifteen months, a considerable delay, harming Inose by keeping him out of the Property, claiming  
18 more than the instance proceeds, and claiming damages on alleged change orders, when Inose  
19 never approved these changes, especially since he was never presented any such change orders  
20 prior to the instant dispute arising.

21           37.     As a direct and proximate result of Desert Valley's aforementioned actions, Inose  
22 has been damaged in a substantial sum in excess of \$10,000.00, the exact amount of which will  
23 be set forth at the time of trial in this matter.

24           38.     As a direct result of the aforementioned conduct on the part of Desert Valley,  
25 Inose has been forced to retain the services of the undersigned counsel to defend and prosecute  
26 this matter and is thus entitled to an award of his reasonable attorneys' fees and costs associated  
27 herewith from Desert Valley.

28     ...

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

39. Inose incorporates the preceding paragraphs of this Counterclaim by reference as though fully set forth herein.

40. Inose and Desert Valley entered into a valid and enforceable contract, the Contract, relating to repaid work on the Property.

41. Inose has complied with all the conditions and requirements under this contract, the Contract.

42. Through its actions complained of herein, Desert Valley has wrongfully, intentionally, and/or maliciously breached its obligations under the Contract.

43. As a direct and proximate result of Desert Valley's aforementioned conduct, Inose had to hire replacement subcontractors to complete/correct Desert Valley's work on the Property.

44. As a direct and proximate result of Desert Valley's aforementioned conduct, Inose has been damaged in a substantial sum in excess of \$10,000.00, the exact amount of which will be set forth at the time of trial in this matter.

45. As a direct result of the aforementioned conduct on the part of Desert Valley, Inose has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of his reasonable attorneys' fees and costs associated herewith from Desert Valley.

**SECOND CLAIM FOR RELIEF**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

46. Inose incorporates the preceding paragraphs of this Counterclaim by reference as though fully set forth herein.

47. Every contract entered into in Nevada, including the above-referenced Contract, contains an implied covenant that the parties will act in good faith, and with fair dealing, and that one party will not conduct itself in a manner that would prevent the other party from achieving the benefit of its bargain.

...



61. As a direct result of the aforementioned conduct on the part of Desert Valley, Inose has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of his reasonable attorneys' fees and costs associated herewith from Desert Valley.

**(Intentional Interference with Prospective Economic Advantage)**

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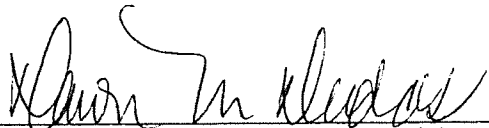
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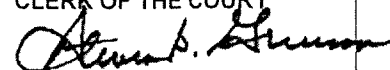


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing **EUGENE INOSE'S ANSWER TO COMPLAINT AND COUNTERCLAIM**, was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1<sup>st</sup> day of June, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

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*Attorneys for Defendant IN-LO Properties and  
Defendant/Counterclaimant Eugene Inose*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESERT VALLEY CONTRACTING, INC. a  
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability  
company; EUGENE INOSE, an individual;  
JEFFREY LOUIE, an individual; DOES 1  
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a  
Nevada corporation; DOES I through X,  
inclusive, and ROE CORPORATIONS I through  
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C  
Dept. No.: XV

**NOTICE OF ENTRY OF FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

///

///

1           YOU, and each of you, will please take notice that a Finding of Fact and Conclusions of  
2 Law in the above entitled matter was filed and entered by the Clerk of the above-entitled Court on  
3 the 3rd day of September, 2019, a copy of which is attached hereto.

4           Dated this 4th day of September, 2019.

5                           **HOLLEY DRIGGS WALCH**  
6                           **FINE PUZEY STEIN & THOMPSON**

7  
8                           /s/ Sean E. Story, Esq.

9                           BRIAN W. BOSCHÉE, ESQ.

10                          Nevada Bar No. 7612

11                          SEAN E. STORY, ESQ.

12                          Nevada Bar No. 13968

13                          400 South Fourth Street, Third Floor

14                          Las Vegas, Nevada 89101

15                          *Attorneys for Defendant IN-LO Properties and*  
16                          *Defendant/Counterclaimant Eugene Inose*

**CERTIFICATE OF SERVICE**

The undersigned, an employee of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON, hereby certifies that on the 4th day of September, 2019, a copy of **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**, was served via electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve to the addresses below. **Pursuant to EDCR 8.05(i), the date and time of the electronic service is in place of the date and place of deposit in the mail.:**

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Rachel L. Shelstad, Esq.  
HURTIK LAW & ASSOCIATES  
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*Attorneys for Plaintiff/Counterdefendant*

/s/ Sandy Sell

An employee of HOLLEY DRIGGS WALCH  
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*Attorneys for Defendant IN-LO Properties and  
Defendant/Counterclaimant Eugene Inose*

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT VALLEY CONTRACTING, INC. a  
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability  
company; EUGENE INOSE, an individual;  
JEFFREY LOUIE, an individual; DOES 1  
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a  
Nevada corporation; DOES I through X,  
inclusive, and ROE CORPORATIONS I through  
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C  
Dept. No.: XV

**DEFENDANT IN-LO PROPERTIES AND  
DEFENDANT/COUNTERCLAIMANT  
EUGENE INOSE'S ~~AMENDED~~  
~~PROPOSED~~ FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Trial Dates: April 8-11, 2019  
June 19-21, 2019  
July 24, 2019

Honorable Joe Hardy

This case having come on for trial on April 8-11, 2019, June 19-21, 2019, and July 24,  
2019 before this Court, Defendant IN-LO PROPERTIES ("In-Lo") and  
Defendant/Counterclaimant EUGENE INOSE ("Inose" and collectively, "Defendants"), by and  
through its undersigned counsel of record, Brian W. Boschke, Esq. and Sean E. Story, Esq. of the

HOLLEY DRIGGS  
WALCH FINE PUZEY STEIN THOMPSON

<input type="checkbox"/> Jury Disposed After Trial Start	<input type="checkbox"/> Non-Jury Disposed After Trial Start
<input type="checkbox"/> Jury Verdict Reached	<input checked="" type="checkbox"/> Non-Jury Judgment Reached
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law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, and DESERT VALLEY CONTRACTING, INC. ("Desert Valley"), by and through undersigned counsel of record, Carrie E. Hurtik, Esq. and Jonathon R. Patterson, Esq., of the law firm Hurtik Law & Associates.

Desert Valley asserted four (4) causes of action against Defendants: 1) Breach of Contract, 2) Breach of the Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Contractual Relations. Inose asserted four (4) causes of action as counterclaims against Desert Valley: 1) Breach of Contract, 2) Breach of the Implied Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Prospective Economic Advantage.

The Court, having fully heard the testimony of the witnesses, reviewed the evidence during the trial, having considered the oral and written arguments set forth by appearing counsel at the trial, having read and considered the other papers and pleadings on file herein, and good cause appearing therefor, enters the following findings of fact and conclusions of law. To the extent any finding of fact shall more appropriately be deemed a conclusion of law, it is so deemed. To the extent any conclusion of law shall more appropriately be deemed a finding of fact, it is so deemed.

#### FINDINGS OF FACT

1. Inose testified and it is not disputed that Inose is the principal of In-Lo, which owns the residential real property located at 587 St. Croix Street, Henderson, Nevada 89012 (APN No. 178-27-114-001) (the "Property"); and that Inose utilizes the Property as his residence when he is in Nevada.

2. Per the testimony of Inose, on or about August 2, 2014, the Property was flooded and damaged to the extent that Inose was unable to reside at the Property.

3. Inose testified that an agent acting on his behalf initially contacted ServPro of Henderson to conduct the water extraction and remediation work on the Property.

4. Per the testimony of Inose, a representative of ServPro of Henderson recommended Desert Valley as a general contractor purported to be experience and proficient in the restoration and remodeling of high-end custom homes such as the Inose Property.

///

1           5.     Dennis Zachary ("Zachary") confirmed through his testimony that Zachary is the  
2 owner of Desert Valley.

3     THE CONTRACT

4           6.     Per the testimony of Inose and other witnesses, Inose retained Desert Valley to be  
5 the general contractor in the restoration of the Property (the "Project"). *See* Work Authorization  
6 and Contract to Perform Scope of Work (the "Contract"), Exhibit 560.

7           7.     The Contract provides, in pertinent part, as follows:

8                     Should Client terminate the Contractor after work has begun, but not  
9                     completed in full, the Client shall be responsible for any and all fees  
10                    and costs associated with the work performed, plus the profit that  
                      **the client would have made** on the job had Client not repudiated  
                      the contract.

11     Contract, Ex. 560 (emphasis added).

12           8.     Per the testimony of Zachary and Merritt, the Contract was prepared by Desert  
13 Valley and is a form contract utilized by Desert Valley when it performs insurance work.

14           9.     Per the testimony of Zachary, the Contract was to be performed on a "10 and 10"  
15 basis, meaning that Desert Valley's job costs would have built in to its total an additional ten-  
16 percent to account for Desert Valley's overhead and another ten-percent to account for Desert  
17 Valley's profit.

18     PROJECT ESTIMATES AND SUPERVISION

19           10.    Per the testimony of Zachary and Daniel Merritt ("Merritt"), Desert Valley assigned  
20 Merritt as the lead estimator on the project.

21           11.    Per Merritt's testimony, he spent a minimum of one week assessing the damage  
22 and coordinating with subcontractors as well as Inose's insurance company, Fireman's Fund, from  
23 which it produced an estimated job cost.

24           12.    Per Merritt's testimony, Desert Valley also begin overseeing the project and  
25 engaging subcontractors to perform work on the Property.

26           13.    Per the testimony of Inose, at all times relevant hereto, Merritt acted as Inose's  
27 primary point of contact with Desert Valley.

28     ///

14. Inose and Merritt testified that at the onset of the project, in part because the Property was a custom home that had originally been constructed pursuant to "as-built" plans, Merritt inquired with Inose to identify a person that Inose believed knows the home the best.

15. Inose testified that he identified Robert Ramirez ("Ramirez") as the person who knows the home the best.

16. Per the testimony of Rachelle Elliston ("Elliston") and Zachary, Elliston was the operations manager primarily responsible for handling the in-house administrative duties related to the Project.

17. Zachary and Elliston Desert Valley testified that Desert Valley retained Ramirez as a W-2 employee to act as a supervisor and/or consultant for the project. *See* Payroll Records, Exhibit 244.

18. Merritt and Zachary testified that, in addition to Ramirez, Desert Valley also had a designated project manager throughout the course of the Project.

19. The Contract provides, in pertinent part, that Desert Valley agreed to "perform all repair work in good and workmanlike manner." Contract, Ex. 560.

20. Each of the Subcontractors further confirmed that their primary point of contact throughout the course of the Project was Merritt.

#### COST OVERRUNS

21. Per Merritt's testimony, during the course of the Project Merritt oversaw the cost projections for the restoration of the Property and regularly communicated directly with Inose's insurance company, Fireman's Fund.

22. Per Merritt's testimony, an initial bid for the project was completed on or around November 17, 2014 and was provided to Fireman's Fund to coordinate an anticipated scope of work and release of insurance proceeds. *See* Inose Full Bid3 (the "November Bid"), Exhibit 266.

23. The November Bid includes a line item total job cost of \$1,035,605.74, plus 10% overhead in the amount of \$103,561.15, plus 10% profit in the amount of \$103,561.15, and material sales tax of \$31,371.63, for a grand total claim of \$1,274,099.67. *Id.* at DVC000662.

///



24. Inose, Merritt, and Zachary all testified that Desert Valley had consistently represented to Inose that Desert Valley could offset the costs of certain changes in scope by removing other items that were part of the original scope of work and that doing so would not affect the total cost of the project. This included, but was not limited to, the removal of the sauna which had previously been on the Property offset by an expansion and various upgrades to the wine room.

25. Merritt testified that there were many cost overruns on the project which included, but were not limited to, an over-order of approximately eight (8) pallets of tile which Merritt testified were ordered based on measurements provided by Summit Tile and Stone, one of the subcontractors working for Desert Valley.

26. Inose and Merritt testified that, as of today, the eight (8) pallets of over-ordered tile are still in his garage and taking up otherwise usable space.

27. Merritt testified that an additional cost overrun was attributable to the necessity for repainting the interior of the home since the home had originally been repainted prior to the installation of tile and that the cutting of tile caused dust to adhere to the painted walls which could not thereafter be sufficiently cleaned.

28. Merritt and Inose testified that additional cost overruns were attributable to items going missing from the Project including a television and several Lutron switches.

29. Pursuant to testimony by Daniel Merritt and Rachelle Elliston, and Exhibit 475, delivery of marble floors were delayed for several months due to customs issues and a dock workers strike in Los Angeles, California.

#### CHANGE ORDERS

30. The Contract further provides that "[i]f any requests for additional work to be performed are made during the scope of the job, all such requests must be put in writing so that these costs will be added to the Scope of Work." Contract, Ex. 560 (emphasis added).

31. Zachary testified that the industry practice is for a general contractor to obtain from a subcontractor a written, approved, and signed "change order" in order for a subcontractor to make any changes to its scope of work and be paid for those changes.

1           32. Each of the Subcontractors also testified that all change orders should be in writing.  
2 All of the Subcontractors testified that they would not expect to be paid for any additional work  
3 performed outside the scope of their bids unless the additional work was approved through a  
4 written, approved, and signed change order.

5           33. Zachary further testified that without a written, approved, and signed change order,  
6 Desert Valley would have no obligation to and would not pay the subcontractor for the change to  
7 its scope of work.

8           34. Zachary further testified that the process of requiring a written and approved change  
9 order signed by the owner (in this case Inose) would be necessary to obligate Inose to pay for any  
10 changes to Desert Valley's scope of work.

11           35. Zachary and Merritt further testified that Desert Valley did not obtain Inose's  
12 approval or signature on any change orders throughout the course of the Project.

13           36. The majority of the subcontractor change orders dated before July 3, 2015 are  
14 approved by and/or signed by Merritt. *See, e.g.,* Exhibit 576 at IN-LO00255; Exhibit 82 at  
15 DVC000104; Exhibit 83 at DVC000105; Exhibit 90 at DVC000120.

16           37. Each of the Subcontractors confirmed through testimony that they had change  
17 orders on the Project which had been provided to and approved by Desert Valley prior to July 3,  
18 2015.

19           38. No change orders that were signed or approved by Inose were presented as evidence  
20 at trial.

21           39. No written communications from Desert Valley to Inose prior to October 2015  
22 indicating the existence of change orders were presented as evidence at trial.

23           40. Rachelle Elliston and Daniel Merritt testified that Inose was aware of the Change  
24 Orders and refused to sign them.

25           41. Inose's claims that he was unaware of the change orders was belied by the evidence  
26 presented at trial.

27 ///

28 ///

THE INSURANCE CLAIM

42. The Contract further provides that the “Contractor agrees to perform the insured work as approved by the Insurance Company and accept insurance proceeds as payment for the insured work.” Contract, Ex. 560.

43. Merritt testified that throughout the course of the Project he negotiated directly with Fireman’s Fund the total amount of Insurance Proceeds that would be available for the scope of work on the Property based on cost estimates prepared by Desert Valley.

44. On June 5, 2015, Merritt emailed Bryan Lynch of Fireman’s Fund and indicated that Desert Valley was at the “agreed contract amount with no needed change orders, and no more change orders from all of the subcontractors which had submitted their bids.” Exhibit 571 at IN-LO00074.

45. Merritt further represented in his email to Fireman’s Fund that Desert Valley “will be able to complete the project for this amount.” *Id.*

46. The subject-line of the email states “Agreement on amount of \$1,321,133.12.” *Id.*

47. The estimate attached to Merritt’s email which is titled as a Final Bid with a completed date of 4/27/15 includes work (such as the Sauna Bath for example) which Merritt, Inose, and Zachary all confirmed was removed from the scope of the Project and was never done. *Id.* at IN-LO00094.

48. Bryan Lynch of Fireman’s Fund emailed Inose on June 19, 2015 stating that “[w]e have received the final estimate from your contractor” and identified that he was attaching “[a]n email from Desert Valley Construction stating that no further billing exists beyond their final estimate” as well as a “copy of the final estimate presented by your contractor totaling \$1,320,429.28. (Final DVC Estimate).” *Id.* at IN-LO00071. The email also included a Policyholder Release and Lynch requested therein that Inose forward a fully completed copy of the release. *Id.*

49. Inose’s testimony that Desert Valley Contracting advised him to close out the insurance claim was not credible as it was in Desert Valley’s best interest to keep the insurance claim open.

1           50.     Inose took no steps to reopen the insurance claim after it appeared that there was a  
2     need to do so.

3           51.     No evidence was presented at trial of any written communications from Desert  
4     Valley to Inose prior to October 2015 objecting to Inose having closed out the insurance claim.

5     POST INSURANCE CLAIM

6           52.     Inose and Merritt testified that on or about July 3, 2015, Desert Valley provided to  
7     Inose a waiver and release which included a notation signed by Daniel indicating "No change  
8     orders as of 07/03/2015." See Unconditional Waiver and Release on Progress Payment (the  
9     "Waiver"), Exhibit 562.

10          53.     The Waiver provides in capitalized text as follows:

11                   NOTICE: THIS DOCUMENT WAIVES RIGHTS  
12                   UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN  
13                   PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS  
14                   ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF  
                    YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN  
                    PAID, USE A CONDITIONAL RELEASE FORM.

15          54.     In addition to Daniel's signature on the notation that there are no change orders as  
16     of 7/3/15, the Waiver is also signed by Rachell Elliston, Desert Valley's operations manager. *Id.*

17          55.     Elliston testified that she signed an invoice dated September 4, 2015 which includes  
18     the following handwritten notation: "Total Contract to Complete House \$1,321,331.27." Desert  
19     Valley Invoice dated 9/4/15, Exhibit 564.

20          56.     Elliston and Zachary testified that Desert Valley sent a letter dated November 16,  
21     2015 to all subcontractors working on the project directing them to cease working on the Property.  
22     See Letter dated November 16, 2015, Exhibit 567.

23          57.     Merritt testified that on or around November 23, 2015, he prepared a summary for  
24     Desert Valley's attorney of the purported differences between the initial bids of each of the  
25     subcontractors on the Project as well as Merritt's own projected costs and the actual costs for each  
26     category of work. See November 23, 2015 Email, Exhibit 568.

27          58.     On November 24, 2015, Merritt forwarded to Inose this list of what Desert Valley  
28     purported to be the differences between its estimated and actual costs to complete the project. The

total amount of the asserted differences was approximately \$125,763.26. *Id.*

59. The list delineates between the estimate and finals costs and does not specify what amounts are accounted for through written, approved, and signed change orders and what amounts are not. *Id.*

60. Merritt testified that, although he had been receiving and approving change orders throughout the course of the Project, and notwithstanding that Desert Valley had indicated to Inose in writing in July 2015 that there were no change orders and again in September 2015 that the cost to complete the house was \$1,321,331.27, Merritt always intended to prepare and submit one large master change order to Inose toward the end of the Project.

61. No evidence was presented at trial or any written communications to Inose indicating Desert Valley's intent to compile and submit a large master change order at the end of the project.

62. Inose testified that on or around December 8, 2015, he terminated the Contract with Desert Valley.

63. Inose testified that at the time Desert Valley ceased working on the Project, Desert Valley had not fully restored the Property and, as a result, Inose was unable to reside in the Property.

64. Merritt confirmed through testimony that at the time Desert Valley ceased working on the Property, the Project was approximately eighty-five (85%) done.

#### DAMAGES CALCULATION

65. Inose testified that after Desert Valley left the project uncompleted, with the work incomplete and the Property not yet in livable condition, and in order avoid any liens from being placed on the Property, Inose was forced to engage many of the subcontractors directly to complete the work and to pay the subcontractors directly.

66. In Merritt's June 5, 2015 email to Fireman's Fund, Merritt represented that the house would be completed with no needed change orders for \$1,321,133.12 and in reliance on this representation and further discussions with Merritt, Inose closed out the claim for this amount.

///

67. This amount was confirmed in a signed Desert Valley invoice dated September 4, 2015.

68. Merritt confirmed through testimony that the Project was approximately eighty-five percent (85%) complete at the time that Desert Valley left the Project

69. During the course of the Project, Inose paid to Desert Valley the total amount of one-million, one-hundred twenty-three thousand seven-hundred thirty-four dollars and eighty-seven cents (\$1,123,734.87). *See* Checks, Exhibit 585.

70. Zachary testified that on April 25, 2017, well after Desert Valley had ceased working on the Project, Desert Valley generated a Job Cost & Billing Detail report. *See* Exhibit 274.

71. Zachary confirmed through testimony that in total Desert Valley incurred costs in the amount of one-million twelve-thousand four-hundred fifty-one dollars and eight cents (\$1,012,451.08). *Id.* at DVC000706.

72. Zachary and Elliston testified that Desert Valley was paid for the entirety of its costs incurred as well as a portion of its profit and overhead.

73. Inose paid directly to subcontractors the total amount of two-hundred fifty-six thousand four-hundred eighty-one dollars and forty-six cents (\$256,481.46) to complete work for which Desert Valley had already been paid. *See* Checks and Credit Card Statements, Exhibits 586 through 595.

74. Inose paid Desert Valley \$1,123,734.87 to complete approximately 85% of the Project, plus an additional \$256,481.46 to subcontractors directly to finish the project, for a sum total paid by Inose of \$1,380,216.33.

## CONCLUSIONS OF LAW

### **A. Desert Valley's Claims**

#### **1. Desert Valley's Claim for Breach of Contract**

1. In Nevada, in order to make a prima facie showing of a cause of action for breach of contract, a Plaintiff must establish the following elements: 1) a valid contract; 2) Defendant's breached the contract or failed to render performance when due; 3) Defendant's breach or failure

1 of performance was unexcused; 4) All conditions precedent to defendant's duty to perform were  
2 fulfilled by plaintiff or were excused; 5) Plaintiff was damaged by the breach; 6) Causation and  
3 damages were a foreseeable consequence of a particular breach. *See Cohen-Breen v. Gray Tel.*  
4 *Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev. 2009); *see also Clark Cnty. School Dist. v.*  
5 *Richardson Constr., Inc.*, 123 Nev. 382, 168 P.3d 87 (2007); *May v. Anderson*, 19 P.3d 1254, 1257  
6 (Nev. 2005).

7 2. The August 24, 2014 Work Authorization and Contract to Perform is a valid and  
8 enforceable agreement between Desert Valley and Inose.

9 3. The Court finds that Defendant/Counter-Plaintiff INOSE was in Breach of  
10 Contract. However, Plaintiff/Counter-Defendant DVC failed to meet their burden, to show by a  
11 preponderance of the evidence the damages caused by that Breach of Contract.

12 4. Based on the foregoing, Desert Valley did not and cannot satisfy the necessary  
13 elements to succeed on a claim for breach of contract and the Court therefore finds in favor of  
14 Inose on Desert Valley claim for breach of contract.

15 **2. Desert Valley's Claim for Breach of the Implied Covenant of Good**  
16 **Faith and Fair Dealing**

17 5. In Nevada, to prevail on a breach of the implied covenant of good faith and fair  
18 dealing claim, there must be proof that: (1) the parties entered into a contract; (2) defendant owed  
19 a duty of good faith to plaintiff; (3) defendant breached that duty by performing in a manner that  
20 was unfaithful to the purpose of the contract and (4) plaintiff's justified expectations were thus  
21 denied. *See Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995); *see also Hilton Hotels*  
22 *Corp. v. Butch Lewis Prods.*, 107 Nev. 226, 234, 808 P.2d 919, 923-24 (1991).

23 6. The August 24, 2014 Work Authorization and Contract to Perform is a valid and  
24 enforceable agreement between Desert Valley and Inose.

25 7. A covenant of good faith and fair dealing arising from the Contract was owed by  
26 Inose to Desert Valley.

27 8. That as both parties are in Breach of Contract, the Court does not need to make a  
28 finding regarding this Cause of Action.

9. To the extent the Court is required to make a ruling on this Cause of Action, it fails for the reasons outlined in the Breach of Contract Cause of Action. Plaintiff/Counter Defendant DVC failed to prove his damages beyond a preponderance of the evidence.

10. Based on the foregoing, Desert Valley did not and cannot satisfy the necessary elements to succeed on a claim for breach of the implied covenant of good faith and fair dealing and the Court therefore finds in favor of Inose on Desert Valley's claim for breach of the implied covenant of good faith and fair dealing.

### 3. Desert Valley's Claim for Unjust Enrichment

11. In Nevada, "[u]njust enrichment is the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience." *Asphalt Products Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (citations omitted). This claim for relief "exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'" *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, \_\_ Nev. \_\_, 283 P.3d 250, 257 (2012) (citations omitted).

12. "An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *Leasepartners Corp. v. Robert L. Brooks Tr. Dated November 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

13. Nevada law would permit an unjust enrichment claim when the benefit conferred is "vastly different in scope and kind from the contracted-for benefit." *Sierra Dev. Co. v. Chartwell Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1108 (D. Nev. 2016).

14. "An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *Lease partners Corp. v. Robert L. Brooks Tr. Dated November 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

///



1 15. Nevada law would permit an unjust enrichment claim when the benefit conferred  
2 is "vastly different in scope and kind from the contracted-for benefit." *Sierra Dev. Co. v. Chartwell*  
3 *Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1108 (D. Nev. 2016).

4 16. The Court finds that a valid contract exists between the parties, therefore the Cause  
5 of Action for Unjust Enrichment fails as a matter of law.

6  
7 **4. Desert Valley's Claim for Intentional Interference with Contract**

8 17. In Nevada, the elements for a claim of intentional interference with contractual  
9 relations are: 1) A valid and existing contract between plaintiff and a third party; 2) Defendant had  
10 knowledge of the valid contract or had reason to know of its existence; 3) Defendant committed  
11 intentional acts intended or designed to disrupt the contractual relationship or to cause the  
12 contracting party to breach the contract; 4) Actual disruption of the contract (the contracting party  
13 breached the contract); 5) The breach was caused by the wrongful and unjustified conduct;  
14 6) Causation and damage. *See Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152  
15 (D. Nev. 2009); *see also Blanck v. Hager*, 360 F. Supp.2d 1137 (D. Nev. 2005).

16 18. Desert Valley failed to establish that any disruptions in its contracts or contractual  
17 relations with subcontracts were caused Inose.

18 19. Desert Valley failed to identify any way in which it suffered damages by the actions  
19 of Inose arising from any alleged interference with its contractual relations.

20 20. The Court finds in favor of Inose on Desert Valley's claim for intentional  
21 interference with contractual relations.

22 **B. Inose's Claims**

23 **1. Inose's Claim for Breach of Contract**

24 21. In Nevada, in order to make a prima facie showing of a cause of action for breach  
25 of contract, a Plaintiff must establish the following elements: 1) a valid contract; 2) Defendant's  
26 breached the contract or failed to render performance when due; 3) Defendant's breach or failure  
27 of performance was unexcused; 4) All conditions precedent to defendant's duty to perform were  
28 fulfilled by plaintiff or were excused; 5) Plaintiff was damaged by the breach; 6) Causation and

1 damages were a foreseeable consequence of a particular breach. *See Cohen-Breen v. Gray Tel.*  
2 *Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev. 2009); *see also Clark Cnty. School Dist. v.*  
3 *Richardson Constr., Inc.*, 123 Nev. 382, 168 P.3d 87 (2007); *May v. Anderson*, 19 P.3d 1254, 1257  
4 (Nev. 2005).

5 22. The August 24, 2014 Work Authorization and Contract to Perform is a valid and  
6 enforceable agreement between Desert Valley and Inose.

7 23. Desert Valley breached its obligations under the Contract by failing to complete the  
8 work in a good and workmanlike manner including, but not limited to, by causing damage to the  
9 Property unrelated to the restoration and incorporating the cost of repairs for this damage into the  
10 cost it sought to collect from Inose.

11 24. Desert Valley breached its obligations under the Contract by failing to complete the  
12 scope of work and provide Inose with a fully restored property.

13 25. Desert Valley breached its obligations under the Contract by failing to complete the  
14 scope of work set forth in the Contract within the confines of the Insurance Proceeds as required  
15 under the Contract.

16 26. Desert Valley breached the Contract by failing to pay the subcontractors in full for  
17 work to be completed by the subcontractors.

18 27. Desert Valley breached its obligations under the Contract by unilaterally approving  
19 change orders received from subcontractors and failing to obtain approval of the same from Inose.

20 28. The above-referenced breaches by Desert Valley were unexcused.

21 29. Inose breached the Contract by failing to forward insurance proceeds as and when  
22 received to Desert Valley.

23 30. Inose breached the Contract by coordinating directly with the subcontractors  
24 retained by Desert Valley.

25 31. Inose paid subcontractors directly the total amount \$256,481.46 to complete work  
26 but could not distinguish between what was paid to restore the property versus what was paid for  
27 upgrades to the property.

28 ///

1           32.     Based on the evidence presented at trial, Inose failed to establish what portion, if  
2 any, of the funds paid to subcontractors was for work included in Desert Valley's scope of work  
3 and what was paid for extras.

4           33.     Inose therefore failed to establish damages under his claim for breach of contract.

5           34.     The Court finds in favor of Desert Valley and against Inose on Inose's claim for  
6 breach of contract.

7           **2.     Inose's Claim for Breach of the Implied Covenant of Good Faith and Fair**  
8           **Dealing**

9           35.     In Nevada, to prevail on a breach of the implied covenant of good faith and fair  
10 dealing claim, there must be proof that: (1) the parties entered into a contract; (2) defendant owed  
11 a duty of good faith to plaintiff; (3) defendant breached that duty by performing in a manner that  
12 was unfaithful to the purpose of the contract and (4) plaintiff's justified expectations were thus  
13 denied. *See Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995); *see also Hilton Hotels*  
14 *Corp. v. Butch Lewis Prods.*, 107 Nev. 226, 234, 808 P.2d 919, 923-24 (1991).

15          36.     The August 24, 2014 Work Authorization and Contract to Perform is a valid and  
16 enforceable agreement between Desert Valley and Inose.

17          37.     A covenant of good faith and fair dealing arising from the Contract was owed by  
18 Desert Valley to Inose.

19          38.     Desert Valley breached its covenant of good faith and fair dealing arising from the  
20 Contract by failing to complete the scope of work set forth in the Contract within the confines of  
21 the Insurance Proceeds.

22          39.     Desert Valley breached its covenant of good faith and fair dealing by causing or  
23 allowing damage to be caused under its supervision to Property and incorporating the repair costs  
24 related to said damage into its restoration job cost to be recovered from Fireman's Fund.

25          40.     Desert Valley breached its covenant of good faith and fair dealing arising from the  
26 Contract by representing to Inose that certain costs could be covered elsewhere or buried without  
27 submitting written changes written change orders to Inose.

28     ///

41. Desert Valley breached its covenant of good faith and fair dealing by failing to timely present to Inose the written change orders that it received from subcontractors throughout the course of the project.

42. Desert Valley breached its covenant of good faith and fair dealing arising from the Contract by directing Inose to close out for the Insurance Proceeds and representing to both Fireman's Fund and Inose that it could complete the work for the total amount of Insurance Proceeds and that it had no change orders as of July 2015.

43. Inose breached his covenant of good faith and fair dealing by failing to forward insurance proceeds as and when received to Desert Valley.

44. Inose breached his covenant of good faith and fair dealing by coordinating directly with the subcontractors retained by Desert Valley.

45. As a result of Desert Valley's above-referenced breaches of its duty of good faith and fair dealing, Inose's justified expectations were denied.

46. Inose failed to establish any damages suffered in relation to his claim for breach of the implied covenant of good faith and fair dealing.

47. The Court therefore finds in favor of Desert Valley and against Inose on Inose's claim for breach of the implied covenant of good faith and fair dealing.

### 3. Inose's Claim for Unjust Enrichment

48. In Nevada, "[u]njust enrichment is the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience." *Asphalt Products Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (citations omitted). This claim for relief "exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'" *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, \_\_ Nev. \_\_, 283 P.3d 250, 257 (2012) (citations omitted).

49. "An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express

agreement.” *Leasepartners Corp. v. Robert L. Brooks Tr.* Dated November 12, 1975, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

50. Nevada law would permit an unjust enrichment claim when the benefit conferred is “vastly different in scope and kind from the contracted-for benefit.” *Sierra Dev. Co. v. Chartwell Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1108 (D. Nev. 2016).

51. The Court finds that a valid contract exists between the parties, therefore the Cause of Action for Unjust Enrichment fails as a matter of law.

#### 4. Inose’s Claim for Intentional Interference with Prospective Economic Advantage

52. In Nevada, the elements for a claim of intentional interference with prospective economic advantage are as follows: 1) A prospective contractual relationship between plaintiff and a third party; 2) Defendant has knowledge of the prospective relationship; 3) The intent to harm plaintiff by preventing the relationship; 4) The absence of privilege or justification by the defendants; 5) Actual harm to plaintiff as a result of defendant’s conduct; and 6) Causation and damages. *Custom Tel., Inc. v. Int’l Tele-Services, Inc.*, 254 F. Supp. 2d 1173, 1180-81 (Nev. 2003); *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727 (1993); *Leavitt v. Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987).

53. After Desert Valley left the project, Inose had a prospective contractual relationship with the subcontractors that had been working on the Property.

54. As the prior general contractor on the project, Desert Valley had knowledge of his prospective relationship and was aware that Inose would need to engage the subcontractors to complete the restoration of his home and to avoid any liens being placed on the Property.

55. In sending written direction to the subcontractors to cease work on the Property and to refrain from dealing with Inose, Desert Valley had a clear intent to prevent the prospective relationship between Inose and the subcontractors.

56. Desert Valley had no privilege or justification to inform the subcontractors to cease work or to refrain from dealing with Inose after it had left the project.

///

57. Inose failed to establish how the aforementioned actions of Desert Valley caused any damage to Inose.

58. The Court therefore finds in favor of Desert Valley and against Inose on Inose's claim for intentional interference with prospective economic advantage.

### DAMAGES

1. The provision of the Contract which provides that upon termination by the client, Desert Valley would be entitled to its costs "plus the profit that the client would have made on the job had Client not repudiated the contract" is ambiguous. *See Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) ("A contract is ambiguous when it is subject to more than one reasonable interpretation.").

2. Desert Valley conceded that it prepared the Contract, which it utilizes as a form contract, and thus any ambiguities are to be construed against Desert Valley. *Id.* ("Any ambiguity, moreover, should be construed against the drafter.").

3. Accordingly, Desert Valley failed to establish that it is entitled to recover any profit or overhead for amounts paid to subcontractors by Inose for work completed after Desert Valley left the Project.

4. Desert Valley was paid approximately 85% of the contract price for a job that its own witness testified was approximately 85% completed at the time that Desert Valley left the Project. Desert Valley failed to establish any legal theory upon which it is entitled to any additional sums and therefore failed to establish any damages under its asserted legal theories.

5. Inose paid additional sums directly to subcontractors after Desert Valley left the project. However, changes and upgrades were performed on the project and thus Inose failed to establish any specific amount of damages suffered under any of his asserted legal theories.

### ORDER

Based on the foregoing, and other good cause appearing:

**IT IS HEREBY ORDERED** that, as to Plaintiff Desert Valley's claims for relief against Defendants for: 1) Breach of Contract, 2) Breach of the Covenant of Good Faith and Fair Dealing, 3) Unjust Enrichment, and 4) Intentional Interference with Contractual Relations; the Court finds

1 in favor of Defendants and against Desert Valley. Thus, Desert Valley's claims are dismissed with  
2 prejudice.

3 **IT IS FURTHER ORDERED** that, as to Inose's claims for relief against Desert Valley  
4 for: 1) Breach of Contract, 2) Breach of the Implied Covenant of Good Faith and Fair Dealing, 3)  
5 Unjust Enrichment, and 4) Intentional Interference with Prospective Economic Advantage; the  
6 Court finds in favor of Desert Valley and against Inose. Thus, Inose's claims are dismissed with  
7 prejudice.

8 **IT IS FURTHER ORDERED** that no damages are awarded to either party and neither  
9 party is considered the prevailing party.

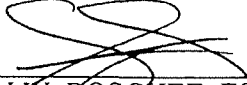
10 **IT IS FURTHER ORDERED** that the Court will address any issues of attorneys' fees,  
11 costs, and prejudgment interest though post-decision motions that may be filed with the Court.

12 **IT IS SO ORDERED.**


13 DATED this 30<sup>th</sup> day of August, 2019

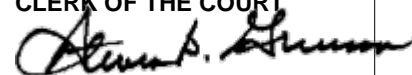
14   
15 DISTRICT COURT JUDGE 40

16 Respectfully Submitted by:  
17 **HOLLEY DRIGGS WALCH**  
18 **FINE PUZEY STEIN & THOMPSON**

19   
20 **BRIAN W. ROSCHEE, ESQ. (NBN 7612)**  
21 **SEAN E. STORY, ESQ. (NBN 13968)**  
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*Attorneys for Defendant IN-LO Properties and  
Defendant/Counterclaimant Eugene Inose*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DESERT VALLEY CONTRACTING, INC. a  
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability  
company; EUGENE INOSE, an individual;  
JEFFREY LOUIE, an individual; DOES 1  
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a  
Nevada corporation; DOES I through X,  
inclusive, and ROE CORPORATIONS I through  
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C  
Dept. No.: XV

**NOTICE OF ENTRY OF AMENDED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW FOLLOWING  
REMAND**

PLEASE take notice that the Amended Finding of Fact and Conclusions of Law in the  
above-entitled matter was filed and entered by the Clerk of the above-entitled Court on the 1<sup>st</sup> day

///

///

///

///



1 of July, 2021, a copy of which is attached hereto.

2 Dated this 6<sup>th</sup> day of July, 2021.

3 **HOLLEY DRIGGS**

4 /s/Brian W. Boschee

5 BRIAN W. BOSCHEE, ESQ.

6 Nevada Bar No. 7612

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11 *Attorneys for Defendants*

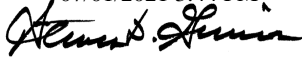
**CERTIFICATE OF SERVICE**

The undersigned, an employee of Holley Driggs, hereby certifies that on the 6<sup>th</sup> day of July, 2021, a copy of **NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING REMAND** was served via electronic service to all interested parties, through the Court's Odyssey E-File & Serve to the addresses below.

Carrie E. Hurtik, Esq.  
Rachel L. Shelstad, Esq.  
HURTIK LAW & ASSOCIATES  
6767 West Tropicana Ave., #200  
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*Attorneys for Plaintiff/Counterdefendant*

/s/Madeline VanHeuvelen  
An employee of HOLLEY DRIGGS

  
CLERK OF THE COURT

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*Attorneys for Defendant IN-LO Properties and  
Defendant/Counterclaimant Eugene Inose*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DESERT VALLEY CONTRACTING, INC. a  
Nevada corporation,

Plaintiff,

v.

IN-LO PROPERTIES, a Nevada limited liability  
company; EUGENE INOSE, an individual;  
JEFFREY LOUIE, an individual; DOES 1  
through 10; and ROE ENTITIES 1 through 10,

Defendants.

EUGENE INOSE, an individual;

Counterclaimant.

v.

DESERT VALLEY CONTRACTING, INC., a  
Nevada corporation; DOES I through X,  
inclusive, and ROE CORPORATIONS I through  
X, inclusive,

Counterdefendants.

Case No.: A-16-734351-C  
Dept. No.: XV

**AMENDED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW FOLLOWING  
REMAND**

**Hearing Date: June 2, 2021  
Hearing Time: 10:00 a.m.**

This matter came on for hearing on June 2, 2021, at 10:00 a.m., upon the Nevada Supreme Court's March 3, 2021, Order of Reversal and Remand, the Honorable Joe Hardy Jr. presiding. Brian W. Boschke, Esq. and Jessica M. Lujan, Esq., of the law firm Holley Driggs appeared on behalf of Defendant IN-LO PROPERTIES ("In-Lo") and Defendant/Counterclaimant EUGENE INOSE ("Inose" and collectively, "Defendants") and Carrie E. Hurtik, Esq., of the law firm Hurtik Law & Associates appeared on behalf of Plaintiff/Counter-defendant DESERT VALLEY

HOLLEY DRIGGS

1 CONTRACTING, INC. (“Desert Valley” or “Plaintiff”).

2 The Court, having heard the arguments of counsel and having considered the Nevada  
3 Supreme Court’s Order of Reversal and Remand, the parties’ supplemental briefs on remand and  
4 any exhibits attached thereto, the Court’s previous Findings of Fact and Conclusions of law dated  
5 September 3, 2019, and the other papers and pleadings on file herein, the Court hereby enters the  
6 following Amended Findings of Fact and Conclusions of Law on remand. To the extent any finding  
7 of fact should properly be designated a conclusion of law, it shall be deemed a conclusion of law.  
8 To the extent any conclusion of law should properly be designated a finding of fact, it shall be  
9 deemed a finding of fact.

## 10 **FINDINGS OF FACT**

### 11 **a. Relevant Procedural History**

12 1. This matter came on for bench trial before this Court on April 8–11, 2019, June 19–  
13 21, 2019, and July 24, 2019.

14 2. On September 3, 2019, the Court entered its Findings of Fact and Conclusions of  
15 Law, ultimately finding that neither side had proven their damages by a preponderance of the  
16 evidence, which is an essential element of all the claims/counterclaims asserted. *See* Findings of  
17 Fact and Conclusions of Law (“FFCL”), on file herein. Accordingly, the Court awarded neither  
18 side damages. *Id.*

19 3. Thereafter, on February 6, 2020, the Court granted Defendants an award of  
20 attorneys’ fees and costs under NRCP 68 pursuant to an offer of judgment Defendants made to  
21 Plaintiff in May 2017, whereby Defendants would allow judgment to be entered against them in  
22 exchange for \$50,000 paid to Plaintiff. As Plaintiff failed to obtain an award of damages in excess  
23 of the \$50,000 offer of judgment, an award of attorneys’ fees and costs in favor of Defendants was  
24 appropriate. *See* Order Regarding Defendant’s Motion for Attorneys’ Fees and Costs (“Order  
25 Granting Fees”), on file herein.

26 4. Following entry of the Court’s FFCL, Plaintiff timely appealed to the Nevada  
27 Supreme Court. *See* Notice of Appeal, on file herein.

28 5. On March 3, 2021, the Nevada Supreme Court entered its Order of Reversal and

1 Remand (the “Remand Order”). In its Remand Order, the Nevada Supreme Court held that the  
2 District Court erred when it construed a scrivener’s error in the subject Construction Agreement  
3 as an ambiguity and thus construed the provision against the drafter, Plaintiff Desert Valley. *See*  
4 Remand Order at 4.

5 6. The Construction Agreement provides, in pertinent part, as follows:

6 Should Client terminate the Contractor after work has begun, but not  
7 completed in full, the Client shall be responsible for any and all fees  
8 and costs associated with the work performed, plus the profit that  
the client would have made on the job had Client not repudiated the  
contract.

9 Construction Agreement, Trial Ex. 560 (emphasis added).

10 7. The Nevada Supreme Court held that the words “the client” is a scrivener’s error  
11 and not an ambiguity, and should therefore be reformed to reference the contractor, Desert Valley.  
12 *See* Remand Order at 4. However, because the Nevada Supreme Court could not “say whether the  
13 district court’s error was harmless here, we reverse the judgment and remand for further  
14 proceedings.” *Id.* at 5.

15 8. “In particular,” the Nevada Supreme Court continued, “the [district] court did not  
16 determine who breached first or if the breaches were mutual, thereby precluding relief.” *Id.* (citing  
17 *Cain v. Price*, 134 Nev. 193, 196, 415 P.3d 25, 29 (2018) (“one party’s material breach of its  
18 promise discharges the non-breaching party’s duty”); *Westinghouse Elec. Corp. v. Garrett Corp.*,  
19 601 F.2d 155, 158 (4th Cir. 1979) (observing that under general contract law, “in proper  
20 circumstances a court may refuse to allow recovery by either party to an agreement because of  
21 their mutual fault”)).

22 9. Thus, the Nevada Supreme Court instructed this Court to “address whether, in light  
23 of the evidence presented, the contract, once reformed to omit the scrivener’s error, entitled Desert  
24 Valley to its expected profit and overhead in the event of termination by Inose.” *Id.*

25 10. The Remand Order did not reverse any other findings of fact in the FFCL besides  
26 the scrivener’s error in the Construction Agreement, thereby leaving all other findings of fact in  
27 the FFCL intact. *See* Remand Order.

28 11. On April 21, 2021, the Court entered a minute order directing the parties to submit

1 supplemental briefs discussing the issues on remand, which the parties submitted to the Court on  
2 May 21, 2021. *See* Plaintiff's Briefing as to Supreme Court Ruling; Defendant's Supplemental  
3 Brief on Remand, both dated May 21, 2021, on file herein.

4 12. The parties appeared before the Court on June 2, 2021, at 10:00 a.m. and presented  
5 oral argument in support of their respective positions on remand.

6 **b. Amendments to September 3, 2019, FFCL Following Remand**

7 13. Because the Nevada Supreme Court reversed only one of the Court's prior findings  
8 of fact, the Court hereby incorporates by reference and readopts the findings of fact as stated in  
9 the FFCL dated September 3, 2019, *with the exception of* ¶¶ 1–3 at page 18 (discussing the  
10 "ambiguity" in the Construction Agreement), and hereby substitutes those paragraphs' findings as  
11 follows:

- 12 a. Consistent with the Remand Order, the Court finds that the provision of the  
13 Construction Agreement which provides that, upon termination by the client,  
14 Desert Valley would be entitled to its costs "plus the profit that the client would  
15 have made on the job had Client not repudiated the contract" contains a scrivener's  
16 error, and is hereby reformed to entitle Desert Valley to the profit it would have  
17 made in the event the client repudiated, notwithstanding any other facts or  
18 circumstances which might preclude recovery by Desert Valley. *See* Remand Order  
19 at 4–5.

20 **c. Additional Findings of Fact Following Remand**

21 Based on the Court's prior FFCL, the parties' supplemental briefs on remand, the  
22 arguments set forth by counsel at the June 2, 2021, hearing on this matter, and the instructions of  
23 the Nevada Supreme Court in its Remand Order, the Court hereby makes additional findings of  
24 fact as follows:

25 14. The Court finds that both sides committed material breaches of the Construction  
26 Agreement.

27 15. The Court further finds that the first material breach of the Construction Agreement  
28 was committed by Desert Valley, when it stopped work on Defendants' construction project and

1 instructed the subcontractors to also stop performing work on the project.

2 16. The Court further finds that, even with the reformation of the Construction  
3 Agreement as set forth in the Remand Order, the parties failed to present sufficient evidence setting  
4 forth their respective damages by a preponderance of the evidence.

### 5 CONCLUSIONS OF LAW

6 1. Because the Nevada Supreme Court reversed only one of the Court's prior findings  
7 of fact, the Court hereby incorporates by reference and readopts the conclusions of law as stated  
8 in the FFCL dated September 3, 2019, *with the exception of* ¶¶ 1–3 at page 18 (discussing the  
9 “ambiguity” in the Construction Agreement), and hereby adopts additional conclusions of law  
10 consistent with the Remand Order, as follows.

11 2. “When parties exchange promises to perform, one party's material breach of its  
12 promise discharges the non-breaching party's duty to perform.” *Cain v. Price*, 134 Nev. 193, 196,  
13 415 P.3d 25, 29 (2018) (citing Restatement (Second) of Contracts § 237 (Am. Law Inst. 1981)).

14 3. Further, under general contract law, “courts have held that in some instances where  
15 both parties are at fault (or in default) neither may recover. . . Whether this doctrine is described  
16 as failure of consideration, failure to satisfy a condition precedent, or mutual breach of contract, it  
17 is clear that in proper circumstances a court may refuse to allow recovery by either party to an  
18 agreement because of their mutual fault, which in contract terms might be more properly described  
19 as mutual default.” *Westinghouse Elec. Corp. v. Garrett Corp.*, 601 F.2d 155, 158 (4th Cir. 1979)  
20 (internal citations omitted).

21 4. Thus, the Court finds that the single error upon which the Nevada Supreme Court  
22 reversed this Court's Judgment was harmless, and does not alter the Court's final determination  
23 that neither side is entitled to an award of damages for the following reasons:

24 a. The parties' mutual breaches of the Construction Agreement preclude recovery by  
25 either side, despite the now-reformed scrivener's error in the Construction  
26 Agreement;

27 b. In the alternative, the Court holds that Desert Valley is precluded from recovering  
28 on its contract claims despite the now-reformed scrivener's error in the

Construction Agreement, as Desert Valley was the first party to materially breach the Construction Agreement.

c. Also in the alternative, the Court holds that Desert Valley has failed to prove its damages by a preponderance of the evidence despite the now-reformed scrivener's error in the Construction Agreement, such that even if Desert Valley had not materially breached the Construction Agreement, it still would not be entitled to damages on any of its claims.

5. As neither side is entitled to recovery based on their failure to establish damages by a preponderance of the evidence, neither party is the prevailing party in this action.

6. Because Desert Valley still has not obtained an award of damages in excess of Defendants' May 2017 offer of judgment following the Nevada Supreme Court's reversal and remand, the Court's February 6, 2020, award of fees and costs in favor of Defendants is still appropriate under NRCP 68 and shall continue to be in full legal force and effect. Moreover, the Order Granting Fees was not the subject of Desert Valley's appeal, and the Nevada Supreme Court did not reverse or otherwise disturb the Order Granting Fees in its Remand Order.

7. Finally, the Court holds that a new bench trial is not necessary to fully address the issues stated in the Remand Order, as both Plaintiff and Defendants had a full and fair opportunity to present documents and witnesses at trial. Moreover, both sides agreed that the issues could be resolved without need of additional documentary evidence and witness testimony, and as neither side requested leave to introduce new evidence in support of their respective positions.

**IT IS SO ORDERED.**

Dated this 1st day of July, 2021



**2EA 680 48F3 D51E  
Joe Hardy  
District Court Judge**

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Respectfully submitted by:

**HOLLEY DRIGGS**

/s/ Brian W. Boschee

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Approved as to form and content by:

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*Attorneys for Plaintiff/Counter-defendant,  
Desert Valley Contracting, Inc.*

## Madeline VanHeuvelen

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**From:** Brian Boschee  
**Sent:** Wednesday, June 30, 2021 4:43 PM  
**To:** Madeline VanHeuvelen  
**Subject:** Fwd: Order Regarding Remand

Sent from my iPhone

Begin forwarded message:

**From:** Jonathan Patterson <jpatterson@hurtiklaw.com>  
**Date:** June 30, 2021 at 4:38:21 PM PDT  
**To:** Brian Boschee <bboschee@nevadafirm.com>  
**Subject:** RE: Order Regarding Remand

Yes, sorry. You can affix my e-signature.

Thank You,

Jonathon Patterson, Esq.  
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**From:** Brian Boschee <bboschee@nevadafirm.com>  
**Sent:** Wednesday, June 30, 2021 4:37 PM  
**To:** Jonathan Patterson <jpatterson@hurtiklaw.com>  
**Cc:** Carrie Hurtik <churtik@hurtiklaw.com>; Madeline VanHeuvelen <mvanheuvelen@nevadafirm.com>; Jessica M. Lujan <jlujan@nevadafirm.com>  
**Subject:** RE: Order Regarding Remand

Great. Can we insert your e-signature? Assuming so, Maddie, please get this submitted. Thanks!

**Brian W. Boschee**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Desert Valley Contracting Inc,  
Plaintiff(s)

CASE NO: A-16-734351-C

7 vs.

DEPT. NO. Department 15

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9 IN-LO Properties LLC,  
Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 7/1/2021

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