

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of:

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION
INVESTMENTS, LLC,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84443

District Court Case No. CV18-00764

JOINT APPENDIX

VOLUME 2

Pages 114 – 250

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JAY KVAM

APPELLANT'S APPENDIX ALPHABETICAL INDEX				
	DOCUMENT	DATE	VOL.	PAGE
1.	Affidavit of Jay Kvam in Support of Reply to Opposition to Motion for Dissolution	08/01/18	1	94-99
2.	Affidavit of Jay Kvam in Support of Reply to Opposition to Motion to Dismiss and for Summary Judgment	11/19/18	2	205-213
3.	Answer and Counterclaim	06/05/18	1	10-23
4.	Answer to First Amended Verified Complaint	02/19/19	3	390-394
5.	Answer to Plaintiff's Motion to Disqualify Judge	04/14/20	13	1912-1919
6.	Answer to Second Amended Verified Complaint	09/25/19	5	769-773
7.	Application for Setting	08/25/21	14	2140
8.	Complaint (Verified)	04/11/18	1	1-9
9.	Declaration of Michael L. Matuska In Support of Plaintiff's First Motion to Compel	03/15/19	3	470-472
10.	Declaration of Michael L. Matuska in Support of Plaintiff's First Motion to Compel	03/27/19	4	522-527
11.	Declaration of Michael L. Matuska In Support of Plaintiff's Second Motion to Compel	11/26/19	6	974-977
12.	First Amended Counterclaim (Mineau & Legion Investments, LLC)	10/05/18	2	114-127
13.	First Amended Verified Complaint	01/31/19	3	379-389
14.	First Motion in Limine (Plaintiff)	02/14/20	12	1609-1642
15.	First Motion to Compel (Plaintiff)	03/15/19	3	395-469
16.	Minutes – Oral Arguments 01/04/22	01/12/22	14	2145-2146
17.	Minutes – Settlement Conference	02/24/20	12	1678
18.	Motion for Dissolution	07/11/18	1	44-51
19.	Motion for Leave to Exceed Page Limit	01/16/20	9	1248-1250

20.	Motion for Leave to File Amended Complaint	12/24/18	3	273-298
21.	Motion for Leave to File Second Amended Complaint	06/19/19	4	620-656
22.	<p>Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; For Discovery Sanctions; and For Other Relief (Plaintiff)</p> <p>Exhibit 1 – Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories</p> <p>Exhibit 2 – Declaration of Brian Mineau, Ex. 1 to Opposition to Motion for Leave to File Amended Complaint, Filed January 14, 2019</p> <p>Exhibit 3 – Declaration of Brian Mineau, Ex. 1 to Reply in Support of Motion for Protective Order, Filed February 25, 2019</p> <p>Exhibit 4 – Declaration of Brian Mineau, Ex. 1 to Motion for Summary Judgment, Filed January 6, 2020, Excerpts</p> <p>Exhibit 5 – Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Requests for Production of Documents</p> <p>Exhibit 6 – Slack Messages Dated November 25, 2017 Between Jay Kvam and Bradley Tammen</p>	01/24/20	12	1518-1564
23.	<p>Motion for Summary Judgment</p> <p>Exhibit 1 – Declaration of Brian Mineau</p> <p>Exhibit 2 – Terms of Agreement between Legion Investments LLC (its Members) and Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street, Chicago Illinois</p> <p>Exhibit 3 – February 13, 2017 Wire Transfer Confirmation in the amount of \$44,000.00</p> <p>Exhibit 4 – February 13, 2017 Wire Transfer Confirmation in the amount of \$784.31</p> <p>Exhibit 5 – March 6, 2017 Colleen Burke text message</p> <p>Exhibit 6 – March 19, 2017 email from Colleen Burke to Brian Mineau</p>	01/06/20	7	1003-1136

	<p>Exhibit 7 – Contractor Agreement with TNT dated March 23, 2017</p> <p>Exhibit 8 – March 23, 2017 Wire Transfer Confirmation in the amount of \$20,020.00</p> <p>Exhibit 9 – Floor Plans</p> <p>Exhibit 10 – Email chain transmitting floor plans dated April 9, 2017</p> <p>Exhibit 11 – Email chain dated April 14, 2017</p> <p>Exhibit 12 – General Wire Transfer Request</p> <p>Exhibit 13 – Minutes Special Meeting Atlas Investors Southside, LLC, Friday, May 5, 2017</p> <p>Exhibit 14 – Text chain between Brian Mineau, Jay Kvam and Michael Spinola with pictures of the property</p> <p>Exhibit 15 – Text chain dated May 15, 2017 with photos</p> <p>Exhibit 16 – “Slack” thread dated May 17, 2017</p>			
23.	<p>Motion for Summary Judgment – continued</p> <p>Exhibit 17 – Wire Transfer Receipt dated May 18, 2017 in the amount of \$9,000.00</p> <p>Exhibit 18 – “Slack” thread dated May 21, 2017</p> <p>Exhibit 19 – Outgoing Domestic Wire Transfer Request dated May 26, 2017</p> <p>Exhibit 20 – Text message dated May 27, 2017 to May 31, 2017</p> <p>Exhibit 21 – Text messages dated May 31, 2017</p> <p>Exhibit 22 – Text messages dated June 1, 2017 to June 20, 2017</p> <p>Exhibit 23 – City of Chicago Department of Buildings records</p> <p>Exhibit 24 – Email chain between Jay Kvam and Brian Mineau</p> <p>Exhibit 25 – Jay Kvam letter to Brian Mineau dated December 31, 2017</p> <p>Exhibit 26 – Michael Matuska letter to Brian Mineau dated February 16, 2018</p> <p>Exhibit 27 – Michael Matuska letter to Austin Sweet dated September 19, 2018</p> <p>Exhibit 28 – Exclusive Right to Sell Listing Agreement</p>	01/06/20	8	1137-1225

	Exhibit 29 – Residential Real Estate Purchase and Sale Contract Exhibit 30 – Citywide Title Corporation ALTA Settlement Statement – Cash Exhibit 31 – Summary of the Annual Cash Flows relating to the Property for 2017 Exhibit 32 – Summary of the Annual Cash Flows relating to the Property for 2018			
24.	Motion for Partial Summary Judgment (Plaintiffs) Exhibit 1 – Declaration of Michael L. Matuska Exhibit 2 – Declaration of Jay Kvam Exhibit 3 – Letter dated February 16, 2018 from Michael L. Matuska to Brian Mineau Exhibit 4 – Letter dated March 8, 2018 from Austin K. Sweet to Michael L. Matuska Exhibit 5 – Closing Statement dated November 16, 2018	06/25/21	14	2049-2077
25.	Motion for Summary Judgment (Defendants)	07/02/21	14	2085-2091
26.	Motion for Temporary Restraining Order and Preliminary Injunction	11/30/18	2	214-250
27.	Motion to Dismiss Counterclaim, and for Summary Judgment	10/25/18	2	128-167
28.	Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	06/25/18	1	24-43
29.	Motion to Disqualify Judge	04/07/20	13	1726-1911
30.	Notice of Appeal	06/29/20	14	2043-2044
31.	Notice of Appeal	03/25/22	14	2172-2173
32.	Notice of Deposit of Property Proceeds by Brian Mineau and Legion Investments, LLC	12/13/18	3	267-272
33.	Notice of Entry of Order – (Motion to Dismiss Counterclaim, and for Summary Judgment)	01/10/19	3	313-330
34.	Notice of Entry of Order – (Motion for TRO)	12/12/18	3	259-266
35.	Notice of Entry of Order (Motion to Dismiss Counterclaim)	09/06/18	1	103-113
36.	Notice of Entry of Order (Order Denying Motion to Disqualify the Presiding Judge)	04/27/20	13	1936-1947

37.	Notice of Entry of Order (Order Granting Motion for Leave)	09/11/19	5	746-755
38.	Notice of Entry of Order (Order Granting, in Part, and Denying, in Part Defendant's Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court's NRCP 56 Notice)	06/05/20	14	1993-2042
39.	Notice of Entry of Order (Order Granting Plaintiff's Motion for Partial Summary Judgment)	03/11/22	14	2157-2171
40.	Notice of Entry of Order (Order Modifying Scheduling Order)	08/05/19	5	740-745
41.	Notice of Trial and Pretrial Conference	06/12/19	4	605-608
42.	Notice of Transfer to Court of Appeals (Supreme Court)	04/08/21	14	2045
43.	Objection to Plaintiff's Amended Pretrial Disclosures Pursuant to NRCP 16.1 (Defendants)	02/17/20	12	1648-1659
44.	Objection to Recommendation for Order (Defendants)	01/13/20	9	1238-1242
45.	Objections to "Legion and Mineau's" 16.1 Pretrial Disclosures (Plaintiff)	02/14/20	12	1643-1647
46.	Objections to Report of Commissioner (Plaintiff)	04/16/19	4	552-574
47.	Opposition to Defendant's Motion For Summary Judgment; and Cross Motion for Partial Summary Judgment Exhibit 1 – Declaration of Jay Kvam Exhibit 2 – Text dated December 29, 2016 Exhibit 3 – Project costs breakdown Exhibit 4 – Text dated March 20, 2017 Exhibit 5 – January 2, 2017 email and Unsigned Triple "R" Construction Contract Exhibit 6 – Purchase Agreement dated January 3, 2017 Exhibit 7 – \$44,000 Wire dated February 13, 2017 Exhibit 8 – \$784.31 Wire dated February 13, 2017 Exhibit 9 – Settlement Statement dated February 13, 2017 Exhibit 10 – Warranty Deed dated January 30 2017	01/16/20	10	1251-1370

	<p>Exhibit 11 – Terms of Agreement dated February 14, 2017</p> <p>Exhibit 12 – Text dated February 17, 2017</p> <p>Exhibit 13 – Text dated March 16, 2017</p> <p>Exhibit 14 – Email dated March 20, 2017</p> <p>Exhibit 15 – DocuSign Certificate March 20, 2017</p> <p>Exhibit 16 – Text dated March 23, 2017</p> <p>Exhibit 17 – Email dated March 23, 2017</p> <p>Exhibit 18 – \$20,000 Wire dated March 23, 2017</p> <p>Exhibit 19 – Text dated April 13, 2017</p> <p>Exhibit 20 – \$20,000 Wire dated April 14, 2017</p> <p>Exhibit 21 – \$9,000 Wire dated May 18, 2017</p> <p>Exhibit 22 – Email dated May 21, 2017</p> <p>Exhibit 23 – Email dated June 5, 2017</p> <p>Exhibit 24 – Email dated July 14, 2017</p> <p>Exhibit 25 – Email dated June 26, 2017</p> <p>Exhibit 26 - Email dated August 12, 2017</p> <p>Exhibit 27 – Email dated August 16, 2017</p>			
47.	<p>Opposition to Defendant’s Motion for Summary Judgment and Cross Motion for Partial Summary Judgment - continued</p> <p>Exhibit 28 – Email dated September 25, 2017</p> <p>Exhibit 29 – Email dated October 12, 2017</p> <p>Exhibit 30 – Email dated November 5, 2017</p> <p>Exhibit 31 – Email chain November 19, 2017 – January 23, 2018</p> <p>Exhibit 32 – Inspection #12270203 report of August 7, 2019</p> <p>Exhibit 33 – Inspection #12274840 report of August 7, 2019</p> <p>Exhibit 34 – Inspection #12288430 report of August 7, 2019</p> <p>Exhibit 35 – Settlement Statement dated November 16, 2018</p> <p>Exhibit 36 – Warranty Deed dated November 5, 2018</p> <p>Exhibit 37 – Deposition of Michelle Salazar, Excerpt</p> <p>Exhibit 38 – Deposition of Colleen Burke, Excerpt</p> <p>Exhibit 39 – Declaration of Michael L. Matuska</p>	01/16/20	11	1371-1495

	Exhibit 40 – Declaration of Benjamin Steele Exhibit 41 – Plaintiff’s Expert Witness Disclosure (report of Benjamin Steele dated September 24, 2019) w/o exhibits Exhibits 42 – Amended Report of Expert Witness Benjamin Steele dated January 15, 2020 Exhibit 43 – Brian Mineau and Legion Investments’ Responses to Plaintiff Jay Kvam’s First Set of Interrogatories Exhibit 44 – Michael L. Matuska’s letter to Austin Sweet dated September 19, 2018 Exhibit 45 – Austin Sweet letter to Michael Matuska dated March 26, 2018 Exhibit 46 – Real Estate Contract – Scotch and Soda Goldmine Company, Inc. acceptance date of May 22, 2018 Exhibit 47 – Real Estate Contract – Mutual Happiness LLC dated July 3, 2018 Exhibit 48 – Appendix A: Legal Authority: Restatement of the Law, Second – Contracts 2d Excerpts from Volumes 1 and 2			
48.	Opposition to Defendant’s Motion for Summary Judgment	07/30/21	14	2098-2127
49.	Opposition to Motion for Dissolution	07/26/18	1	73-87
50.	Opposition to Motion for Leave to File Amended Complaint	01/14/19	3	331-339
51.	Opposition to Motion for Leave to File Second Amended Complaint	07/01/19	4	657-665
52.	Opposition to Motion for Partial Summary Judgment	07/02/21	14	2078-2084
53.	Opposition to Motion for Reconsideration of Order Affirming Discovery Commissioner’s Recommendation, Entered May 16, 2019; For Discovery Sanctions; and For Other Relief	02/07/20	12	1591-1600
54.	Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment	11/13/18	2	168-190
55.	Opposition to Motion to Dismiss Counterclaim, or Alternatively, For A More Definite Statement	07/12/18	1	52-62

56.	Opposition to Plaintiff's First Motion in Limine	02/28/20	13	1712-1715
57.	Opposition to Plaintiff's First Motion to Compel	03/25/19	4	473-512
58.	Opposition to Plaintiff's Second Motion to Compel	12/06/19	6	978-987
59.	Order (Motion for Dissolution)	09/04/18	1	100-102
60.	Order (Motion For Leave to File Amended Complaint)	01/29/19	3	376-378
61.	Order (Motion to Dismiss Counterclaim, and for Summary Judgment)	01/09/19	3	299-312
62.	Order (Notice of and Order for Audio/Visual Hearing)	10/29/21	14	2141-2411
63.	Order Accepting Case Reassignment	06/06/19	4	602-604
64.	Order Affirming Master's Recommendation	05/16/19	4	593-601
65.	Order of Affirmance	06/21/21	14	2046-2048
66.	Order After Pretrial Conference	01/15/20	9	1245-1247
67.	Order Denying Motion to Disqualify the Presiding Judge	04/23/20	13	1929-1935
68.	Order Granting Plaintiff's Motion for Partial Summary Judgment	03/10/22	14	2147-2156
69.	Order Granting Temporary Restraining Order	12/03/18	3	251-255
70.	Order Granting, in Part, and Denying, in Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice	06/05/20	14	1948-1992
71.	Order Modifying Scheduling Order	08/05/19	5	738-739
72.	Order Referring Discovery Motion to Commissioner for Recommendation [Defendants' Second Motion to Compel]	12/18/19	6	1000-1002
73.	Order Scheduling Settlement Conference	01/30/20	10	1565-1569
74.	Order to Set Hearing on Motions for Summary Judgment	08/11/21	14	2137-2139

75.	Pre-Trial Conference Minutes	01/14/20	9	1243-1244
76.	Pretrial Disclosures (Defendants)	01/31/20	12	1570-1577
77.	Pretrial Disclosures (Plaintiff)	01/31/20	12	1578-1583
78.	Pretrial Disclosures, Amended (Plaintiff)	02/03/20	12	1584-1590
79.	Recommendation for Order	04/09/19	4	528-551
80.	Recommendation for Order	01/10/20	9	1226-1237
81.	Remittitur	07/19/21	14	2097
82.	Reply in Support of Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, entered May 16, 2019; For Discovery Sanctions and For Other Relief (Plaintiff)	02/09/20	12	1601-1608
83.	Reply in Support of Motion for Summary Judgment	01/23/20	12	1501-1517
84.	Reply in Support of Motion for Summary Judgment	08/09/21	14	2128-2136
85.	Reply to Answer to Motion to Disqualify Judge	04/22/20	13	1920-1928
86.	Reply to Defendants' Response to Objection to Report of Commissioner (Plaintiff)	04/30/19	4	588-592
87.	Reply to Opposition to First Motion in Limine (Plaintiff)	03/04/20	13	1716-1725
88.	Reply to Opposition to First Motion to Compel (Plaintiff)	03/27/19	4	513-521
89.	Reply to Opposition to Motion for Dissolution	08/01/18	1	88-93
90.	Reply to Opposition to Motion for Leave to File Amended Complaint	01/21/19	3	340-357
91.	Reply to Opposition to Motion for Leave to File Amended Complaint	01/22/19	3	358-375
92.	Reply to Opposition to Motion for Leave to File Second Amended Complaint	07/08/19	5	666-730
93.	Reply to Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment	11/19/18	2	191-204

94.	Reply to Opposition to Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	07/17/18	1	63-72
95.	Reply to Opposition to Plaintiff's Second Motion to Compel (Plaintiff)	12/11/19	6	988-999
96.	Reply to Opposition to Plaintiff's Motion for Partial Summary Judgment	07/07/21	14	2092-2096
97.	Request for Submission – Order Granting Motion for Leave to File Second Amended Complaint	07/08/19	5	731-734
98.	Response to Objection to Recommendation for Order	01/21/20	12	1496-1500
99.	Response to Plaintiff's Objection to Report of Commissioner	04/25/19	4	575-587
100.	Second Amended Verified Complaint	09/11/19	5	756-768
101.	Second Motion to Compel (Plaintiff) Exhibit 1 – Letter to Austin Sweet of November 13, 2019 Exhibit 2 – Terms of Agreement Exhibit 3 – February 13, 2017 Wire Transfer Confirmation in the amount of \$44,000.00 Exhibit 4 – February 13, 2017 Wire Transfer Confirmation in the amount of \$784.31 Exhibit 5 – March 23, 2017 Wire Transfer Confirmation in the amount of \$20,000.00 Exhibit 6 – April 14, 2017 Wire Transfer Request in the amount of \$20,000.00 Exhibit 7 – Wire Transfer Receipt dated May 18, 2017 in the amount of \$9,000.00 Exhibit 8 – Response to Interrogatory No. 6 Exhibit 9 – Contractor Agreement Exhibit 10 – Text Message dated March 23, 2017 Exhibit 11 – Text Message dated April 13, 2017 Exhibit 12 – Excerpt from Colleen Burke's Deposition Exhibit 13 – Closing Statement dated November 16, 2018 Exhibit 14 – Plaintiff's Expert Witness Disclosure – Report of Benjamin C. Steele, CPA, CGMA Exhibit 15 – Text Message dated February 17, 2017	11/26/19	6	774-973

	Exhibit 16 – TNT Complete Facility Care, Inc. – Chase Bank Statements Account #1855 Exhibit 17 – TNT Strategic Facility, Inc. Bank records Account #1220 Exhibit 18 – Plaintiff’s First Set of Requests for Admission Exhibit 19 – Plaintiff’s Fourth Set of Requests for Production of Documents Exhibit 20 – Responses to Plaintiff’s First Set of Requests for Admission Exhibit 21 – Responses to Plaintiff’s Fourth Set of Requests for Production of Documents Exhibit 22 – Attorney’s Fees Ledger			
102.	Stipulation to Deposit Funds; Order	12/12/18	3	256-258
103.	Stipulation to Modify Scheduling Order	08/01/19	5	735-737
104.	Stipulation to Vacate Trial	02/27/20	11	1705-1707
105.	Supplement to Plaintiff’s Motion for Reconsideration of Order Affirming Discovery Commissioner’s Recommendation, Entered May 16, 2019; for Discovery Sanctions; and for Other Relief	02/27/20	13	1708-1711
106.	Supplemental Uniform Pretrial Order	06/12/19	4	609-619
107.	Transcript – Hearing December 17, 2018	12/17/18	15	2174-2231
108.	Transcript – Motions for Summary Judgment January 4, 2022	01/04/22	15	2372-2394
109.	Transcript – Oral Arguments (Motion for Summary Judgment) February 11, 2020	02/11/20	15	2276-2326
110.	Transcript - Pretrial Conference January 14, 2020 (w/correction page) [Note: page 6 line 21 was corrected to reflect that the speaker was Mr. Matuska]	01/14/20	15	2232-2275
111.	Transcript - Pretrial Conference & Pretrial Motions February 27, 2020	02/27/20	15	2327-2371
112.	Trial Statement (Defendants)	02/24/20	10	1660-1677
113.	Trial Statement (Plaintiff)	02/26/20	10	1679-1704

1 **CODE 1120**

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11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 JAY KVAM,

Case No. CV18-00764

14 Plaintiff / Counterdefendant,

Dept. No. 3

15 vs.

16 BRIAN MINEAU; LEGION INVESTMENTS,
17 LLC; 7747 S. May Street, an Unincorporated
18 Joint Venture; and DOES I-X, inclusive,

19 Defendants / Counterclaimants.
20 _____/

21 **FIRST AMENDED COUNTERCLAIM**

22 BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and
23 through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., and in
24 accordance with the Court's September 5, 2018 *Order*, allege and complain as follows:

25 1. Prior to 2018, Mineau, JAY KVAM ("Kvam"), and Michael Spinola engaged in a
26 number of successful investment transactions through various legal entities.

27 2. In February 2017, Legion and Kvam entered into an agreement (the "Agreement")
28 involving a property located at 7747 S. May Street, Chicago, Illinois (the "House").

3. The Agreement was drafted by Kvam.

4. Pursuant to the Agreement, Legion acquired the House.

5. Pursuant to the Agreement, Kvam paid the seller directly to fund Legion's acquisition
of the House.

1 6. Pursuant to the Agreement, Legion began renovating the House for resale.

2 7. Pursuant to the Agreement, Kvam paid the contractor directly to fund the renovations.

3 8. The Agreement does not include a defined maturity date or a defined rate of return

4 because those terms were undefined and unknown to the parties when the Agreement was made.

5 9. All parties to the Agreement knew that this was a high-risk investment with a potential

6 for high returns.

7 10. The House is located in a dangerous and crime-ridden area of the south side of

8 Chicago, which creates various difficulties with renovations.

9 11. For reasons beyond any of the parties' knowledge, control, or expectation, the

10 contractor initially hired to perform the renovations was unable to complete the job.

11 12. Legion undertook the difficult process of identifying and retaining a competent,

12 trustworthy, and affordable contractor who was willing to work in the House's neighborhood.

13 13. At approximately the same time, Kvam had a falling out with Mineau and Michael

14 Spinola after Kvam refused to make a duly-imposed capital call in an unrelated investment company

15 called Atlas Investors Southside LLC ("Atlas").

16 14. Consequently, Kvam demanded to be "bought out" of the Agreement. Legion

17 declined to modify the Agreement and informed Kvam that, pursuant to the Agreement, he would be

18 paid what he is owed under the Agreement when the House is sold.

19 15. After Legion and Mineau refused to renegotiate the terms of the Agreement, Kvam

20 began undertaking efforts to interfere with Mineau's business investments and harm Mineau's

21 business relationships in an effort to coerce Mineau and Legion into renegotiating the terms of the

22 Agreement and/or to retaliate against Mineau.

23 16. Among other things, Kvam wrongfully and fraudulently accessed Atlas's bank

24 accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on

25 or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently

26 accessed Atlas's checking account and transferred \$20,000 out of Atlas's checking account to pay off

27 an interest-free credit card held by Atlas which would not come due for several more years. Kvam's

28 unauthorized actions caused Atlas's checking account to be overdrawn by more than \$10,000.00. As

1 a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate
2 operating funds and avoid drastic financial and business consequences. Mineau and Legion were
3 consequently unable to invest those funds into the House.

4 17. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam
5 wrongfully and fraudulently turned off the power to the House without Legion's or Mineau's
6 knowledge, consent, or authorization, causing the pipes in the House to freeze, burst, and flood the
7 House. Kvam intentionally and knowingly withheld this material information from Legion and
8 Mineau, precluding Legion or Mineau from taking any steps to protect the House.

9 18. Among other things, after initiating this suit, Kvam caused his process servers to
10 harass, threaten, and intimidate Mineau's family. Specifically, Kvam's agents entered Mineau's
11 property and knocked on his front door in an effort to serve Mineau with process in this action.
12 Mineau's wife answered the door and informed the process servers that Mineau was not home. The
13 process servers raised their voices, threatened, and harassed Mineau's wife until she told them to
14 leave the property. The process servers refused to leave and continued to scream, threaten, and harass
15 Mineau's wife until she called the police. The process servers left before the police arrived, then
16 returned shortly after the police left and again entered the property and screamed at, threatened, and
17 harassed Mineaus' wife.

18 19. As a result of these actions, among others, Mineau and Legion have been forced to
19 retain counsel to pursue the claims listed below.

20 **FIRST CLAIM FOR RELIEF**
21 **(Breach of Contract)**

22 20. Mineau and Legion reallege the allegations contained in the other paragraphs of this
23 Counterclaim and incorporate them by reference as if fully set forth here.

24 21. Kvam alleges that the Agreement constitutes a binding legal contract.

25 22. To the extent that the Agreement constitutes a binding legal contract, Mineau and
26 Legion fulfilled all of their obligations pursuant to the Agreement and are entitled to full performance
27 from Kvam.

28 ///

FIFTH CLAIM FOR RELIEF
(Deceptive Trade Practices)

47. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.

48. Mineau and Legion entered into a business transaction with Kvam that is subject to the provisions of the Deceptive Trade Practices Act, NRS Chapter 598.

49. During the course of this transaction, Kvam used coercion, duress, and intimidation in an attempt to force Mineau and Legion to pay him more than he is entitled under the Agreement, pay him sooner than he is entitled under the Agreement, and/or renegotiate the terms of the Agreement to terms more favorable to Kvam.

50. Among other things, Kvam wrongfully and fraudulently accessed Atlas's bank accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred \$20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than \$10,000.00. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences.

51. Kvam's actions were designed and intended to deprive Mineau and Legion of operating capital and interfere with their other business ventures to the point where Mineau and Legion would acquiesce to Kvam's improper demands to prevent further damage.

52. Among other things, after initiating this suit, Kvam caused his process servers to harass, threaten, and intimidate Mineau's family. Specifically, Kvam's agents entered Mineau's property and knocked on his front door in an effort to serve Mineau with process in this action. Mineau's wife answered the door and informed the process servers that Mineau was not home. The process servers raised their voices, threatened, and harassed Mineau's wife until she told them to leave the property. The process servers refused to leave and continued to scream, threaten, and harass Mineau's wife until she called the police. The process servers left before the police arrived, then

1 returned shortly after the police left and again entered the property and screamed at, threatened, and
2 harassed Mineaus' wife.

3 53. Kvam's actions were designed and intended to harass and intimidate Mineau and his
4 family to the point where Mineau would acquiesce to Kvam's improper demands to prevent further
5 harassment.

6 54. By his actions described above, Kvam has engaged in deceptive trade practices by
7 using coercion, duress, and intimidation through the course of this transaction.

8 55. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages
9 in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

10 56. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result,
11 Mineau and Legion are entitled to an award of exemplary and punitive damages.

12 57. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to
13 retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount
14 of their attorneys' fees and costs expended in the defense and prosecution of this matter.

15 **SIXTH CLAIM FOR RELIEF**
16 **(Abuse of Process)**

17 58. Mineau and Legion reallege the allegations contained in the other paragraphs of this
18 Counterclaim and incorporate them by reference as if fully set forth here.

19 59. Through his actions described above, Kvam is using the statutes and laws of the State
20 of Nevada for an ulterior purpose and for private gain by wrongfully initiating, prosecuting, and
21 otherwise using this action not to resolve a legitimate legal dispute, but instead to force Mineau and
22 Legion to buy him out of the Agreement, pay him more than he is entitled under the Agreement,
23 and/or pay sooner than he is entitled under the Agreement.

24 60. Kvam's actions are willful, intentional, and not proper in the regular conduct of the
25 proceeding.

26 61. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages
27 in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

28 ///

62. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

63. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

SEVENTH CLAIM FOR RELIEF
(Trespass)

64. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.

65. Through his actions described above, Kvam intentionally caused his agents to physically enter Mineau's property without permission, after they had been instructed to leave Mineau's property, and without legal purpose or justification.

66. Kvam's agents acted intentionally and at Kvam's direction to invaded Mineau's property.

67. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

68. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

EIGHTH CLAIM FOR RELIEF
(Trespass to Chattels)

69. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.

70. Legion owns the House and all personal property within the House.

71. Through his actions described above, Kvam intentionally impaired the condition, quality, and value of the personal property within the House.

72. As a result of Kvam's actions, Legion has been deprived of the use and value of the personal property within the House.

1 73. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages
2 in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

3 74. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result,
4 Mineau and Legion are entitled to an award of exemplary and punitive damages.

5 75. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to
6 retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount
7 of their attorneys' fees and costs expended in the defense and prosecution of this matter.

8 **NINTH CLAIM FOR RELIEF**
9 **(Conversion)**

10 76. Mineau and Legion reallege the allegations contained in the other paragraphs of this
11 Counterclaim and incorporate them by reference as if fully set forth here.

12 77. Legion owns the House and all personal property within the House.

13 78. Through his actions described above, Kvam seriously interfered with Legion's rights
14 in the personal property within the House.

15 79. As a result of Kvam's actions, Legion has been deprived of the use and value of the
16 personal property within the House in its entirety.

17 80. Kvam's acts were and are in denial of, or inconsistent with, Legion's title or rights
18 therein.

19 81. Kvam's acts were and are in derogation, exclusion, or defiance of Legion's title or
20 rights therein.

21 82. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages
22 in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

23 83. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result,
24 Mineau and Legion are entitled to an award of exemplary and punitive damages.

25 84. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to
26 retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount
27 of their attorneys' fees and costs expended in the defense and prosecution of this matter.

28 ///

TENTH CLAIM FOR RELIEF
(Fraud)

85. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.

86. During the course of this transaction, Kvam used deception and fraud in an attempt to force Mineau and Legion to pay him more than he is entitled under the Agreement, pay him sooner than he is entitled under the Agreement, and/or renegotiate the terms of the Agreement to terms more favorable to Kvam.

87. Among other things, Kvam wrongfully and fraudulently accessed Atlas's bank accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred \$20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than \$10,000.00. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences.

88. Kvam intentionally concealed his actions from Mineau to avoid detection, knowing that he was not authorized to take these actions, that Mineau and Legion would object to such actions, and that such actions would harm Mineau and Legion. Kvam's actions were designed and intended to deprive Mineau and Legion of operating capital and interfere with their other business ventures to the point where Mineau and Legion would acquiesce to Kvam's improper demands to prevent further damage. Kvam's actions caused Mineau and Legion actual and material damages.

89. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off the power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam intentionally and knowingly withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

///

1 90. Kvam intentionally concealed his actions from Mineau to avoid detection, knowing
2 that he was not authorized to take these actions, that Mineau and Legion would object to such actions,
3 and that such actions would harm Mineau and Legion. Kvam's actions caused Mineau and Legion
4 actual and material damages.

5 91. Through his actions described above, Kvam intentionally deceived, defrauded, and
6 harmed Mineau and Legion.

7 92. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages
8 in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

9 93. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result,
10 Mineau and Legion are entitled to an award of exemplary and punitive damages.

11 94. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to
12 retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount
13 of their attorneys' fees and costs expended in the defense and prosecution of this matter.

14 **ELEVENTH CLAIM FOR RELIEF**
15 **(Negligence)**

16 95. Mineau and Legion reallege the allegations contained in the other paragraphs of this
17 Counterclaim and incorporate them by reference as if fully set forth here.

18 96. Kvam owed Mineau and Legion a duty to act with reasonable care to avoid damaging
19 Mineau, Legion, or their property.

20 97. During the course of this transaction, Kvam breached his duties to Mineau and Legion
21 by failing to act with reasonable care.

22 98. Among other things, Kvam improperly accessed Atlas's bank accounts and engaged
23 in unauthorized and unreasonable online banking transactions. Specifically, on or around March 6,
24 2018, without any legal authority whatsoever, Kvam improperly accessed Atlas's checking account
25 and transferred \$20,000 out of Atlas's checking account to pay off an interest-free credit card held by
26 Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's
27 checking account to be overdrawn by more than \$10,000.00. As a result, Mineau and Legion were
28 forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic

1 financial and business consequences.

2 99. Kvam's actions were unreasonable and taken without due care or consideration for the
3 damages such actions would cause Mineau and Legion.

4 100. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam
5 improperly turned off the power to the House without Legion's or Mineau's knowledge, consent, or
6 authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam failed to
7 notify Legion and Mineau of his actions, precluding Legion or Mineau from taking any steps to
8 protect the House.

9 101. Through his actions described above, Kvam seriously damaged the House, its
10 components, and the personal property within the House.

11 102. Kvam's actions were unreasonable and taken without due care or consideration for the
12 damages such actions would cause Mineau and Legion.

13 103. Among other things, after initiating this suit, Kvam caused his process servers to
14 harass, threaten, and intimidate Mineau's family. Specifically, Kvam's agents entered Mineau's
15 property and knocked on his front door in an effort to serve Mineau with process in this action.
16 Mineau's wife answered the door and informed the process servers that Mineau was not home. The
17 process servers raised their voices, threatened, and harassed Mineau's wife until she told them to
18 leave the property. The process servers refused to leave and continued to scream, threaten, and harass
19 Mineau's wife until she called the police. The process servers left before the police arrived, then
20 returned shortly after the police left and again entered the property and screamed at, threatened, and
21 harassed Mineaus' wife.

22 104. By instructing his process servers to trespass on Mineau's property, Kvam's actions
23 were unreasonable and taken without due care or consideration for the damages such actions would
24 cause Mineau and his family.

25 105. Kvam's conduct as described above was at least negligent.

26 106. As a direct and proximate result of Kvam's negligent conduct, Mineau and Legion are
27 entitled to damages in excess of \$15,000.00, plus interest, attorneys' fees, and costs.

28 ///

107. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter

WHEREFORE, Mineau and Legion pray for:

1. Judgment for damages in excess of \$15,000.00 in favor of Mineau and Legion and against Kvam according to the evidence;
2. Punitive and exemplary damages in an amount to be determined at trial;
3. An award of interest, costs and attorneys' fees;
4. Declaratory relief; and
5. Such further relief as the Court deems proper.

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **FIRST AMENDED COUNTERCLAIM**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED this 5 day of October, 2018.

GUNDERSON LAW FIRM

By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

Mark H. Gunderson, Esq.

Nevada State Bar No. 2134

3895 Warren Way

Reno, Nevada 89509

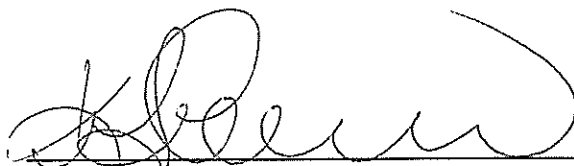
Telephone: 775.829.1222

Attorneys for Brian Mineau and Legion Investments

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 5 day of October, 2018, I deposited for mailing in Reno, Nevada AND
4 electronically filed a true and correct copy of the **FIRST AMENDED COUNTERCLAIM**, with the
5 Clerk of the Court by using the electronic filing system which will send a notice of electronic filing
6 to the following:

7
8 Michael Matuska, Esq.
9 Matuska Law Offices, Ltd.
10 2310 South Carson Street, Suite 6
11 Carson City, Nevada 89701
12 *Attorneys for Jay Kvam*

13 
14 Kelly Gunderson

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Attorneys for Plaintiff

THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JAY KVAM,

Plaintiff,

Case No. CV18-00764

v.

Dept. No. 3

BRIAN MINEAU; LEGION INVESTMENTS,
LLC; 7747 S. May Street, an Unincorporated
Joint Venture; and DOES I-X, inclusive,

Defendants.

MOTION TO DISMISS COUNTERCLAIM,
AND FOR SUMMARY JUDGMENT

Plaintiff / Counter-Defendant, JAY KVAM, "Kvam"), by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., pursuant to NRCP 9(b), NRCP 9(f), NRCP 12(b)(5), and NRCP 56, hereby moves this Court for an Order

(1) dismissing the Fifth, Tenth, and Eleventh Clams for Relief in the First Amended Counterclaim ("FACC") filed by Defendants Brian Mineau and Legion Investments, LLC (collectively, "Mineau");

(2) dismissing any remaining Claims for Relief in the Counterclaim, to the extent that such claims depend upon Mineau's allegations regarding the "unrelated" company Atlas Investors Southside LLC ("Atlas"); and

(3) for summary judgment as to all Claims for Relief set forth in the Counterclaim.

This motion is made and based on the Points and Authorities submitted herewith, the

1 Declaration of Michael L. Matuska and other exhibits attached hereto, and all other pleadings,
2 exhibits and documents of record.

3
4 **POINTS AND AUTHORITIES**

5 **I. BACKGROUND**

6 **A. Mineau's Original Answer and Counterclaim**

7 Kvam filed his Complaint on April 11, 2018 to be reimbursed for money invested with
8 Mineau and Legion pursuant to the Terms of Agreement. Ex. "1." Kvam has previously
9 described the Terms of Agreement as a Joint Venture Agreement ("JVA"). The subject of the
10 JVA was to remodel and resell the house located at 7747 May Street, Chicago, Illinois (the
11 "Property"). Kvam alleged in ¶ 10 of his Complaint that he fulfilled his funding obligation in the
12 total amount of \$93,781.31. Mineau and Legion filed their Answer and Counterclaim on June 5,
13 2018 in which they admitted that Kvam fulfilled his obligation. (Answer, ¶ 5). Kvam had no
14 other performance obligations arising from the JVA.
15

16 However, Mineau included eleven (11) counterclaims based on badly confused legal
17 theories that can only be described as a jumbled mess. The counterclaims contain five (5) general
18 themes that recur in different claims for relief: (i) that Kvam committed an unspecified breach of
19 the JVA, even though he admittedly fully performed it; (ii) that Kvam damaged the Property by
20 turning off the power; (iii) that Kvam caused an "unrelated"¹ non-party, Atlas, to pay off a credit
21 card earlier than it wanted to; (iv) that Kvam abused process by demanding to be repaid on his
22 investment; and (v) that Kvam directed licensed process servers to harass Mineau's wife, who also
23 is a non-party to this action.
24

25 A list of Mineau's Claims for Relief and the main themes in question in his original
26 Counterclaim are as follows:
27

28

¹ Mineau refers to Atlas as "an unrelated investment company" in Paragraph 13 of the Answer and Counterclaim.

1. Breach of Contract: demanding payment; turning off power to the Property
2. Breach of Covenant of Good Faith and Fair Dealing: same as 1.
3. Declaratory Relief: same as 1.
4. Interference with Prospective Economic Advantage: same as 1.
5. Deceptive Trade Practices (NRS Chapter 598): non-specific allegation of
“coercion, duress and intimidation throughout this transaction.” (§ 49.).
6. Abuse of Process: demanding repayment.
7. Trespass: process servers.
8. Trespass to Chattels: turning off power and using Atlas’ bank account.
9. Conversion: same as 8.
10. Fraud: non-specific allegations of exercise of dominion and control over Legion’s
assets and Atlas’ assets.
11. Negligence: turning off power to the Property; depriving Atlas of operating capital.

B. Kvam’s Original Motion to Dismiss, and This Court’s Order

Kvam predictably filed a *Motion To Dismiss Counterclaim Or In The Alternative For A More Definite Statement* (See #6746240). The motion was granted in part and denied in part (See Order entered September 5, 2018, #6864914). In summary, the Order directed as follows:

5./10. Deceptive Trade Practices and Fraud:

Actions for deceptive trade practices are actions that sound in fraud. NRS 41.600(2)(e).

* * * *

Mineau does not meet this elevated standard . . . There are no specifics of time, place, nor descriptions of precisely the conduct involved. Therefore, this Court orders that Mineau submit a more definite statement complying with the standards for pleading fraud regarding claims five and ten.
(Order at 3:17-4:2)

///

8./9. Trespass to Chattels and Conversion

Mineau's main allegations in this claim are that there was a deprivation of the use and value of real property, which does not fall under the umbrella of conversion. Further, Mineau pleads that Kvam converted Atlas' assets. As stated in the Counterclaim, Atlas is an "unrelated investment company" and is further not a party to this action. Answer and Counterclaim, 4:25-27. Under these theories, Mineau cannot maintain a claim for conversion.

However, Mineau does allege that there was personal property within the house, and that Kvam interfered with Mineau's rights to the property and impaired the condition of the personal property within the house. This is sufficient to assert a claim for conversion and trespass to chattels.

Therefore, Mineau's claims for conversion and trespass to chattels regarding real property and Atlas' assets are dismissed.
(Order at 5:23-6:6)

10/11. Negligence.

While Mineau alleges that Kvam "owed Mineau and Legion a duty to act with reasonable care to avoid damaging Mineau, Legion or their property," it does not allege sufficient facts to put Kvam on notice of what the claim actually refers to.

Therefore, this Court orders that Mineau submit a more definite statement that will comply with Nevada's notice pleading standards.
(Order at 6:9-6:15)

C. Mineau's "First Amended Counterclaim"

Mineau filed his *First Amended Counterclaim* ("FACC") on October 5, 2010 (#6914700).²

² The Court may choose to disregard the "First Amended Counterclaim" in its entirety because it does not contain an Answer, and therefore is not a pleading.

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint . . . and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

A cross-claim or counterclaim must be asserted in an answer. "No other pleading shall be allowed." There is no such thing as a stand-alone counterclaim, and the Nevada Rules of Civil Procedure preclude Mineau from filing a stand-alone FACC. This result is mandated by *Smith v. District Court*, 113 Nev. 1343, 950 P.2d 280. The *Smith* court concluded that the free-standing cross-claim was not a pleading, the cross-claim had to be dismissed, and a writ of

1 His FACC only provides two (2) additional factual allegations: First, that Kvam transferred
2 \$20,000 out of Atlas' bank account to pay off an interest free credit card (§ 16), and second, that
3 Kvam turned off the power to the Property sometime between March 1, 2018 and March 24, 2018
4 (§ 17). Mineau's specific allegations are as follows:

5
6 16. Among other things, Kvam wrongfully and fraudulently accessed
7 Atlas's accounts and engaged in unauthorized and fraudulent online banking
8 transactions. Specifically, on or around March 6, 2018, without any legal
9 authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's
10 checking account and transferred \$20,000 out of Atlas's checking account to pay
11 off an interest-free credit card held by Atlas which would not come due for
12 several more years. Kvam's unauthorized actions caused Atlas's checking
13 account to be overdrawn by more than \$10,000. As a result, Mineau and Legion
14 were forced to liquidate other assets to provide Atlas with adequate operating
15 funds and avoid drastic financial and business consequences. Mineau and Legion
16 were consequently unable to invest those funds into the house.

17 (FACC, §16)

18
19 17. Among other things, at some point between March 1, 2018 and
20 March 24, 2018, Kvam wrongfully and fraudulently turned off power to the
21 House without Legion's or Mineau's knowledge, consent, or authorization,
22 causing the pipes in the House to freeze, burst and flood the House. Kvam
23 knowingly and intentionally withheld this material information from Legion and
24 Mineau, precluding Legion or Mineau from taking any steps to protect the House.

25 (FACC, §17)

26
27 Thereafter, Mineau simply strung together and repeated his different theories regarding
28 Atlas's accounts, turning off the power to the Property, and trespass by the process servers, so that
these different themes now appear in an incomprehensible, desultory sequence in almost every one
of Mineau's claims for relief. This repetitious form of pleading does not constitute a more definite

mandate was appropriate to compel this result. The court proceeded to issue a writ of mandate to the lower court to
dismiss the cross-claims. The court noted that this result did not turn on a technical construction or enforcement of the
pleading requirements. Rather, the cross-claims were not a pleading and did not put the matter at issue.

We do not suggest that dismissal of Chang's cross-claim was mandated because of a
technical defect in pleading . . . There is, however, nothing technical about the defect in
Chang's cross-claim; the document simply is not a pleading, and does not itself put the
matters asserted therein at issue. (*Smith* at 1348)

1 statement and subjects the so-called FACC to Kvam's Motion to Dismiss.

2 Perhaps more importantly, Mineau disregarded the prior order which dismissed the claims
3 regarding Atlas. The Court was clear on page 6 of its Order of September 5, 2018, "IT IS
4 HEREBY ORDERED that Plaintiff/Counter-Defendant's Motion to Dismiss is GRANTED with
5 regards to . . . Atlas' assets" In the FACC, however, Mineau added new allegations regarding
6 Atlas to his Fifth, Tenth, and Eleventh Claims for Relief, and impliedly includes the allegations
7 regarding Atlas in his other Claims, such as his Fourth and Sixth Claims for Relief. This
8 expanded use of factual allegations that were dismissed by this Court does not constitute a more
9 definite statement. Mineau's Fifth, Tenth, and Eleventh Claims for Relief should be dismissed,
10 and the remaining Claims for Relief also should be dismissed to the extent that they depend upon
11 the allegations regarding Atlas.
12

13 Additionally, documentation recently provided by Mineau disproves his new allegations in
14 ¶s 16 and 17 of his FACC. Mineau's own records prove that Kvam maintained power to the
15 property through April 6, 2018 – after the alleged pipe-freeze incident – and the transfer from
16 Atlas' checking account on March 6, 2018 was made to account 9494, not to the US Bank credit
17 card 7005. Mineau's claims are therefore subject to Summary Judgment.
18

19 II. MOTION TO DISMISS

20 NRCP 12(b)(5) mandates dismissal of a claims that fail to state a claim upon which relief
21 can be granted. NRCP 12(b)(5) provides in pertinent part, as follows:
22

23 **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any
24 pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be
25 asserted in the responsive pleading thereto if one is required, except that the
26 following defenses may at the option of the pleader be made by motion:

27 . . .

28 (5) failure to state a claim upon which relief can be granted A motion making
any of these defenses shall be made before pleading if a further pleading is
permitted. No defense or objection is waived by being joined with one or more
other defenses or objections in a responsive pleading or motion. . . . If, on a motion
asserting the defense numbered (5) to dismiss for failure of the pleading to state a

1 claim upon which relief can be granted, matters outside the pleading are presented
2 to and not excluded by the court, the motion shall be treated as one for summary
3 judgment and disposed of as provided in Rule 56, and all parties shall be given
4 reasonable opportunity to present all material made pertinent to such a motion by
5 Rule 56.

6 Nevada is a "notice pleading" jurisdiction and, therefore, a complaint need only set forth
7 sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending
8 party has "adequate notice of the nature of the claim and relief sought." *Hay v. Hay*, 100 Nev.
9 196, 198, 678 P.2d 672, 674 (1984). In reviewing motions to dismiss under NRCP 12(b)(5), a
10 district court must construe the pleadings liberally, accept all factual allegations in the Complaint
11 as true, and draw every fair inference in favor of the non-moving party. *Blackjack Bonding v. City*
12 *of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (citing *Simpson v.*
13 *Mars, Inc.*, 1134 Nev. 188, 190, 929 P.2d 966, 967 (1997)).

14 However, dismissal under NRCP 12(b)(5) is proper where the allegations are insufficient
15 to establish the elements of a claim for relief. *Stockmeier v. Nevada Dep't of Corr, Psychological*
16 *Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135, (2008). "To survive dismissal, a complaint
17 must contain some 'set of facts, which, if true, would entitle [the plaintiff] to relief.'" *In re*
18 *AMERCO Derivative Litig.*, 127 Nev. 196, 210-11, 252 P. 3d 681, 692 (2011) (quoting *Buzz Stew,*
19 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)).

20 Further, a "court may take into account matters of public record, orders, items presented in
21 the record of the case, and any exhibits attached to the complaint when ruling on a motion to
22 dismiss for failure to state a claim upon which relief can be granted." *Brelia v. Preferred*
23 *Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

24 In the present case, Mineau cannot maintain any of his claims regarding Atlas, and it
25 would be futile for this Court to allow Mineau to make further amendments.
26
27
28

1. **Mineau's Fourth and Sixth Claims for Relief Must be Dismissed to the Extent that they Depend upon the Allegations Regarding Atlas.**

Mineau's Fourth Claim for Relief alleges Intentional Interference with Prospective Economic Advantage. Kvam cannot reasonably frame an answer to this Claim because it does not identify any wrongful conduct or the prospective contracts. It merely references "actions described above . . ." It is unclear whether these actions concern Atlas, turning off the power, requesting repayment, or the non-specific allegation of breach of contract.

Moreover, any economic advantage would have accrued to the joint venture, and Mineau lacks standing to assert any such claim.

Mineau's sixth Claim for Relief for abuse of process also should be dismissed to the extent it is based on the allegations regarding Atlas. Defendants also fail to allege any willful act of Mr. Kvam in the use of process.

2. **Mineau's Fifth, Tenth, and Eleventh Claims for Relief Must be Dismissed.**

Rather than provide a more definite statement, Kvam appended his prior allegations regarding Atlas to his Fifth, Tenth, and Eleventh Claims for Relief. With regard to the Fifth Claim for Relief, there is no legal authority for Mineau's attempt to base a claim for deceptive trade practices on the action of a process server, and he cannot salvage this claim by repeating the already dismissed claims relating to Atlas.

Mineau's Tenth Claim for Relief for Fraud is based primarily on allegations concerning Atlas (FACC ¶s 87, 88). Mineau also added a new allegation concerning turning off power to the Property. Specifically, Mineau alleges that:

89. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off the power to the House without Legion's or Mineau's knowledge, consent or authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam intentionally and knowingly withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

1 This an entirely new allegation, and factually incorrect as discussed in the summary
2 judgment section, below. This allegation is based on a theory of concealment, which requires a
3 special relationship or fiduciary duty, and the cause of action would have accrued to the joint
4 venture, not Legion and Mineau. See Nevada Jury Instructions, Civil 10FR.6 ("the plaintiff must
5 show: 1. There was a special relationship between the parties . . ."; *Nevada Power Co. v.*
6 *Monsanto Co.*, 891 F.Supp. 1406, 1415 (D. Nev. 1995) ("Under Nevada Law, the general rule is
7 that an action will not lie for nondisclosure unless the defendant had a duty to disclose."). Mineau
8 does not base his fraud claim on a false or misleading statement of material fact.
9

10
11 The same is true for Mineau's repetitive allegations concerning Atlas. Aside from the fact
12 that Mineau cannot assert claims on behalf of Atlas, he failed to allege that Kvam owed a duty to
13 inform him that he was paying off Atlas' credit card.

14 Mineau's Eleventh Claim for Relief for Negligence repeats the previous defects
15 concerning Atlas and also should be dismissed. Furthermore, any alleged duty owed by Kvam
16 was owed to the joint venture as a result of the JVA and not to Mineau and Legion.
17

18 Mineau's eleventh counterclaim is also barred by the economic loss doctrine which was
19 adopted in Nevada in *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). The
20 plaintiff homeowners in *Calloway* sued the City of Reno and framing subcontractors who had
21 performed work on their homes, seeking recovery for alleged construction defects in the homes.
22 The plaintiffs in part asserted tort theories of recovery, but alleged only economic losses. The
23 District Court dismissed the plaintiffs' tort claims based on the economic loss rule.
24

25 The Nevada Supreme Court affirmed the decision of the District Court to dismiss
26 plaintiffs' tort claims pursuant to the economic loss rule, explaining:

27 Under the economic loss doctrine 'there can be no recovery in tort for purely
28 economic losses.' American Law of Products Liability (3d), § 60:39, at 69 (1991).
Purely economic loss is generally defined as 'the loss of the benefit of the user's

1 bargain... including... pecuniary damage for inadequate value, the cost of repair
2 and replacement of the defective product, or consequent loss of profits, without any
3 claim of personal injury or damage to other property. *Id.* § 60:36, at 66.
4 *Calloway*, 116 Nev. at 257.³

5 * * * *

6 The economic loss doctrine marks the fundamental boundary between contract law,
7 which is designed to enforce the expectancy interests of the parties, and tort law,
8 which imposes a duty of reasonable care and thereby encourages citizens to avoid
9 causing physical harm to others.

10 * * * *

11 Under the economic loss doctrine 'there can be no recovery in tort for purely
12 economic losses. *Calloway*, 116 Nev. at 256, 993 P.2d at 1263 (*quoting* Sidney R.
13 Barrett, Jr., Recovery of Economic Loss in Tort for Construction Defects: A
14 Critical Analysis, 40 S.C.L.Rev. 891, 894 (1989)).

15 The Court also noted that the rule "shields a defendant from unlimited liability for all of
16 the economic consequences of a negligent act, particularly in a commercial or professional setting,
17 and thus ... keeps the risk of liability reasonably calculable." *Id.*, 993 P.2d at 1266 (internal
18 quotation marks omitted).

19 The economic loss doctrine is not an affirmative defense. The economic loss doctrine
20 delineates the distinction between contract claims and tort claims, and bars plaintiffs from
21 recovering in tort what they can recover in contract. It "primarily functions to bar the recovery of
22 purely monetary losses in certain products liability and unintentional tort actions." *Davis v.*
23 *Beling*, 278 P.3d 501, 514, 128 Nev. Adv. Op. 28 (2012). "[W]hen economic loss occurs as a
24 result of negligence in the context of commercial activity, contract law can be invoked to enforce
25 the quality expectations derived from the parties' agreement." *Terracon Consultants v. Mandalay*
26 *Resort*, 206 P.3d 81, 87, 125 Nev. 66, 75 (2009). Additionally, the doctrine is based on balancing

27 ³ The Court made it clear that the property damage referred to as "other property" is damage to "property other than
28 the defective entity itself." *Calloway*, 116 Nev. at 262. In doing so, the Court expressly rejected the Appellants
argument that a defective component of house that causes damage to other components of the house qualifies as
damage to "other property."

1 the need for useful economic activity with plaintiff's recovery and to prevent tort claims from
2 deterring useful economic activity. *See id.* "Intentional torts are not barred by the economic loss
3 doctrine." *Halcrow, Inc. v. Eighth Judicial Dist. Court of State*, 302 P.3d 1148, 1155, 129 Nev.
4 Adv. Op. 42 (2013). As such, the economic loss doctrine does not bar contract claims or
5 intentional torts.

6
7 In this case, the expectations of the parties are defined by the JVA, which precludes
8 Mineau's separate counterclaim for negligence.

9 **III. MOTION FOR SUMMARY JUDGMENT**

10 **A. STANDARD FOR SUMMARY JUDGMENT**

11 *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005) is the seminal case on
12 summary judgments in Nevada and speaks directly to the burden that the plaintiff [in this case, the
13 counterclaimant] bears in opposing a motion for summary judgment. *Wood* rejected the "slightest
14 doubt" standard that was adopted in 1954 in place of the standards in *Celotex Corp. v. Catrett*, 477
15 U.S. 317, 106 S.Ct. 2548 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505
16 (1986), and *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586, 106 S.Ct. 1348
17 (1986). "By its very terms [the summary judgment standard] provides that the mere existence of
18 some alleged factual dispute between the parties will not defeat an otherwise properly supported
19 motion for summary judgment; the requirement is that there be no genuine issue of material fact."
20 *Wood v. Safeway, Inc.*, 121 Nev. at ____; 121 P.3d at 1030.

21
22
23 This court has often stated that the nonmoving party may not defeat a
24 motion for summary judgment by relying "on the gossamer threads of
25 whimsy, speculation and conjecture." As this court has made abundantly
26 clear, "[w]hen a motion for summary judgment is made and supported as
27 required by NRCP 56, the non-moving party may not rest upon general
28 allegations and conclusions, but must, by affidavit or otherwise, set forth
specific facts demonstrating the existence of a genuine factual issue." *Id.*
at ____, 1030-31 [internal citations omitted].

"A factual dispute is genuine when the evidence is such that a rational trier

1 of fact could return a verdict for the nonmoving party.” *Id.* at ___, 1031
2 [internal citations omitted].

3 While the pleadings and other proof must be construed in a light most
4 favorable to the nonmoving party, that party bears the burden to “do more
5 than simply show that there is some metaphysical doubt” as to the
6 operative facts in order to avoid summary judgment being entered in the
7 moving party's favor. The nonmoving party “must, by affidavit or
8 otherwise, set forth specific facts demonstrating the existence of a genuine
9 issue for trial or have summary judgment entered against him.” The
10 nonmoving party “is not entitled to build a case on the gossamer threads
11 of whimsy, speculation, and conjecture.” *Id.* at ___, 1031 [internal
12 citations omitted].

13 *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986) is also instrumental to this
14 decision because that case considered whether the moving party/defendant had to support its
15 summary judgment motion with evidence or only needed to demonstrate that the plaintiff could
16 not produce admissible evidence to carry its burden of proof. The United State Supreme Court
17 confirmed that summary judgment is appropriate where the moving party has demonstrated the
18 absence of a genuine issue of fact regardless of whether the motion is supported by affidavits or
19 not.

20 Under Rule 56(c), summary judgment is proper “if the pleadings,
21 depositions, answers to interrogatories, and admissions on file, together
22 with the affidavits, if any, show that there is no genuine issue as to any
23 material fact and that the moving party is entitled to a judgment as a
24 matter of law.” In our view, the plain language of Rule 56(c) mandates
25 the entry of summary judgment, after adequate time for discovery and
26 upon motion, against a party who fails to make a showing sufficient to
27 establish the existence of an element essential to that party's case, and on
28 which that party will bear the burden of proof at trial. In such a situation,
there can be “no genuine issue as to any material fact,” since a complete
failure of proof concerning an essential element of the nonmoving party's
case necessarily renders all other facts immaterial. The moving party is
“entitled to a judgment as a matter of law” because the nonmoving party
has failed to make a sufficient showing on an essential element of her case
with respect to which she has the burden of proof. “[T]h[e] standard [for
granting summary judgment] mirrors the standard for a directed verdict
under Federal Rule of Civil Procedure 50(a). . . .” *Anderson v. Liberty
Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505 2511, 91 L.Ed.2d 202
(1986).

Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. But unlike the Court of Appeals, we find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim. On the contrary, Rule 56(c), which refers to "the affidavits, if any" (emphasis added), suggests the absence of such a requirement. And if there were any doubt about the meaning of Rule 56(c) in this regard, such doubt is clearly removed by Rules 56(a) and (b), which provide that claimants and defendants, respectively, may move for summary judgment "with or without supporting affidavits" [emphasis added].
Celotex Corporation v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548 (1986)

That standard was adopted by the Nevada Supreme Court in *Woods v. Safeway* and is the standard that governs consideration of this motion.

Based on the foregoing, Kvam need not produce any evidence to support this Motion for Summary Judgment. It is not enough for Mineau to simply allege that a factual dispute exists. Rather the burden is on him to produce sufficient evidence that a reasonable jury could return a verdict in his favor.

B. STATEMENT OF MATERIAL FACTS AS TO WHICH NO CONTROVERSY EXISTS

1. The Terms of Agreement state as follows:

Terms of Agreement between Legion Investments LLC (its Members) and
Jay Kvam (Initial Funding Member of Same)
Re: 7747 May Street, Chicago, Illinois.

With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam and Michael Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has agreed to allot %50 of his 1/3 profit for both initial funding's.

1 See Ex. "1" attached hereto.

2 2. Mineau admitted that Kvam provided the required funding (Answer, ¶ 5). Mineau
3 admitted this again in interrogatory response no. 6, wherein he also acknowledged that he did not
4 provide any funding. (Ex. "3").
5

6 3. Mineau alleges as follows in FACC:

7 16. Among other things, Kvam wrongfully and fraudulently accessed
8 Atlas's accounts and engaged in unauthorized and fraudulent online banking
9 transactions. Specifically, on or around March 6, 2018, without any legal
10 authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's
11 checking account and transferred \$20,000 out of Atlas's checking account to pay
12 off an interest-free credit card held by Atlas which would not come due for
13 several more years. Kvam's unauthorized actions caused Atlas's checking
14 account to be overdrawn by more than \$10,000. As a result, Mineau and Legion
15 were forced to liquidate other assets to provide Atlas with adequate operating
16 funds and avoid drastic financial and business consequences. Mineau and Legion
17 were consequently unable to invest those funds into the house.

18 (FACC, ¶16)

19 4. The Atlas South Side Checking detail proves that \$20,000 was transferred to
20 account 9494 on March 6, 2018, and not paid to a zero-interest credit card, as Mineau alleged.
21 (Ex. "4"). This same detail proves that \$20,000 was also returned from account 9494 that same
22 day, which cancelled out the transfer complained of and essentially resulted in a zero-net
23 transaction. There is no proof that Kvam made these transfers or had any connection with this odd
24 sequence of transfers.⁴

25 5. Mineau also alleges as follows in the FACC:

26 17. Among other things, at some point between March 1, 2018 and
27 March 24, 2018, Kvam wrongfully and fraudulently turned off power to the
28 House without Legion's or Mineau's knowledge, consent, or authorization,

⁴ In order to prove this allegation, Mineau would have to produce the signature cards for Atlas' checking account to prove that Kvam was not authorized on the account, prove that Kvam initiated the transfer in question on March 6, 2018, and produce the credit card account agreement to prove that that the account was a zero-interest account for years to come. Mineau would also have to provide proof that he was "forced to liquidate other assets." He has not and cannot produce such proof, which is within his sole custody and control.

1 causing the pipes in the House to freeze, burst and flood the House. Kvam
2 knowingly and intentionally withheld this material information from Legion and
Mineau, precluding Legion or Mineau from taking any steps to protect the House.

3 (FACC, ¶17)

4 6. Mineau repeated this allegation in interrogatory response no. 2: "The water pipes
5 burst at the house on the Property at some point between March 1, 2018, and March 24, 2018."
6 (Ex. "3").
7

8 7. The Final Bill from ComEd attached hereto as Ex. "2" confirms that Kvam
9 maintained electricity for the Property through April 6, 2018, even though there was no
10 contractual duty for him to do so.

11 8. Mineau admitted in interrogatory response no. 1 that "On April 14, 2018, Mr.
12 Kvam confirmed via email that he had cancelled electrical service to the Property." (Ex. "3").
13

14 9. Mineau admitted in interrogatory response no. 11 that the chattels at issue in the
15 Eighth Claim for Relief (Trespass) are "Drywall, insulation and copper plumbing." (Ex. "3").

16 10. Mineau is listed as the Registered Agent of Defendant, Legion Investments, LLC,
17 and the service address provided for Mr. Mineau, as Registered Agent of Legion Investments,
18 LLC, the Mr. Mineau's home address: 2171 San Remo Drive, Sparks, Nevada 89434. See true
19 and correct copy of information from the Nevada Secretary of State website, attached hereto as
20 Ex. "5."
21

22 C. ANALYSIS

23 The undisputed record summarized above proves that Kvam funded his contractual
24 obligations. As such, Kvam is entitled to summary judgment on Mineau's first three Claims for
25 Relief for Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing and
26 Declaratory Relief.

27 The undisputed record summarized above proves that \$20,000 was transferred from Atlas'
28

1 account on March 6, 2018 to account no. 9494, not to a zero-interest credit card. \$20,000 was also
2 transferred back that same day. As such, Atlas was never short of capital, and that cannot be the
3 cause of Mineau's failure to provide the required funding for the Property. There is no evidence
4 that Kvam made any of those transfers or that he had any involvement with account 9494. As
5 such, Kvam is entitled to summary judgment on all of Mineau's claims involving Atlas, including
6 Fifth Claim for Relief (Deceptive Trade Practices), Tenth Claim for Relief (Fraud) and Eleventh
7 Claim for Relief (Negligence).
8

9 The undisputed record summarized above also proves that Kvam maintained power to the
10 Property through April 6, 2018, even though there was no obligation for him to do so, and that
11 Kvam notified Mineau of the cancellation eight (8) days later on April 14, 2018. Kvam has no
12 personal knowledge of when or if the pipes burst between March 1, 2018 and March 24, 2018, or
13 the cause, but that had nothing to do with cancelling electrical service which occurred later. As
14 such, Kvam is entitled to summary judgment on all of Mineau's claims for relief that are based on
15 turning off the power, including: Fourth Claim for Relief (Intentional Interference With
16 Prospective Economic Advantage), Eight Claim for Relief (Trespass to Chattels), Ninth Claim for
17 Relief (Conversion), Tenth Claim for Relief (Fraud), and Eleventh Claim for Relief (Negligence).
18

19 Kvam is further entitled to summary judgment on Mineau's Eighth Claim for Relief
20 (Trespass to Chattels) and Ninth Claim for Relief (Conversion) because drywall, insulation and
21 copper plumbing are part of the realty, not chattels. Moreover, Mineau has not provided any
22 evidence of damages or evidence to support a theory of causation. Any such evidence would be
23 solely in his possession and should have been produced by now.
24

25 Kvam is further entitled to summary judgment on Mineau's Fourth Claim for Relief
26 (Intentional Interference with Prospective Economic Advantage), Fifth Claim for Relief
27 (Deceptive Trade Practices), Sixth Claim for Relief (Abuse of Process) and Eight Claim for Relief
28

(Trespass) for lack of evidence sufficient to withstand a directed verdict. In particular, Mineau is the Registered Agent of Legion Investments, LLC, and Mineau listed his home address as the registered office for service of process. See Ex. "5."

NRS 14.020 provides in pertinent part as follows:

NRS 14.020 Artificial persons doing business in this State to appoint registered agents; service of process, demand or notice; fine for failure to staff street address of registered agent.

1. Every corporation, miscellaneous organization described in chapter 81 of NRS, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust and municipal corporation created and existing under the laws of this State, any other state, territory or foreign government, or the Government of the United States, doing business in this State shall appoint and keep in this State a registered agent who resides or is located in this State, upon whom all legal process and any demand or notice authorized by law to be served upon it may be served in the manner provided in subsection 2. . . .

2. All legal process and any demand or notice authorized by law to be served upon the corporation, miscellaneous organization, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust or municipal corporation may be served upon the registered agent listed as the registered agent of the entity in the records of the Secretary of State, personally or by leaving a true copy thereof with a person of suitable age and discretion at the most recent street address of the registered agent shown on the information filed with the Secretary of State pursuant to chapter 77 of NRS. . . .

4. A corporation, miscellaneous organization, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust or municipal corporation that fails or refuses to comply with the requirements of subsection 3 is subject to a fine of not less than \$100 nor more than \$500 for each day of such failure or refusal to comply with the requirements of subsection 3, to be recovered with costs by the State, before any court of competent jurisdiction, by action at law prosecuted by the Attorney General or by the district attorney of the county in which the action or proceeding to recover the fine is prosecuted.

(emphasis added)

Having provided his home address as the registered office for Legion Investments, Mineau was required by NRS 14.020 to accept service of process against Legion Investments at that address. The licensed process server therefore was legally permitted to access the property to serve process, and Mineau may not base his Fourth, Fifth, Sixth, or Eighth Claims for Relief on

1 such statutorily permitted activity. Further, there is no evidence that the process server proceeded
2 beyond Mr. Mineau's porch, would not amount to trespass or abuse of process under any scenario.
3 Mineau's Fourth, Fifth, Sixth, or Eighth Claims for Relief should be dismissed on summary
4 judgment.

5 Mineau also has yet to produce actual evidence that Kvam filed this lawsuit for a reason
6 other than to resolve his legitimate claim for repayment under the JVA. Mineau cannot maintain
7 his Counterclaim "on the gossamer threads of whimsy, speculation and conjecture." *Wood v.*
8 *Safeway, Inc.*, 121 Nev. at ____; 121 P.3d at 1030-31.

9
10 **IV. CONCLUSION**

11 Mineau's First Amended Counterclaim does not provide a more definite statement, but
12 instead doubles-down on the allegations regarding Atlas, a non-party, in violation of this Court's
13 Order. Consequently, Mineau's Fifth, Tenth, Eleventh, and any remaining claims based upon
14 Atlas, should be dismissed. Mineau's Eleventh counterclaim for negligence is also barred by the
15 economic loss doctrine.

16
17 Mineau's FACC also should be dismissed under NRCP 56. Mineau lacks standing to sue
18 for breach of contract claims on behalf of the joint venture. The only duty imposed on Kvam
19 pursuant to the parties' joint venture agreement was funding for the project at 7747 May Street,
20 Chicago, Illinois, which he undeniably provided. Mineau has not kept of his end of the bargain.
21 He failed to provide his funding, has not completed project, has not provided a completion date,
22 and has not repaid Mineau any part of his investment. Mineau has tried to punish Kvam by filing
23 eleven specious counterclaims after Kvam predictably demanded his money back. The
24 counterclaims lack essential elements of the claims for relief, lack any allegations of time, place
25 and manner of the alleged wrongs, and include confusing allegations regarding non-parties such as
26 process servers and Atlas. Mineau has not and cannot produce evidence to support his allegations.
27
28

1 Mineau falsely alleged that Kvam shut off the power to the Property in March, 2018 and
2 transferred \$20,000 from the Atlas account on March 6, 2018 to pay off a zero-interest credit card.
3 In fact, based on documents provided by Mineau, power continued to the Property through April
4 6, 2018, and someone other than Kvam transferred \$20,000 to account no. 9494, which amount
5 was immediately transferred back. None of this was done by Kvam.
6

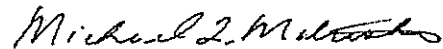
7 Mineau is the registered agent for Legion Investments, LLC, and he cannot base his
8 trespass and abuse of process claims on his illegal refusal to accept process, especially when there
9 is no allegation or evidence that the process server proceeded beyond Mineau's front porch.
10

11 **AFFIRMATION**

12 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
13 document does not contain the social security number of any person.

14 Dated this 25th day of October 2018.

15 MATUSKA LAW OFFICES, LTD.

16 

17 By: _____
18 MICHAEL L. MATUSKA, SBN 5711
19 Attorneys for Plaintiff, JAY KVAM,
20 individually and derivatively on behalf
21 the unincorporated joint venture identified as 7747
22
23
24
25
26
27
28

DECLARATION

I, MICHAEL L. MATUSKA, do hereby declare as follows:

1. That I am an attorney of law licensed to practice in the court of the state of California, and the attorney of record in this case for Plaintiff, JAY KVAM.

2. That the following are true and correct copies of the documents received from Austin Sweet, attorney of record for the Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC:

Exhibit 1 – Terms of Agreement (LEG0001)

Exhibit 2 – ComEd Final Bill (LEG0103-0104)

Exhibit 3 – Responses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories.

Exhibit 4 – Atlas South Side (Checking)- 5328 (LEG0119-0120)

3. That Exhibit 5 attached hereto is a true and correct copy of the Legion Investments, LLC – Secretary of State Business Profile that I printed on October 15, 2018.

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

Dated this 25th day of October 2018.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By: _____
MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM,
individually and derivatively on behalf
the unincorporated joint venture identified as
7747

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 25 day of October 2018, I served a true and correct copy of the preceding document entitled **MOTION TO STRIKE COUNTERCLAIM, TO DISMISS, AND FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person named above.

☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY:**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

/s/ SUZETTE TURLEY
SUZETTE TURLEY

EXHIBIT INDEX

EXHIBIT	DOCUMENT
1	Terms of Agreement
2	ComEd Final Bill
3	Responses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories
4	Atlas South Side (Checking) – 5328
5	Legion Investments, LLC – Secretary of State Business Profile

EXHIBIT 1
Terms of Agreement
MOTION TO STRIKE

FILED
Electronically
CV18-00764
2018-10-25 03:20:25 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6948019 : yvloria

MOTION TO STRIKE
Terms of Agreement
EXHIBIT 1

Terms of Agreement between Legion Investments LLC (its Members)

And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Jay Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has agreed to allot %50 of his 1/3 profit to Mr. Kvam for both initial funding's.

Jay Kvam

[Signature]

Date 2017-02-14

Brian Mineau

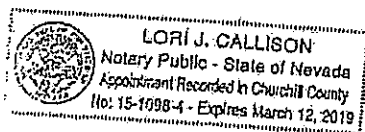
[Signature]

Date 2/13/2017

Michael J. Spinola

[Signature]

Date 2/13/17



[Signature]

LEG0001

EXHIBIT 2
ComEd Final Bill
MOTION TO STRIKE

FILED
Electronically
CV18-00764
2018-10-25 03:20:25 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6948019 : yvitoria

MOTION TO STRIKE
ComEd Final Bill
EXHIBIT 2



FINAL BILL

Issued 4/9/18 Account # 7766172077

An Exelon Company

SERVICE FROM 3/19/18 THROUGH 4/6/18 (18 DAYS)

Residential - Single

Jay Kvam
7747 S May St
Chicago, IL 60620
530.251.3205

Total Amount Due by 5/1/18

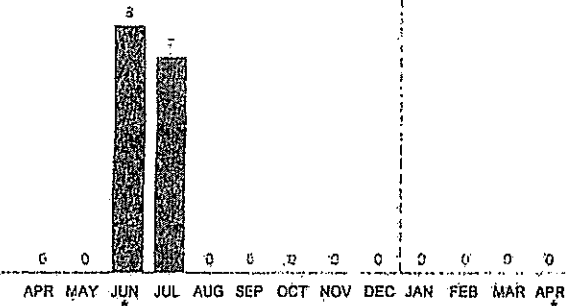
\$24.82

Late payment charges will continue until bill is paid.

TOTAL USAGE (kWh)

2017

2018



Current month's reading is actual.
*Non-regular Billing Period

AVERAGE DAILY USE (monthly usage/days in period)

Current Month

38° avg. temp

0.0 kWh

Last Month

37° avg. temp

Last Year

0.0 kWh

Not Available

⚡ Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details ➡



SUPPLY
\$0.00

DELIVERY
\$9.31

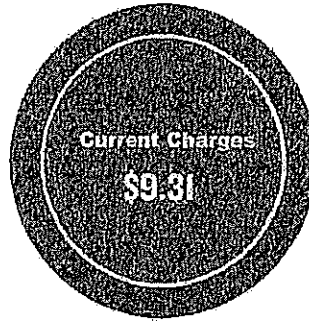


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ComEd delivers electricity to your home.

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TAXES & FEES \$0.00

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Return only this portion with your check made payable to ComEd. Please write your account number on your check.



An Exelon Company

0109286 01 MB 0.421 **AUTO T8 0 1070 89511-147665 -C10-B1-P09297-11 45



JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476



COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111



Pay your bill online, by phone or by mail.

See reverse side for more info ➡

Account # 7766172077

Total Amount Due by 5/1/18

\$24.82

Payment Amount:

776617207700000248281210024826

LEG0103

Issued: 4/9/18

Account #: 7766172077

For Questions, Support, and Outages visit ComEd.com

English

1.800.EDISON1 (1.800.334.7661)

Español

1.800.95.LUCES (1.800.955.8237)

Hearing/Speech Impaired

1.800.572.5788 (TTY)

Federal Video Relay Services (VRS)

Fedvrs.us/session/new

Total Amount Due by 5/1/18

\$24.82**METER INFORMATION**

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
3/19-4/6	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

• Final Bill

Residential - Single 3/19/18 - 4/6/18 (18 Days)

**DELIVERY** - ComEd

\$9.31

Customer Charge

\$6.53

Standard Metering Charge

\$2.78

TAXES & FEES

\$0.00

Service Period Total

\$9.31

MISCELLANEOUS

\$15.51

Charges from previous bill

\$15.51

Total Amount Due

\$24.82**UPDATES**

ComEd

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1070-10-0109288-0001-0017583

EXHIBIT 3
Reponses of Brian Mineau and Legion
Investments, LLC to First Set of Interrogatories
MOTION TO STRIKE

MOTION TO STRIKE
Reponses of Brian Mineau and Legion
Investments, LLC to First Set of Interrogatories
EXHIBIT 3

1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

17 BRIAN MINEAU; LEGION INVESTMENTS,

18 LLC; 7747 S. May Street, an Unincorporated

19 Joint Venture; and DOES I-X, inclusive,

20 Defendants / Counterclaimants.

21 **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO**
22 **PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES**

23 **PROPOUNDING PARTY:** Jay Kvam

24 **RESPONDING PARTY:** Brian Mineau and Legion Investments, LLC

25 Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and
26 LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K.
27 Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 33 of the Nevada Rules of Civil
28 Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s First Set of
Interrogatories to Mineau and Legion ("Requests") as follows:

///

///

///

1 INTERROGATORY NO. 1:

2 Describe when and how Mr. Kvam allegedly turned off power to the Property. Including the
3 date and time.

4 RESPONSE TO INTERROGATORY NO. 1:

5 At some point between March 1, 2018, and March 24, 2018, electrical service to the Property
6 ceased. On April 14, 2018, Mr. Kvam confirmed via email that he had cancelled electrical service to
7 the Property. Further details concerning when and how Mr. Kvam completed this task, including the
8 date and time, are presently unknown.

9 INTERROGATORY NO. 2:

10 State the date and approximate time on which the water pipes burst at the house on the
11 Property.

12 RESPONSE TO INTERROGATORY NO. 2:

13 The water pipes burst at the house on the Property at some point between March 1, 2018, and
14 March 24, 2018.

15 INTERROGATORY NO. 3:

16 State the date on which Legion Investments, LLC's improvements to the house at the Property
17 were completed.

18 RESPONSE TO INTERROGATORY NO. 3:

19 Objection. Interrogatory No. 3 assumes incorrect facts and therefore cannot be directly
20 answered. Specifically, Interrogatory No. 3 assumes that Legion Investments, LLC was the party
21 making improvements to the house at the Property and that such improvements were completed.

22 Without waiving this objection, Legion Investments, LLC has not itself made improvements
23 to the house at the Property and the improvements which were being made to the house at the Property
24 by licensed contractors have not been completed.

25 INTERROGATORY NO. 4:

26 State the date and amount of each expenditure for improvements to the Property.

27 ///

28 ///

1 RESPONSE TO INTERROGATORY NO. 4:

2 Legion Investments, LLC and Brian Mineau are aware of the following expenditures made
3 for improvements to the Property:

4	March 23, 2017	\$20,000.00
5	April 14, 2017	\$20,000.00
6	May 18, 2017	\$9,000.00
7	May 26, 2017	\$20,000.00

8 INTERROGATORY NO. 5:

9 State date [sic] and amount of each capital call or funding request for the property.

10 RESPONSE TO INTERROGATORY NO. 5:

11 None.

12 INTERROGATORY NO. 6:

13 Identify all persons who contributed capital or funds for the purchase and improvement of the
14 Property. Including the names, addresses, phone numbers, dates and amounts of the contributions.

15 RESPONSE TO INTERROGATORY NO. 6:

16	Jay Kvam		
	7565 Michaela Dr.		
	Reno, NV 89511		
17	Contributions:	February 13, 2017	\$44,000.00
18	March 23, 2017	\$20,000.00	
	April 14, 2017	\$20,000.00	
19	May 18, 2017	\$9,000.00	

20	Criterion NV LLC		
21	7560 Michaela Dr.		
	Reno, NV 89511		
22	Contributions:	March 26, 2017	\$20,000.00

23 INTERROGATORY NO. 7:

24 Describe the heating system for the property, including the heater model and number, and
25 whether it a [sic] gas or electric heater.

26 RESPONSE TO INTERROGATORY NO. 7:

27 The heating system on the property is electric. The heater model and number are unknown.

28 ///

1 INTERROGATORY NO. 8:

2 Identify all dates that Brian Mineau was present at the Property.

3 RESPONSE TO INTERROGATORY NO. 8:

4 Brian Mineau has never been present at the Property.

5 INTERROGATORY NO. 9:

6 Identify all prospective economic relationships alleged in your Fourth Claim for Relief.
7 Include the name, address, phone numbers and describe any contracts and the dates and contents
8 thereof.

9 RESPONSE TO INTERROGATORY NO. 9:

10 The earlier completion of the project and profitable sale of the Property. Although most
11 potential buyers are not specifically known, Mutual Happiness LLC was in contract to purchase the
12 Property but cancelled that contract. Documentation of this lost prospective economic relationship
13 has been produced and identified as LEG0023 – LEG0036.

14 INTERROGATORY NO. 10:

15 Describe all acts of coercion, duress and intimidation identified in your Fifth claim for Relief
16 (Deceptive Trade Practices). Include the date, time and manner of the alleged acts and any identify
17 any [sic] witness thereto.

18 RESPONSE TO INTERROGATORY NO. 10:

19 Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into the Property,
20 despite the fact that the project was incomplete, no disbursements were yet due to anyone under the
21 "Terms of Agreement," and the project had been severely set back by Mr. Kvam's own actions. Brian
22 Mineau and Legion Investments, LLC nonetheless affirmed that they intended to complete the project
23 and perform their obligations under the "Terms of Agreement." However, Mr. Kvam demanded that
24 the "Terms of Agreement" be renegotiated to his benefit and threatened Mr. Mineau and Legion
25 Investments, LLC with frivolous legal action if they refused to acquiesce to those demands. Mr.
26 Kvam also wrongfully and fraudulently accessed Atlas Investors Southside LLC ("Atlas")'s bank
27 accounts and fraudulently, and without authorization, used Atlas's operating funds to pay off an
28 interest-free debt held by Atlas which would not come due for several more years, causing Atlas's

1 operating account to be overdrawn and forcing Mr. Mineau and Legion Investments, LLC to liquidate
2 other assets to provide Atlas with adequate operating funds and avoid drastic financial and business
3 consequences. Mr. Kvam also demanded Legion Investments' historic financial records, without any
4 legal or factual right to such information, again under threat of frivolous litigation. Mr. Kvam also
5 demanded that Mr. Mineau and/or Legion Investments, LLC personally guaranty Mr. Kvam's return
6 on his investment and provide separate collateral to protect his investment, again under threat of
7 frivolous litigation. When Brian Mineau and Legion Investments, LLC refused, Mr. Kvam's agents
8 harassed, threatened, and intimidated Mr. Mineau's family. Each of these acts constitutes acts of
9 coercion, duress, and intimidation designed to compel Mr. Mineau and/or Legion Investments, LLC
10 to buy Mr. Kvam out of the "Terms of Agreement," pay him more than he is entitled under the "Terms
11 of Agreement," and/or pay him sooner than he is entitled under the "Terms of Agreement." The date,
12 time, and manner of these acts is documented in correspondence between the parties' counsel and the
13 pleadings of this action.

14 **INTERROGATORY NO. 11:**

15 Describe all chattels identified in your Eighth Claim for Relief (Trespass to Chattels).

16 **RESPONSE TO INTERROGATORY NO. 11:**

17 Drywall, insulation, and copper plumbing.

18 DATED this 1 day of October, 2018.

19 GUNDERSON LAW FIRM

20
21
22 By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

Mark H. Gunderson, Esq.

Nevada State Bar No. 2134

3895 Warren Way

Reno, Nevada 89509

Telephone: 775.829.1222

*Attorneys for Brian Mineau and Legion
Investments*

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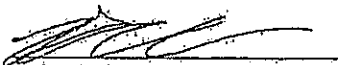
VERIFICATION

I, Brian Mineau, a Defendant and a Manger of Legion Investments, LLC in the above-entitled action, make this verification. I have read the foregoing *Brian Mineau and Legion Investments' Responses to Plaintiff Jay Ryan's First Set of Interrogatories* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged upon information and belief, and as to those matters, I believe them to be true.

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

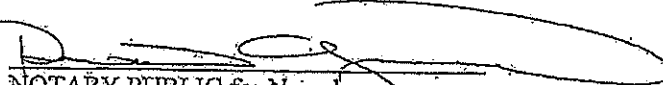
Executed in Reno, NV

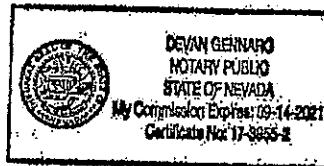
DATED this 1st day of October, 2018.


Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE

This instrument was acknowledged before me
on this 1st day of October, 2018 by Brian Mineau.


NOTARY PUBLIC for Nevada
Commission Expires: 9/14/2021



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 1 day of October, 2018, I deposited for mailing in Reno, Nevada a true and
4 correct copy of the BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO
5 PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES, to the following:

6
7 Michael Matuska, Esq.
8 Matuska Law Offices, Ltd.
9 2310 South Carson Street, Suite 6
10 Carson City, Nevada 89701
11 *Attorneys for Jay Kvam*

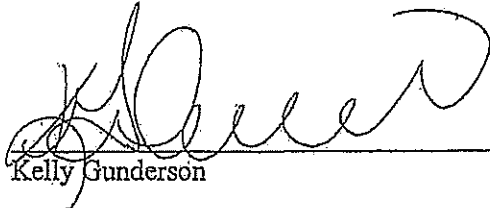
12 
13 Kelly Gunderson

EXHIBIT 4
Atlas South Side (Checking) - 5328
MOTION TO STRIKE

FILED
Electronically
CV18-00764
2018-10-25 03:20:25 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6948019 : yvilorla

MOTION TO STRIKE
Atlas South Side (Checking) - 5328
EXHIBIT 4

9/27/2018

Atlas South Side (Checking) - 5328

Account Balance \$798.03

Available Balance \$798.03

Transactions

Date	Description	Check Number	Deposits	Withdrawals	Acct Balance
Completed Transactions					
03/15/2018	Overdraft Paid Fee			\$36.00	\$117.46
03/15/2018	Overdraft Returned Fee Refund		\$36.00		\$153.46
03/15/2018	Extended Overdraft Fee Refund 0000		\$25.00		\$117.46
03/15/2018	Extended Overdraft Fee Refund 0000		\$25.00		\$92.46
03/15/2018	Overdraft Returned Fee Refund		\$36.00		\$67.46
03/15/2018	Extended Overdraft Fee Refund 0000		\$25.00		\$31.46
03/15/2018	Overdraft Paid Fee Refund		\$36.00		\$6.46
03/14/2018	Debit Purchase -visa 03/12 card 0934 Fsl*liberty Util855-541-3939ca			\$808.95	-\$29.54
03/14/2018	Analysis Service Charge			\$96.00	\$779.41
03/12/2018	Internet Banking Transfer Deposit 9494		\$750.00		\$875.41
03/06/2018	Wire Transfer Deposit 03/06 card 0000 Wt01 Ref000223 Umpqua Bk Roseburg 1334		\$12,000.00		\$125.41
03/06/2018	Mobile Banking Transfer Withdrawal 9494			\$20,000.00	-\$11,874.59
03/05/2018	Internet Banking Transfer Deposit 9494		\$8,000.00		\$8,125.41
03/05/2018	Mobile Banking Transfer Deposit 9494		\$2,000.00		\$125.41
03/05/2018	Extended Overdraft Fee			\$25.00	-\$1,874.59
03/05/2018	Overdraft Returned Fee 1023			\$36.00	-\$1,849.59
03/02/2018	Deposit		\$800.00		-\$1,813.59
02/26/2018	Extended Overdraft Fee			\$25.00	-\$2,613.59
02/20/2018	Extended Overdraft Fee			\$25.00	-\$2,588.59

LEG01192

9/27/2018

Date	Description	Check Number	Deposits	Withdrawals	Acct Balance
02/20/2018	Overdraft Returned Fee	1021		\$36.00	-\$2,563.59
02/16/2018	Overdraft Returned Fee	1018		\$36.00	-\$2,527.59
02/14/2018	Overdraft Returned Fee			\$36.00	-\$2,491.59
02/14/2018	Analysis Service Charge			\$41.00	-\$2,455.59
02/13/2018	Overdraft Paid Fee	1022		\$36.00	-\$2,414.59
02/12/2018	Check	1022		\$21,000.00	-\$2,378.59
02/12/2018	Internet Banking Payment To Credit Card 02/09 card 7005			\$14,266.52	\$18,621.41
02/09/2018	Wire Transfer Withdrawl 02/09 card 0000 W127 Ref002149 Jp Morgan Chase Ba [REDACTED] 499			\$1,353.71	\$32,887.93
02/08/2018	Electronic Withdrawal Nv Sos Portal			\$350.00	\$34,241.64
02/07/2018	Check	1019		\$10,000.00	\$34,591.64
02/07/2018	Customer Withdrawal			\$6,000.00	\$44,591.64

LEG0120^{2/2}

FILED
Electronically
CV18-00764
2018-10-25 03:20:25 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6948019 : yviloria

EXHIBIT 5
Legion Investments, LLC – Secretary of State
Business Profile
MOTION TO STRIKE

MOTION TO STRIKE
Legion Investments, LLC – Secretary of State
Business Profile
EXHIBIT 5

LEGION INVESTMENTS, LLC

Business Entity Information	
Status:	Active
Type:	Domestic Limited-Liability Company
Qualifying State:	NV
Managed By:	Managers
Foreign Name:	
NV Business ID:	NV20141431794
File Date:	07/02/2014
Entity Number:	E0344102014-7
List of Officers Due:	07/31/2019
Expiration Date:	
On Admin Hold:	No
Business License Exp:	07/31/2019

Additional Information	
Central Index Key	

Registered Agent Information	
Name:	BRIAN MINEAU
Address 1:	2171 SAN REMO DR
Address 2:	
City:	SPARKS
State:	NV
Zip Code:	89434
Phone:	
Fax:	
Mailing Address 1:	
Mailing Address 2:	
Mailing City:	
Mailing State:	NV
Mailing Zip Code:	
Agent Type:	Noncommercial Registered Agent
View all business entities under this registered agent ()	

Officers	
<input type="checkbox"/> Include Inactive Officers	
Manager - BRIAN MINEAU	
Address 1:	2171 SAN REMO DR
Address 2:	
City:	SPARKS
State:	NV
Zip Code:	89434
Country:	
Status:	Active
Email:	

Actions/Amendments	
Click here to view 7 actions/amendments associated with this company ()	

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Disclaimer

1 **CODE 2645**

2 GUNDERSON LAW FIRM
3 Austin K. Sweet, Esq.
4 Nevada State Bar No. 11725
5 Mark H. Gunderson, Esq.
6 Nevada State Bar No. 2134
7 3895 Warren Way
8 Reno, Nevada 89509
9 Telephone: 775.829.1222
10 *Attorneys for Brian Mineau and Legion Investments*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 JAY KVAM,

Case No. CV18-00764

14 Plaintiff / Counterdefendant,

Dept. No. 3

15 vs.

16 BRIAN MINEAU; LEGION INVESTMENTS,
17 LLC; 7747 S. May Street, an Unincorporated
18 Joint Venture; and DOES I-X, inclusive,

19 Defendants / Counterclaimants.
20 _____ /

21 **OPPOSITION TO MOTION TO DISMISS**
22 **COUNTERCLAIM, AND FOR SUMMARY JUDGMENT**

23 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS,
24 LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq., and Mark H.
25 Gunderson, Esq., submit the following Opposition to the *Motion to Dismiss Counterclaim, and for*
26 *Summary Judgment* ("Motions") filed by Plaintiff / Counterdefendant JAY KVAM ("Kvam"). This
27 Opposition is made and based upon the following memorandum of points and authorities, the
28 pleadings on file in this case, the Declaration of Austin K. Sweet, Esq., attached as Exhibit "1," and
any oral argument this Court wishes to entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

Kvam's Motions contain two entirely separate and distinct motions filed together: a motion to
dismiss ("Dismissal Motion") and a motion for summary judgment ("Summary Judgment Motion").

1 The Motions do not appear to be pled in the alternative and therefore violate WDCR 10(3). The
2 Motions should be denied outright as improperly before this Court. However, should this Court elect
3 to address the Motions on their merits, Legion and Mineau will address each of the Motions separately.

4 **I. OPPOSITION TO MOTION TO DISMISS**

5 **A. Introduction**

6 Mineau and Legion's First Amended Counterclaim is adequately pled and complies with this
7 Court's September 5, 2018 Order. The Dismissal Motion should be denied.

8 **B. Legal Standard**

9 A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt
10 that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him
11 to relief. Simpson v. Mars Inc., 113 Nev. 188, 929 P.2d 966 (1997). The court must construe the
12 pleading liberally and draw every fair intendment in favor of the plaintiff. Capital Mtg. Holding v.
13 Hahn, 101 Nev. 314, 705 P.2d 126 (1985).

14 A pleading which sets forth a claim for relief shall contain (1) a short and plain statement of
15 the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the
16 pleader seeks. NRCP 8(a). Courts liberally construe pleadings to place into issue matters which are
17 fairly noticed to the adverse party. Hay v. Hay, 100 Nev. 196, 678 P.2d 672 (1984).

18 In all averments of fraud, the circumstances constituting the fraud shall be stated with
19 particularity. NRCP 9(b). Malice, intent, knowledge, and other condition of mind of a person may be
20 averred generally. Id. This level of pleading is required "in order to afford adequate notice to the
21 opposing part[ies], so that they can defend against the charge and not just deny that they have done
22 anything wrong." Rocker v. KPMG LLP, 122 Nev. 1185, 1192, 148 P.3d 703, 707-08
23 (2006) (abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181
24 P.3d 670 (2008)).

25 **C. Argument**

26 In a footnote, Kvam first argues that the *First Amended Counterclaim* should be disregarded
27 in its entirety because it does not restate the answer to Kvam's complaint and is therefore not a pleading
28 under NRCP 7. Motions at 4. However, the *First Amended Counterclaim* is not a stand-alone

1 counterclaim; rather, it is an amendment to the previously filed *Answer and Counterclaim*. The
2 amendment properly relates back to the original pleading and need not restate the unamended answer
3 to constitute a proper pleading. NRC 15. However, should this Court disagree, leave should be
4 granted for Mineau and Legion to refile their *First Amended Counterclaim* as a *First Amended Answer*
5 *and Counterclaim*.

6 Kvam attacks the Fourth, Fifth, Sixth, Tenth, and Eleventh Claims for Relief in the *First*
7 *Amended Counterclaim*. Each challenged claim for relief will be addressed in turn.

8 *i. The Fourth Claim for Relief Is Adequately Pled.*

9 Kvam first moves to dismiss the Fourth Claim for Relief (Intentional Interference with
10 Prospective Economic Advantage). Motions at 8. However, this Court denied Kvam's first motion
11 to dismiss with respect to the Fourth Claim for Relief and that claim has not been amended. See
12 September 5, 2018 *Order* at 3. Kvam's efforts to reargue this issue without leave of court are
13 improper. DCR 13(7); WDCR 12(8). The Fourth Claim for Relief remains adequately pled and the
14 Dismissal Motion should be denied in this regard.

15 *ii. The Fifth Claim for Relief Is Adequately Pled.*

16 The Court granted Kvam's alternative motion for a more definite statement concerning the
17 Fifth Claim for Relief (Deceptive Trade Practices). See September 5, 2018 *Order* at 3-4. The Court
18 ordered Mineau and Legion to submit a more definite statement including specifics of time and place,
19 and descriptions of precisely the conduct involved. Id. Mineau and Legion complied with this
20 requirement by specifically describing the conduct which constituted coercion, duress, and
21 intimidation through the course of his transaction with Mineau and Legion. See *First Amended*
22 *Counterclaim* ¶¶ 47 – 57.

23 Specifically, as alleged in the *First Amended Counterclaim*, Mineau and Legion entered into a
24 business transaction (the "Term of Agreement") with Kvam that is subject to the provisions of the
25 Deceptive Trade Practices Act, NRS Chapter 598. *First Amended Counterclaim* ¶ 48. In taking the
26 actions described in the *First Amended Counterclaim* (including (1) inhibiting Mineau's and Legion's
27 access to operating capital by improperly paying off the Atlas loan; (2) threatening to further sabotage
28 the project or initiate baseless litigation unless Mineau and Legion agreed to pay Kvam more than he

1 is owed, sooner than he is owed; and (3) threatening and intimidating Mineau's family to coerce
2 settlement), Kvam has engaged in deceptive trade practices. Id. ¶¶ 49 - 54. Based upon these
3 allegations, the Fifth Claim for Relief is adequately pled.

4 In moving to dismiss the Fifth Claim for Relief, Kvam argues "there is no legal authority for
5 Mineau's attempt to base a claim for deceptive trade practices on the actions of a process server, and
6 he cannot salvage this claim by repeating the already dismissed claims relating to Atlas." Motions at
7 8. As explained in the *First Amended Counterclaim*, Mineau alleges that Kvam specifically directed
8 his process servers to harass, threaten, and intimidate Mineaus' family and is therefore responsible for
9 his agent's actions. Further, this Court did not dismiss "claims relating to Atlas" and the fact that
10 Kvam's improper conduct involved non-parties, such as Atlas and Mineau's family, does not relieve
11 Kvam of his liability to Mineau and Legion for such conduct. Kvam offers no other argument or
12 analysis concerning the Fifth Claim for Relief.

13 The Fifth Claim for Relief is adequately pled. The Dismissal Motion should be denied in this
14 regard.

15 **iii. The Sixth Claim for Relief Is Adequately Pled.**

16 Kvam also moves to dismiss the Sixth Claim for Relief (Abuse of Process). Motions at 8.
17 However, this Court denied Kvam's first motion to dismiss with respect to the Sixth Claim for Relief
18 and the Sixth Claim for Relief has not been amended. See September 5, 2018 *Order* at 4. Kvam's
19 efforts to reargue this issue without leave of court are improper. DCR 13(7); WDCR 12(8). The Sixth
20 Claim for Relief remains adequately pled and the Dismissal Motion should be denied in this regard.

21 **iv. The Tenth Claim for Relief Is Adequately Pled.**

22 The Court granted Kvam's alternative motion for a more definite statement concerning the
23 Tenth Claim for Relief (Fraud). See September 5, 2018 *Order* at 3-4. The Court ordered Mineau and
24 Legion to submit a more definite statement including specifics of time and place, and descriptions of
25 precisely the conduct involved. Id. Mineau and Legion complied with this requirement by specifically
26 describing Kvam's conduct which constituted fraud. See *First Amended Counterclaim* ¶¶ 85 - 94.

27 Kvam moves to dismiss the amended Tenth Claim for Relief based upon the argument that
28 Mineau and Legion have actually pled a claim for "concealment," not a claim for "fraud." Motions at

1 9. Fraudulent concealment is a subset of fraud, so Kvam's efforts to dismiss the Tenth Claim for
2 Relief based upon the distinction between "concealment" and "fraud" is unavailing. Regardless, a
3 plaintiff is only required to set forth the facts which support a legal theory, but the legal theory relied
4 upon need not be correctly identified. See Liston v. Las Vegas Metro. Police Dep't, 111 Nev. 1575,
5 1578, 908 P.2d 720, 723 (1995). Kvam plainly understands the facts supporting Mineau's and
6 Legion's legal theories and claims, so the claim is adequately pled regardless of how the Tenth Claim
7 for Relief is identified.

8 Kvam further states that a theory of concealment requires a special relationship or fiduciary
9 duty between the parties. Motions at 9. Kvam implies, but does not argue, that the *First Amended*
10 *Counterclaim* does not adequately plead such a relationship. On the contrary, the relationship between
11 the parties is thoroughly pled in the *First Amended Counterclaim*. Indeed, Kvam himself repeatedly
12 characterizes this relationship as a "joint venture" throughout his Motions. Thus, the existence of a
13 special relationship or fiduciary duty is adequately pled.

14 Finally, Kvam asserts that the cause of action for "concealment" would accrue to the joint
15 venture, not to Legion or Mineau. Kvam cites no legal authority supporting this proposition.
16 Regardless, Mineau and Legion adamantly deny that a "joint venture" exists between the parties or
17 that any such "joint venture" would hold independent legal claims against Kvam separate and apart
18 from Legion's or Mineau's claims.

19 For these reasons, the Dismissal Motion should be denied in this regard. However, if this Court
20 agrees that the amended Tenth Claim for Relief improperly refers to the wrong legal theory, Mineau
21 and Legion request leave to amend their *First Amended Counterclaim* as necessary.

22 v. ***The Eleventh Claim for Relief Is Adequately Pled.***

23 The Court granted Kvam's alternative motion for a more definite statement concerning the
24 Eleventh Claim for Relief (Negligence). See September 5, 2018 *Order* at 6. The Court ordered
25 Mineau and Legion to submit a more definite statement to put Kvam on notice of what the claim
26 actually refers to. Id. Mineau and Legion complied with this requirement by specifically describing
27 Kvam's conduct which constituted negligence. See *First Amended Counterclaim* ¶¶ 95 – 107.

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1 Kvam first argues again that the negligence claim would accrue to the joint venture, not to
2 Legion or Mineau. Kvam cites no legal authority supporting this proposition. Regardless, Mineau
3 and Legion again adamantly deny that a “joint venture” exists between the parties or that any such
4 “joint venture” would hold legal claims against Kvam separate and apart from Mineau or Legion’s
5 claims.

6 Kvam next resurrects his argument that the Eleventh Claim for Relief is barred by the economic
7 loss doctrine. Motion at 9 – 11. Again, as in his first motion, the economic loss doctrine bars purely
8 economic losses, not losses caused by personal injury or damage to other property. Motions at 10; see
9 also Calloway v. City of Reno, 116 Nev. 250, 257, 993 P.2d 1259 (2000). Here, the *First Amended*
10 *Counterclaim* specifically alleges that Kvam’s negligence damaged Mineau’s and Legion’s property.
11 The economic loss doctrine therefore does not bar the Eleventh Claim for Relief.

12 Furthermore, Legion and Mineau adamantly dispute that the parties’ expectations are defined
13 by the “Terms of Agreement.” As explained in more detail in response to Kvam’s Summary Judgment
14 Motion below, the “Terms of Agreement” is ambiguous on its face and, by itself, lacks essential terms
15 to form a contract. If the finder of fact in this matter determines that the “Terms of Agreement” does
16 not constitute a valid and enforceable contract, or that its terms are too vague and undefined to govern
17 the totality of the expectations between the parties, then the economic loss doctrine cannot preclude
18 damages for Kvam’s negligent conduct which was not governed by the “Terms of Agreement.”
19 Mineau and Legion have therefore properly pled their Eleventh Claim for Relief in the alternative to
20 their First Claim for Relief.

21 For these reasons, the Eleventh Claim for Relief is adequately pled, and the Dismissal Motion
22 should be denied in this regard.

23 **vi. Mineau and Legion Should Be Granted Leave To Amend As Necessary To**
24 **Cure Any Deficiencies In The Counterclaim.**

25 As explained in this Opposition, the *First Amended Counterclaim* is adequately and properly
26 pled. The Dismissal Motion should therefore be denied in its entirety. However, should this Court

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determine that the *First Amended Counterclaim* contains any technical deficiencies, Mineau and Legion should be afforded the opportunity to amend their *First Amended Counterclaim* to address those deficiencies and ensure that this dispute is litigated on its merits.

D. Conclusion

Mineau and Legion have properly pled their counterclaims against Kvam. Mineau and Legion have plainly explained the facts from which their claims arise and the legal basis for their claims. The *First Amended Counterclaim* clearly and properly explains the basis of Mineau's and Legion's Counterclaims and complies with this Court's September 5, 2018 Order.

This dispute should be resolved on the merits. The Dismissal Motion should be denied.

II. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

A. Introduction

In addition to moving to dismiss certain claims, Kvam also seeks summary judgment on all claims in the *First Amended Counterclaim*. Summary judgment is extremely premature at this stage: Kvam has yet to file an answer, the disputed facts and legal theories have not yet been defined, Mineau and Legion have not yet commenced discovery, no discovery deadlines have been set, and trial has not yet been scheduled.

Despite these facts, Kvam's Summary Judgment Motion makes no affirmative arguments explaining why he is entitled to judgment as a matter of law. Rather, Kvam simply invites Mineau and Legion to prove their entire case in this Opposition and ask this Court to enter summary judgment in his favor if Mineau and Legion fail to do so. This is not how summary judgment works in Nevada.

The Summary Judgment Motion should be denied.

B. Statement of Disputed and Unknown Facts

The Summary Judgment Motion relies upon incomplete and disputed facts. Kvam identifies ten (10) statements and then analyzes this dispute as if Kvam's ten (10) statements contain the totality of this action. However, as pled in the *First Amended Counterclaim*, Mineau and Legion's claims are not based solely upon the ten (10) statements identified by Kvam in his Summary Judgment Motion.

Kvam's Summary Judgment Motion first quotes the "Terms of Agreement" in its entirety. However, the "Terms of Agreement" is an incredibly vague, ambiguous, and incomplete document.

1 The "Terms of Agreement" is silent regarding the purpose of the project, the scope of the project, the
2 timeline of the project, the parties' respective roles, duties, and obligations for the project, the project's
3 budget, how the second and third "renovation draws" would be funded, the source of the project's
4 anticipated profits, the amount of the project's anticipated profits, how potential losses on the project
5 would be allocated, or even the end goal of the project. Kvam offers no extrinsic evidence concerning
6 his understanding or interpretation of the "Terms of Agreement." Absent extrinsic evidence
7 supplementing the written document, the "Terms of Agreement" lacks the essential terms to form a
8 contract. Therefore, the full extent of the parties' respective rights, duties, and obligations cannot be
9 determined absent a review and adjudication of extrinsic and parol evidence, which is not currently
10 before this Court. Accordingly, a genuine dispute of material fact exists concerning the "Terms of
11 Agreement."

12 Kvam's Summary Judgment Motion goes on to assert that "There is no proof that Kvam made
13 [the transfers from Atlas's account] or had any connection with this odd sequence of transfers."
14 Motions at 14. Tellingly, Kvam does not actually deny doing so, he merely asserts that the bank
15 statement attached to the Motions as Exhibit 4 is not, by itself, sufficient evidence to prove Kvam's
16 wrongdoing. This statement exemplifies why this motion is premature: Mineau and Legion do not
17 believe that Kvam disputes that he paid off Atlas's credit card and expect Kvam to admit this allegation
18 when an answer to the *First Amended Counterclaim* is eventually filed. If necessary, Mineau and
19 Legion intend to conduct discovery to determine the circumstances surrounding Kvam's access Atlas's
20 accounts, under what authority he was allegedly acting, and his motivations for doing so. Until such
21 discovery is completed, this information is solely within Kvam's custody and control and summary
22 judgment is inappropriate.

23 Kvam's Summary Judgment Motion goes on to assert that Exhibit 2 to the Motions "confirms
24 that Kvam maintained electricity for the Property through April 6, 2018...." Motions at 15. On the
25 contrary, Exhibit 2 to the Motions merely indicates that the final billing period ended April 6, 2018,
26 without any evidence as to when Kvam actually turned the electricity off. Motions at Ex. 2. By
27 contrast, the property manager managing the Property has asserted that, on March 1, 2018, the Property
28 was in good order and the electricity was operating. See Watkins' May 22, 2018 letter, identified as

1 LEG0020, attached as Exhibit "2." However, on March 24, 2018, the electricity was not working, the
2 pipes had burst and water was running, and the Property had suffered water damage in an estimated
3 amount of \$10,000.00. Id. Mineau and Legion intend to conduct discovery to concerning these facts
4 and circumstances. Regardless, a genuine dispute of material facts exists concerning when the power
5 was shut off to the Property, who shut the power off to the Property, and whether shutting off the
6 power to the Property caused the pipes to burst.

7 **C. Legal Standard**

8 Summary judgment may be entered only when there is no genuine issue of material fact and
9 the moving party is entitled to judgment as a matter of law. NRCP 56(c). When reviewing a motion
10 for summary judgment, "the evidence, and any reasonable inference drawn from it, must be viewed in
11 a light most favorable to the nonmoving party." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d
12 1026, 1029 (2005). If "the evidence is such that a rational trier of fact could return a verdict for the
13 nonmoving party," a genuine issue of material fact exists precluding summary judgment. Id. at 731,
14 1031.

15 **D. Argument**

16 **i. Summary Judgment Is Premature.**

17 Kvam's Summary Judgment Motion is based upon the argument that Mineau and Legion must,
18 at this early stage in the litigation, "produce sufficient evidence that a reasonable jury could return a
19 verdict in [their] favor." Motions at 13. This is not the summary judgment standard and the time for
20 Mineau and Legion to prove their case to the finder of fact has not yet arrived.

21 This action has yet to proceed past the pleading stage and Mineau and Legion's *First Amended*
22 *Counterclaim* is not even at issue. Kvam has not filed an answer, so it is not yet clear which factual
23 allegations Kvam admits, which he denies, or what his affirmative defenses might be. As such, Mineau
24 and Legion have not yet been able to analyze the issues or commence meaningful discovery. See
25 Exhibit "1." Further, no discovery deadlines have been set, nor has trial been scheduled, so Mineau
26 and Legion are not being dilatory in waiting until the pleadings stage is completed, and the factual and
27 legal issues clearly defined, before commencing discovery. The Summary Judgment Motion is
28 therefore premature and should be denied. NRCP 56(f).

1 Kvam cites Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986) to support his
2 proposition that Mineau and Legion must produce sufficient evidence to prove their case to survive
3 summary judgment. Motions at 12-13. However, Kvam's own citation states that such requirement
4 applies only "after adequate time for discovery." Motions at 12. As explained above, Mineau and
5 Legion have not had adequate time for discovery. Thus, even accepting Kvam's legal argument, the
6 time for Mineau and Legion to "produce sufficient evidence that a reasonable jury could return a
7 verdict in [their] favor" has yet to arrive.

8 For these reasons, Mineau and Legion cannot present by affidavit facts essential to justify their
9 opposition, so the Summary Judgment Motion should be denied. NRCP 56(f).

10 *ii. Kvam Is Not Entitled To Summary Judgment On The Counterclaims*
11 *Concerning the "Terms of Agreement."*

12 Even if this Court considers the merits of the Summary Judgment Motion at this early stage in
13 the litigation, before the *First Amended Counterclaim* is at issue or any discovery has been conducted,
14 Kvam's Summary Judgment Motion should still be denied. Kvam's motion is broken into five
15 separate arguments, which Mineau and Legion will address in turn.

16 Kvam first asserts that, because he funded the "first draw" as required by the "Terms of
17 Agreement," then he fully satisfied his contractual obligations and is therefore entitled to summary
18 judgment on Mineau's and Legion's First, Second, and Third Claims for Relief. Motions at 15. This
19 argument is nonsensical and wrong.

20 As explained above, the "Terms of Agreement" is an incredibly vague, ambiguous, and
21 incomplete document. The "Terms of Agreement" is silent regarding the purpose of the project, the
22 scope of the project, the timeline of the project, the parties' respective roles, duties, and obligations
23 for the project, the project's budget, how the second and third "renovation draws" would be funded,
24 the source of the project's anticipated profits, the amount of the project's anticipated profits, how
25 potential losses on the project would be allocated, or even the end goal of the project. Therefore, the
26 full extent of the parties' respective rights, duties, and obligations cannot be determined absent a
27 review and adjudication of extrinsic and parol evidence, with all ambiguities in the Terms of
28 Agreement construed against Kvam as the drafter. Dickenson v. State, Dep't of Wildlife, 110 Nev.

1 934, 937, 877 P.2d 1059, 1061 (1994). Accordingly, a genuine dispute of material fact exists
2 precluding summary judgment on any claims concerning the “Terms of Agreement.”

3 Mineau and Legion’s First Claim for Relief alleges that, to the extent the “Terms of
4 Agreement” constitutes a binding legal contract, Kvam breached that contract by, among other things,
5 demanding payment before payment was due and interfering with the renovation of the Property for a
6 profit. See First Amended Counterclaim ¶¶ 20 – 25. The fact that Kvam funded the “first draw” does
7 not absolve him of the other breaches of contractual obligations under the “Terms of Agreement.”
8 Kvam is not entitled to judgment as a matter of law on this claim.

9 Mineau and Legion’s Second Claim for Relief alleges that, to the extent the “Terms of
10 Agreement” constitutes a binding legal contract, Kvam breached the implied covenant of good faith
11 and fair dealing by performing in a manner that was unfaithful to the purpose of the agreement. See
12 First Amended Counterclaim ¶¶ 26 – 31. Kvam apparently argues that he cannot have breached the
13 implied covenant of good faith and fair dealing if he “funded his contractual obligations.” However,
14 literal compliance with the terms of a contract does not absolve a defendant from liability for breach
15 of the implied covenant of good faith and fair dealing. Hilton Hotels Corp. v. Butch Lewis
16 Productions, Inc., 107 Nev. 226, 232, 808 P.2d 919, 920 (1991) (“Where the terms of a contract are
17 literally complied with but one party to the contract deliberately countervenes the intention and spirit
18 of the contract, that party can incur liability for breach of the implied covenant of good faith and fair
19 dealing.”) Thus, the fact that Kvam funded the “first draw” does not entitle him to judgment as a
20 matter of law on Mineau and Legion’s Second Claim for Relief.

21 Mineau and Legion’s Third Claim for Relief seeks a judicial declaration of the parties’
22 respective rights, restrictions, duties, and obligations pursuant to the “Terms of Agreement” and the
23 Property. The fact that Kvam funded the “first draw” does not resolve this controversy or otherwise
24 determine the parties’ respective rights, restrictions, duties, and obligations pursuant to the “Terms of
25 Agreement.” Kvam is not entitled to judgment as a matter of law on this claim.

26 For these reasons, genuine disputes of facts exist concerning the “Terms of Agreement” and
27 Kvam is not entitled to judgment as a matter of law on Mineau and Legion’s First, Second, or Third
28 Claims for Relief.

1 *iii. Kvam Is Not Entitled To Summary Judgment On The Counterclaims*
2 *Concerning Kvam Accessing Atlas's Bank Account.*

3 Kvam next asserts that he is entitled to summary judgment on Mineau and Legion's Fifth,
4 Tenth, and Eleventh Claims for Relief because Exhibit 4 to the Motions does not, by itself, prove that
5 Kvam improperly accessed Atlas's bank accounts and engaged in unauthorized transactions. The fact
6 that a single document does not prove Counterclaimants' case at this early stage in the litigation is far
7 from sufficient to enter summary judgment in Kvam's favor.

8 Summary judgment shall be entered "if the pleadings, depositions, answers to interrogatories,
9 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to
10 any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c).
11 When a motion for summary judgment is made and supported by affidavits, an adverse party may not
12 rest upon the mere allegations of their pleading. NRCP 56(e).

13 Kvam has failed to establish that there is no genuine issue as to any material fact or that he is
14 entitled to judgment as a matter of law concerning the allegation that he improperly accessed Atlas's
15 bank accounts and engaged in unauthorized transactions. Kvam's Summary Judgment Motion is not
16 supported by affidavits. Indeed, Kvam does not even deny the fact that he unilaterally paid off Atlas's
17 credit card. Therefore, summary judgment on this issue is inappropriate.

18 Further, Mineau and Legion's Fifth, Tenth, and Eleventh Claims for Relief arise out of various
19 facts, not just Kvam's tortious conduct concerning Atlas's bank accounts. Thus, even if this Court
20 somehow determines that Kvam is entitled to judgment as a matter of law on this particular issue, and
21 even if this Court is inclined to enter summary judgment on an issue-by-issue basis, Kvam is not
22 entitled to judgment as a matter of law on the entirety of Mineau and Legion's Fifth, Tenth, and
23 Eleventh Claims for Relief. The Summary Judgment Motion must therefore be denied in this regard.

24 As explained above, summary judgment on this issue is premature. However, should this Court
25 choose to consider this issue on the merits, the Summary Judgment Motion should be denied in this
26 regard because Kvam has failed to establish that there is no genuine issue as to any material fact or
27 that he is entitled to judgment as a matter of law. NRCP 56(c).

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1 *iv. Kvam Is Not Entitled To Summary Judgment On The Counterclaims*
2 *Concerning The Water Damage To The Property.*

3 Kvam next asserts that he is entitled to summary judgment on Mineau and Legion's Fourth,
4 Eighth, Ninth, Tenth, and Eleventh Claims for Relief because Exhibit 2 to the Motions "proves that
5 Kvam maintained power to the Property through April 6, 2018." Motions at 16. However, as
6 explained above, Exhibit 2 to the Motions merely establishes that the final billing cycle for the
7 Property ended April 6, 2018, it does not establish when Kvam turned off the power. This single
8 document is therefore insufficient to establish that Kvam is entitled to judgment as a matter of law.

9 Furthermore, as explained above, the property manager has asserted that the power to the
10 property was shut off at some point between March 1, 2018, and March 24, 2018, causing the pipes to
11 burst and causing water damage in an estimated amount of \$10,000.00. Exhibit 2. To the extent that
12 these statements contradict the power bill presented by Kvam, a genuine dispute of material fact exists
13 precluding summary judgment.

14 Kvam goes on to argue that he is entitled to summary judgment on Mineau and Legion's Eighth
15 and Ninth Claims for Relief because Mineau and Legion have not yet "provided any evidence of
16 damages or evidence to support a theory of causation," but that such evidence "should have been
17 produced by now." Motions at 16. Again, Kvam has not yet even answered the *First Amended*
18 *Counterclaim*, no discovery deadlines have been set, and trial has not been scheduled. Mineau and
19 Legion have not yet determined whether expert witnesses must be retained to address these issues and
20 the initial expert disclosure deadline has not yet been set. This evidence therefore should not have
21 been produced by now, and Kvam is not entitled to summary judgment at this early stage in the
22 litigation.

23 Finally, Mineau and Legion's Fourth, Tenth, and Eleventh Claims for Relief arise out of
24 various facts, not just Kvam's tortious conduct concerning turning off the power to the Property. Thus,
25 even if this Court somehow determines that Kvam is entitled to judgment as a matter of law on this
26 particular issue, and even if this Court is inclined to enter summary judgment on an issue-by-issue

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1 basis, Kvam is not entitled to judgment as a matter of law on the entirety of Mineau and Legion's
2 Fourth, Tenth, and Eleventh Claims for Relief. The Summary Judgment Motion must therefore be
3 denied in this regard.

4 As explained above, summary judgment on this issue is premature. However, should this Court
5 choose to consider this issue on the merits, the Summary Judgment Motion should be denied in this
6 regard because Kvam has failed to establish that there is no genuine issue as to any material fact or
7 that he is entitled to judgment as a matter of law. NRCP 56(c).

8 v. *Kvam Is Not Entitled To Summary Judgment On The Counterclaims*
9 *Concerning Kvam's Process Servers.*

10 Last, Kvam asserts that he is entitled to summary judgment on Mineau and Legion's Fourth,
11 Fifth, Sixth, and Eighth Claims for Relief because Mineau is listed as Legion's Registered Agent,
12 thereby permitting Kvam's process servers to access his property to serve process. Motions at 17 –
13 18. Kvam again fails to establish an absence of a genuine dispute of material fact or that he is entitled
14 to judgment as a matter of law in this regard.

15 As alleged in the *First Amended Counterclaim*, the issue is not that Kvam's process servers
16 merely entered Mineau's property to serve process, it is that they raised their voices, threatened, and
17 harassed Mineau's wife until she told them to leave the property, which they refused to do and
18 continued to scream, threaten, and harass Mineau's wife until the police arrived. *First Amended*
19 *Counterclaim* ¶ 18. After the police left, Kvam's process servers returned to Mineau's property at
20 Kvam's express direction and again screamed at, threatened, and harassed Mineau's wife. *Id.*
21 Critically, Kvam does not dispute these facts in the Motions. These facts establish that Kvam's process
22 servers went well beyond merely entering Mineau's property to serve process. Kvam has failed to
23 establish that he is entitled to judgment as a matter of law in this regard simply because Mineau is
24 listed as Legion's Registered Agent.

25 Furthermore, Mineau and Legion's Fourth, Fifth, and Sixth Claims for Relief arise out of
26 various facts, not just the tortious conduct of Kvam's process servers. Thus, even if this Court
27 somehow determines that Kvam is entitled to judgment as a matter of law on this issue, and even if
28 this Court is inclined to enter summary judgment on an issue-by-issue basis, Kvam is not entitled to

1 judgment as a matter of law on the entirety of Mineau and Legion's Fourth, Fifth, and Sixth Claims
2 for Relief. The Summary Judgment Motion must therefore be denied in this regard.

3 As explained above, summary judgment on this issue is premature. However, should this Court
4 choose to consider this issue on the merits, the Summary Judgment Motion should be denied in this
5 regard because Kvam has failed to establish that there is no genuine issue as to any material fact or
6 that he is entitled to judgment as a matter of law. NRCP 56(c).

7 ***E. Conclusion***

8 Summary judgment is premature at this time. Kvam has not yet answered the *First Amended*
9 *Counterclaim*, Mineau and Legion have not commenced discovery, no discovery deadlines have been
10 set, and trial has not yet been scheduled. The Summary Judgment Motion should therefore be denied
11 until discovery is completed.

12 Regardless, even if this Court considers Kvam's Summary Judgment Motion on its merits, the
13 motion must be denied. Genuine disputes concerning several material facts exist and Kvam has failed

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1 to establish that he is entitled to judgment as a matter of law on any of Mineau or Legion's
2 counterclaims.

3 This dispute should be resolved on the merits. The Summary Judgment Motion should be
4 denied.

5 **III. CONCLUSION**


6 The Motions are not properly before the Court and should be procedurally denied outright.
7 Nonetheless, for the reasons explained above, both the Dismissal Motion and the Summary Judgment
8 Motion are without merit and should be denied.

9 **AFFIRMATION**

10 The undersigned does hereby affirm that the preceding document, **OPPOSITION TO**
11 **MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT**, filed in the
12 Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social
13 security number of any person.

14 DATED this 13 day of November, 2018.

15 GUNDERSON LAW FIRM

16
17
18 By: 
19 Austin K. Sweet, Esq.
20 Nevada State Bar No. 11725
21 Mark H. Gunderson, Esq.
22 Nevada State Bar No. 2134
23 3895 Warren Way
24 Reno, Nevada 89509
25 Telephone: 775.829.1222
26 *Attorneys for Brian Mineau and Legion*
27 *Investments*
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 13 day of November, 2018, I electronically filed a true and correct copy of
4 the **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY**
5 **JUDGMENT**, with the Clerk of the Court by using the electronic filing system which will send a
6 notice of electronic filing to the following:

7
8 Michael Matuska, Esq.
9 Matuska Law Offices, Ltd.
10 2310 South Carson Street, Suite 6
11 Carson City, Nevada 89701
12 *Attorneys for Jay Kvam*

13 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
14 Firm, and that on the 13 day of November, 2018, I deposited for mailing in Reno, Nevada a true
15 and correct copy of the **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND**
16 **FOR SUMMARY JUDGMENT**, to the following:

17 Michael Matuska, Esq.
18 Matuska Law Offices, Ltd.
19 2310 South Carson Street, Suite 6
20 Carson City, Nevada 89701
21 *Attorneys for Jay Kvam*

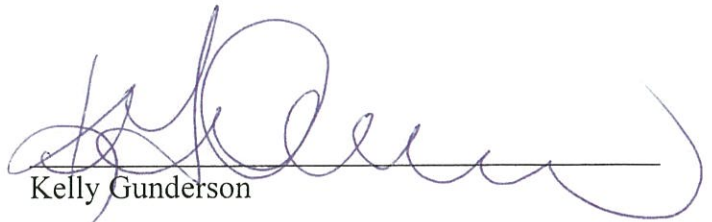
22 
23 Kelly Gunderson

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Declaration of Austin K. Sweet, Esq.	2
Exhibit "2"	Watkins' May 22, 2018 letter, identified as LEG0020	1

FILED
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CV18-00764
2018-11-13 03:47:43 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6974711 : yvitoria

Exhibit “1”

Exhibit “1”

DECLARATION OF AUSTIN K. SWEET, ESQ.

I, AUSTIN K. SWEET, ESQ., declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18.

2. I am counsel of record for Defendants / Counterclaimants Brian Mineau ("Mineau") and Legion Investments, LLC ("Legion") in this action.

3. This Declaration is made in support of Mineau and Legion's *Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment* ("Opposition").

4. Mineau and Legion filed their *First Amended Counterclaim* on October 5, 2018.

5. Plaintiff / Counterdefendant Jay Kvam ("Kvam") has yet to file an answer to the *First Amended Counterclaim*.

6. As such, Counterclaimants have not yet been able to analyze the factual and legal disputes at issue in this matter as necessary to commence meaningful discovery.

7. The parties have agreed that all discovery deadlines in this matter shall be based upon the trial date. However, no trial has been scheduled in this matter. Therefore, no discovery deadlines have been set.

8. Mineau and Legion have not yet commenced discovery.

9. Mineau and Legion are not dilatory in waiting until the pleadings stage is completed, and the factual and legal issues clearly defined, before commencing discovery, particularly when the *First Amended Counterclaim* was only recently filed and no discovery deadlines have been set.

10. Through discovery, Mineau and Legion expect to learn Kvam's intentions, expectations, and understandings concerning each of the parties' respective the parties' respective rights, duties, and obligations under the "Terms of Agreement."

11. Through discovery, Mineau and Legion expect to learn how Kvam accessed Atlas's checking account, when he did so, why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.

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1 12. Through discovery, Mineau and Legion expect to learn how Kvam turned off the
2 power to the Property, when he did so, why he did so, why he did not notify Mineau, and under what
3 authority he was allegedly acting.

4 13. If necessary, Mineau and Legion may consider retaining expert witnesses concerning
5 the cause of the pipes bursting at the Property and the extent of water damage suffered at the Property.

6 14. For these reasons, Mineau and Legion cannot present by affidavit facts essential to
7 justify their opposition to Kvam's motion for summary judgment at this time.

8 15. Attached as Exhibit "2" to the Opposition is a true and correct copy of the May 22,
9 2018 letter from the property manager that was produced by Mineau and Legion in this matter.

10 16. The foregoing is true and correct and based upon my own personal knowledge except
11 as to those statements made upon information and belief, and for those I believe them to be true.

12 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
13 trust and correct.

14 Executed at Reno . Nevada this 13 day of November, 2018.

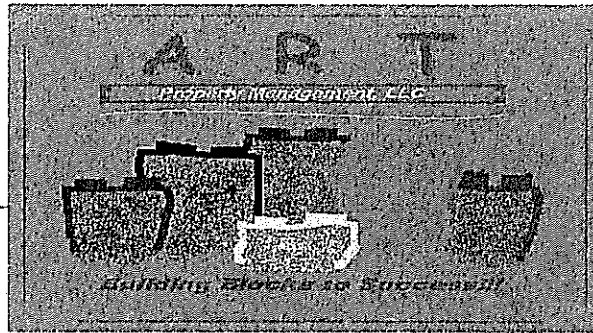
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AUSTIN K. SWEET, ESQ.

Exhibit “2”

Exhibit “2”



May 22, 2018

Brian Mineau
Legion Investment Group
2171 San Remo Drive
Sparks, NV 89434

Dear Mr. Mineau:

Upon hiring us to manage your property at 7747 S May, Chicago, Illinois we inspected it on March 1, 2018. During the inspection all the following were operating and in good standing:

- Plumbing
- Electricity
- Windows
- Roof

On March 24, 2018 when I returned with several contractors for estimates to complete unfinished work there were some damages that have been done to the property. We would like to bring your attention to them:

- Electricity was not operating
- Pipes burst and water was running
- Water damage from the burst pipe

Our contractor has estimated the cost of the damage at \$10,000. If you have any additional questions or concerns please do not hesitate to contact me.

Sincerely,

Tiffany L Watkins

Tiffany L Watkins
Property Manager

1507 E 53rd Street, Chicago, IL 60615
TEL: 773-568-1138 FAX: 773-846-2383
www.artpropertymgmt.com

1 **CODE: 3785**
2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 mlm@matuskalawoffices.com

7 Attorneys for Plaintiff

8
9
10 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 JAY KVAM,

13 Plaintiff,

Case No. CV18-00764

14 v.

Dept. No. 3

15 BRIAN MINEAU; LEGION INVESTMENTS,
16 LLC; 7747 S. May Street, an Unincorporated
17 Joint Venture; and DOES I-X, inclusive,

18 Defendants.

19 **REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM,**
20 **AND FOR SUMMARY JUDGMENT**

21 COMES NOW Plaintiff / Counter-Defendant, JAY KVAM, ("Kvam"), by and through his
22 counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby files this
23 Reply to the Opposition to Motion to Dismiss Counterclaim and for Summary Judgment filed by
24 Defendants / Counterclaimants BRIAN MINEAU and LEGION INVESTMENTS, LLC
25 (collectively, "Mineau").

26 This Reply is made and based on the following Points and Authorities, the Affidavit of Jay
27 Kvam submitted herewith, and all other pleadings, exhibits and documents of record.

28 **I. REPLY TO OPPOSITION TO MOTION TO DISMISS**

Kvam need not reargue the Motion to Dismiss. The only new factual allegations contained
in Mineau's First Amended Counterclaim ("FACC") were as follows:

1 16. Among other things, Kvam wrongfully and fraudulently accessed
2 Atlas's accounts and engaged in unauthorized and fraudulent online banking
3 transactions. Specifically, on or around March 6, 2018, without any legal
4 authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's
5 checking account and transferred \$20,000 out of Atlas's checking account to pay
6 off an interest-free credit card held by Atlas which would not come due for
7 several more years. Kvam's unauthorized actions caused Atlas's checking
8 account to be overdrawn by more than \$10,000. As a result, Mineau and Legion
9 were forced to liquidate other assets to provide Atlas with adequate operating
10 funds and avoid drastic financial and business consequences. Mineau and Legion
11 were consequently unable to invest those funds into the house.

12 (FACC, ¶16)

13 17. Among other things, at some point between March 1, 2018 and
14 March 24, 2018, Kvam wrongfully and fraudulently turned off power to the
15 House without Legion's or Mineau's knowledge, consent, or authorization,
16 causing the pipes in the House to freeze, burst and flood the House. Kvam
17 knowingly and intentionally withheld this material information from Legion and
18 Mineau, precluding Legion or Mineau from taking any steps to protect the House.

19 (FACC, ¶17)

20 Mineau repeats these allegations in his Fifth, Tenth and Eleventh Claims for Relief, and
21 incorporated them into all others. Mineau's Fourth Claim for Relief (Intentional Interference with
22 Economic Advantage) does not specifically allege any wrongful conduct, and presumably relies
23 on the aforementioned allegations in ¶s 16 and 17. Kvam's Motion to Dismiss, therefore,
24 appropriately challenges all of Mineau's claims which are based on these new allegations.
25 "Failure of the opposing party to serve and file his written opposition may be construed as an
26 admission that the motion is meritorious and a consent to granting the same." DCR 13(3).

27 Mineau failed to provide any legal authority in his Opposition to support his claims, and
28 Kvam's Motion to Dismiss is therefore largely un rebutted.

 The only new issue raised in Mineau's Opposition concerns the discussion on pp. 4-5
regarding his Tenth Claim for Relief (Fraud). Mineau seems to concede that his claim for fraud is
actually a claim for fraudulent concealment which depends on a fiduciary duty or other special
relationship. Mineau also seems to acknowledge that he did not allege a fiduciary duty or other

1 special relationship in his FACC. He therefore attempts to bootstrap his FACC to Kvam's
2 Complaint, which alleges that the Agreement at issue in this case is a joint venture agreement
3 which creates corresponding fiduciary duties between the joint venture partners. Mineau's
4 argument is deceitful and inadequate. He must either concede that the parties are joint venture
5 partners, in which case he is a fiduciary to Kvam, or admit that he did not allege a fiduciary duty
6 or other special relationship which would result in the dismissal of his Tenth Claim for Relief.
7

8 II. REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

9 1. Mineau Failed to Carry His Burden of Proof On His Counterclaim

10 Mineau's Opposition to Kvam's Motion for Summary Judgment is based on a fundamental
11 misunderstanding of the parties' respective burdens when moving for summary judgment. "A
12 party against whom a claim, counterclaim or cross-claim is asserted, or a declaratory judgment is
13 sought may, *at any time, move with or without supporting affidavits* for summary judgment in the
14 party's favor as to all or any part thereof." NRCP 56(a) (italics added). "The judgment sought
15 *shall be rendered forthwith* if the pleadings, depositions, answers to interrogatories, admissions on
16 file, together with the affidavits, if any, show that there is no genuine issue as to any material
17 fact." NRCP 56(c) (italics added).
18

19 In our view, the plain language of Rule 56(c) mandates the entry of summary
20 judgment, after adequate time for discovery and upon motion, against a party who
21 fails to make a showing sufficient to establish the existence of an element
22 essential to that party's case, and on which that party will bear the burden of proof
23 at trial. In such a situation, there can be "no genuine issue as to any material
24 fact," since a complete failure of proof concerning an essential element of the
25 nonmoving party's case necessarily renders all other facts immaterial. The
26 moving party is "entitled to a judgment as a matter of law" because the
27 nonmoving party has failed to make a sufficient showing on an essential element
28 of her case with respect to which she has the burden of proof. "[T]h[e] standard
[for granting summary judgment] mirrors the standard for a directed verdict under
Federal Rule of Civil Procedure 50(a). . ." *Celotex Corp v. Catrett*, 477 U.S. 317,
322-23 (1986), *cert. denied*, 484 U.S. 1066 (1988) (citing *Anderson v. Liberty
Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986)).

The Nevada Practice Manual provides an excellent discussion of the relative burdens of the claimant and defendant in making and opposing motions under Rule 56.

If the moving party is the party defending a claim, the burden of production on the moving party may be met by “showing” – that is, pointing out to the trial court – that there is an absence of evidence to support any one or more of the prima facie elements of the non-moving party’s claim. FRCP 56(c)(1)(b); NRCPP 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), *cert. denied*, 484 U.S. 1066 (1988); *Farrakhan v. Gregoire*, 590 F.3d 989, 1003 (9th Cir. 2010), *rehearing granted on other grounds*, 623 F.3d 990 (9th Cir. 2010); *Forest v. Vitek, Inc.*, 884 F.Supp. 1203, 1205-06 (D.Nev. 1993); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007); *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1156, 946 P.2d 163, 166-67 (1997).

The moving party itself need not *affirmatively* produce any evidence by affidavit or otherwise, negate the prima facie elements of its opponent’s claim. NRCPP 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), *cert. denied*, 484 U.S. 1066 (1988); *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1105 (9th Cir. 2000); *Main v. Stewart*, 109 Nev. 721, 727, 857 P.2d 755, 759 (1993). Rather, the moving party may simply point out the *lack* of evidence produced by the non-moving claimant on any of the prima facie elements of the claim. *Lujan v. Nat’l Wildlife Fed’n*, 49 U.S. 871, 884-85 (1990); *Shwarz v. United States*, 234 F.3d 428, 436 (9th Cir. 2000); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007).

1 Nevada Practice Manual, Sec. 17.15[2] (2015) (*italics in original*)

Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007)

removed any doubt about whether the federal standard would be applied in Nevada.

With respect to burdens of proof and persuasion in the summary judgment context, we follow the federal approach outlined in *Celotex Corp. v. Catrett*.³ The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) “pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.” In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other

admissible evidence, introduce specific facts that show a genuine issue of material fact. [footnotes and internal citations omitted].

Application of summary judgment standards

In this case, appellants, as plaintiffs below, bore the burden of persuasion at trial. Thus, respondents, in moving for summary judgment, properly pointed to the absence of evidence to support appellants' causes of action. Once respondents pointed to this evidentiary deficiency, appellants had the burden of presenting evidence showing a material issue of fact.

Id. at 134.

For these reasons, Kvam, as the counter-defendant need not present evidence to *affirmatively* disprove each element of Mineau's counterclaims, but only point out where Mineau has failed to make a sufficient showing on the essential elements of his case. Kvam has done exactly that. In order to avoid summary judgment, Mineau was therefore required to submit sufficient evidence to rebut Kvam's Statement of Facts and demonstrate a *prima facie* case on his various claims. Evidence submitted in opposition to a motion for summary judgment must be admissible evidence. NRCP 56(e); *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2d 610 (1983). The only piece of evidence that Mineau provided was a letter from a property manager about the condition of the property between March 1, 2018 and March 24, 2018. That letter is inadmissible hearsay. It is also irrelevant because it does not relate to Kvam.

2. Kvam Affirmatively Disproved Essential Elements of Mineau's Claims

Kvam also *affirmatively* disproved Mineau's case. See, Statement of Material Facts as to Which No Controversy Exists and Exhibits 1-5. Specifically, Kvam affirmatively disproved the allegations in ¶16 of Mineau's FACC that he transferred \$20,000 from the Atlas account to pay off a credit card on March 6, 2018. The transfers on March 6, 2018 were not made to a credit card, at all. Rather, the transfers were to account 9494 and were immediately reversed¹. None of this was

¹ The Atlas account statement (Ex. "4") shows three deposits on March 6, 2018: \$2,000 from account 9494; \$8,000 from account 9494; and \$12,000 from Umpqua Bank account 334.

Kvam's doing, and no amount of discovery can cure Mineau's false allegations that contradict his own records.

Kvam also disproved the allegations in ¶17 of Mineau's FACC that Kvam turned off the electricity for the heater sometime between March 1, 2018 and March 24, 2018. According to the ComEd Final Bill that was provided by Mineau and submitted as Exhibit "2" in support of Kvam's Motion for Summary Judgment, the electricity was turned off on April 6, 2018. Mineau offers his own, tortured, reading of the ComEd Final Bill when he writes "However, as explained above, Exhibit 2 to the Motion merely establishes that the final billing cycle for the Property ended April 6, 2018, it does not establish when Kvam turned off the power." (Opposition at 13:5-7). Kvam does not understand this theory, except to the extent that it seems to be an unsupported allegation of fact by Mineau that ComEd stopped supplying power to the Property sometime prior to April 6, 2018. This is contrary to the information on the Final Bill. The Final Bill was "Issued 4/9/18" and included "Service From 3/19/18 Through 4/6/18." That was the final service date.

Mineau has no evidence that Kvam or ComEd turned off power to the Property before April 6, 2018 and he "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. 724, ___, 121 P.3d 1026, 1031 (2006) [internal citations omitted]. Mineau produced no evidence that Kvam turned off the power before April 6, 2018, and he could not survive a directed verdict on that issue. For good measure, Kvam provides herewith all of the ComEd bills for 2018. These bills prove that there was no electrical use at all in 2018 and that the normal billing cycle ends on the 17th or 18th of the month.

[Ex. "6"]

3. Absence of Genuine Issue of Material Fact

Based Mineau's failure to provide any admissible evidence and Kvam's unrebutted statement of facts and Exhibits 1-6, Mineau failed to demonstrate the existence of a genuine issue of

material facts, the record now stands as follows:

1-3. Kvam funded his obligation under the Joint Venture Agreement; Mineau did not provide his funding; there are no other obligations imposed on Kvam pursuant to the JVA; and Mineau failed to present any admissible evidence of a breach of contract. Mineau's contract-based claims 1-3 must be dismissed.

4. Mineau failed to present any admissible evidence of prospective economic advantage, Kvam's knowledge thereof or his interference therewith. Mineau's fourth claim must be dismissed.

5. Mineau failed to present any admissible evidence of Deceptive Trade Practices. His fifth claim must be dismissed.

6. Mineau failed to present any admissible evidence of abuse of process. His sixth claim must be dismissed.

7. Mineau argues on page 14 of his Opposition that his Fourth, Fifth and Sixth Claims for Relief all allege tortious conduct of the process servers. This is false. Only his Seventh Claim for Relief (Trespass) contains any reference that can be construed as relating to process servers: "Through the action described above, Kvam intentionally caused his agents to physically enter Mineau's property without permission, after they had been instructed to leave Mineau's property, and without legal purpose or justification." (First Amended Counterclaim at ¶65)

Unfortunately for Mineau, he provided no evidence that anyone physically entered his property without permission. He now seems to concede this point, and backtracks on his claim, when he alleges for the first time at p. 14 of his Opposition that "they raised their voices, threatened and harassed Mineau's wife . . ." Mineau's wife is not a party and raising voices is not trespass. There is no evidence that the process servers proceeded beyond Mineau's front porch or that Kvam was involved in any manner.

1 8. Mineau admitted in interrogatory response no. 11 that the chattels at issue in the
2 Eighth Claim for Relief (Trespass to Chattels) are "Drywall, insulation and copper plumbing."
3 Those items are fixtures to the property that are part of the realty. They are not chattels, and
4 Mineau's eighth claim must be dismissed. Mineau did not even defend this claim in his
5 Opposition.
6

7 9. Mineau's Ninth Claim for Relief (Conversion) alleges: "78. Through his actions
8 described above, Kvam seriously interfered with Legion's rights in the personal property in the
9 house." The actions described above presumably refer to the allegation that pipes burst between
10 March 1, 2018 and March 24, 2018. Mineau failed to provide any admissible evidence that Kvam
11 caused the pipes to burst, and Kvam affirmatively disproved this allegation. In addition, Mineau
12 has not identified any personal property. Drywall, insulation and copper plumbing are not
13 personal property, and Mineau's ninth claim must be dismissed. Mineau did not defend this claim
14 in his Opposition.
15

16 10. Mineau failed to provide any evidence of fraud or concealment, and his tenth claim
17 must be dismissed.

18 11. Mineau's Eleventh Claim for Relief (Negligence) is based on the allegations in ¶s
19 16 and 17 of the FACC regarding paying off the Atlas credit card on March 6, 2018 and shutting
20 off power to the property between March 1, 2018 and March 24, 2018. Mineau has no evidence
21 that either of these events happened, and Kvam affirmatively disproved them both. The transfers
22 on March 6, 2018 were made to account 9494, not to a credit card. The last day power was
23 supplied to the Property was April 6, 2018. This seems to be irrelevant, as the ComEd bills
24 indicate that the heater was not drawing power before that date, anyway.
25

26 //

27 //

28 //

III. NO NEW DISCOVERY

Mineau's main defense to the entry of summary judgment seems to be that he needs more time to conduct discovery.

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

(NRCP 56(f)).

Mineau failed to carry his burden to show that he is entitled to an extension of time to delay the entry of summary judgment.

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

Bakerink v. Orthopedic Assocs., 94 Nev. 428, 581 P.2d 9 (1978) (quoting *Willmar Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975)).

In this case, Kvam filed his Verified Complaint on April 11, 2018. Kvam provided the initial disclosures required by NRCP 16.1 on July 19, 2018 and The Joint Case Conference Report was filed on August 6, 2018. Mineau has not requested any further discovery from Kvam. Also, Mineau failed to identify any admissible evidence that he expects to obtain through additional discovery that would support his claims. It is undisputed at this point that Kvam fulfilled his funding obligation under the JVA (Mineau did not), and Mineau failed to identify any breach of contract on behalf of Kvam. Atlas is irrelevant. Kvam did not cause the pipes to burst. Mineau is

1 the resident agent for Legion, the process servers did not proceed beyond his front porch, and
2 whatever happened with the yelling is unknown to Kvam and does not constitute trespass. There
3 is no evidence of interference with contract, fraud, deceptive trade practices or negligence on
4 behalf of Kvam. Any evidence to support Mineau's various claims would be within his sole
5 possession and control. Kvam has no knowledge about Mineau's various factual allegations. This
6 fact is confirmed by Kvam's affidavit submitted herewith.

8 IV. CONCLUSION

9 Atlas is irrelevant to this case, and Mineau's claims relating to Atlas must be dismissed.
10 Mineau's other claims must be dismissed as set forth above. Any claims not dismissed under
11 NRCP 12 must be dismissed under NRCP 56. Although Kvam was only required to point to an
12 absence of evidence to support the essential elements of Mineau's various claims, he went further
13 and affirmatively disproved the bulk of Mineau's case. Mineau failed to provide any admissible
14 evidence to support the allegations in his First Amended Counterclaim, and his FACC must
15 therefore be dismissed in its entirety.

18 AFFIRMATION

19 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
20 document does not contain the social security number of any person.

21 Dated this 19th day of November 2018.

22 MATUSKA LAW OFFICES, LTD.

23 *Michael L. Matuska*

24 By: _____

25 MICHAEL L. MATUSKA, SBN 5711
26 Attorneys for Plaintiff, JAY KVAM,
27 individually and derivatively on behalf of
28 the unincorporated joint venture identified as 7747

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 19th day of November, 2018, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person(s) named above.

☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY:**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

/s/ SUZETTE TURLEY
SUZETTE TURLEY

EXHIBIT INDEX

EXHIBIT	DOCUMENT
1	Terms of Agreement
2	ComEd Final Bill
3	Responses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories
4	Atlas South Side (Checking) – 5328
5	Legion Investments, LLC – Secretary of State Business Profile
6	2018 ComEd Bills

[Exhibits 1-5 filed with Motion to Dismiss Counterclaim and For Summary Judgment;
Exhibit 6 filed herewith]

EXHIBIT 6
2018 ComEd Bills
REPLY TO OPPOSITION MOTION TO DISMISS
COUNTERCLAIM,
AND FOR SUMMARY JUDGMENT

EXHIBIT 6
2018 ComEd Bills
REPLY TO OPPOSITION MOTION TO DISMISS
COUNTERCLAIM,
AND FOR SUMMARY JUDGMENT



An Exelon Company

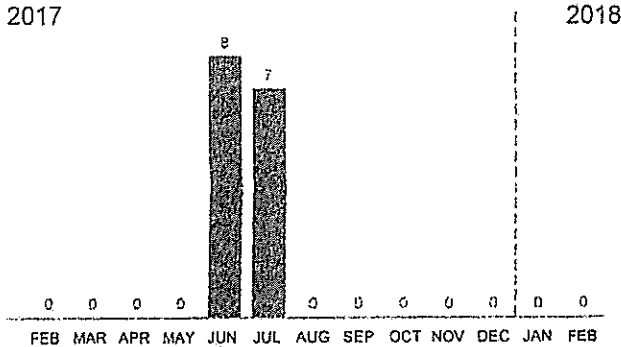
SERVICE FROM 1/18/18 THROUGH 2/16/18 (29 DAYS)
Residential - Single

Jay Kvarn
7747 S May St
Chicago, IL 60620
775.434.8230

Issued 2/16/18 Account # 7766172077

Past Balance Due Immediately	\$16.81
New Charges Due by 3/12/18	\$15.51
Total Amount Due	\$32.32

TOTAL USAGE (kWh)



Current month's reading is actual.
*Non-regular Billing Period

AVERAGE DAILY USE (monthly usage/days in period)

Current Month	27° avg. temp
0.0 kWh	
Last Month	20° avg. temp
0.0 kWh	
Last Year	Not Available

⚡ Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

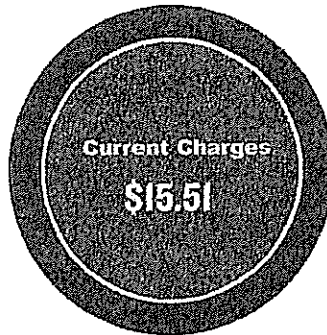
See reverse side for details ➡



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ComEd provides your energy.

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1.800.334.7661



Current Charges
\$15.51

DELIVERY
\$15.51



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1.800.334.7661

For Electric Supply Choices visit pluginillinois.org

TAXES & FEES \$0.00

Return only this portion with your check made payable to ComEd. Please write your account number on your check.

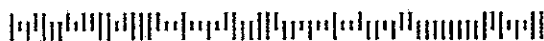


An Exelon Company

0120785 02 MB 0.421 **AUTO T3 0 1034 89511-147665 -C06-B1-P20805-IT 4 6789AB



JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476



COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111



Pay your bill online, by phone or by mail.

See reverse side for more info ➡

Account # 7766172077

Past Balance Due Immediately	\$16.81
New Charges Due by 3/12/18	\$15.51
Total Amount Due	\$32.32
Payment Amount:	

776617207700000323280710032329

LEG0099²⁰⁴

1034-05-0120785-0001-0022787

1 **CODE: 1046**
2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

7 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 JAY KVAM,
10 Plaintiff,
11 v.
12 BRIAN MINEAU; LEGION INVESTMENTS,
13 LLC; 7747 S. May Street, an Unincorporated
14 Joint Venture; and DOES I-X, inclusive,
15 Defendants.

Case No. CV18-00764
Dept. No. 3

16 **AFFIDAVIT OF JAY KVAM IN SUPPORT OF REPLY TO OPPOSITION TO MOTION**
17 **TO DISMISS AND FOR SUMMARY JUDGMENT**

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF Washoe)

21 COMES NOW PLAINTIFF, JAY KVAM, who being first duly sworn deposes and says:

22 1. That I am the Plaintiff in the above-encaptioned action. I am over the age of 18, a
23 resident of Washoe County, Nevada, and am competent to make this affidavit. I have first-hand
24 knowledge of the facts alleged herein, the same are true and correct to the best of my knowledge,
25 information and belief, and I am competent to testify to these facts if called upon to do so.

26 2. That I have reviewed the First Amended Counterclaim filed by Brian Mineau and
27 Legion Investments, LLC (collectively "Mineau") and their Opposition to my Motion to Dismiss
28 Counterclaim and for Summary Judgment. I specifically reviewed ¶s 16 and 17 of Mineau's First
Amended Counterclaim wherein he alleges as follows:

16. Among other things, Kvam wrongfully and fraudulently accessed

1 Atlas's accounts and engaged in unauthorized and fraudulent online banking
2 transactions. Specifically, on or around March 6, 2018, without any legal
3 authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's
4 checking account and transferred \$20,000 out of Atlas's checking account to pay
5 off an interest-free credit card held by Atlas which would not come due for
6 several more years. Kvam's unauthorized actions caused Atlas's checking
7 account to be overdrawn by more than \$10,000. As a result, Mineau and Legion
8 were forced to liquidate other assets to provide Atlas with adequate operating
9 funds and avoid drastic financial and business consequences. Mineau and Legion
10 were consequently unable to invest those funds into the house.

11 17. Among other things, at some point between March 1, 2018 and
12 March 24, 2018, Kvam wrongfully and fraudulently turned off power to the
13 House without Legion's or Mineau's knowledge, consent, or authorization,
14 causing the pipes in the House to freeze, burst and flood the House. Kvam
15 knowingly and intentionally withheld this material information from Legion and
16 Mineau, precluding Legion or Mineau from taking any steps to protect the House.

17 3. That I have no information that would tend to support Mineau's First Amended
18 Counterclaim, or ¶s 16 and 17 contained therein. I was simply an investor in the project for the
19 remodel and resale of the property at 7747 S. May Street, Chicago, Illinois (the "Property.") I
20 funded my obligation, and there were no other contractual requirements for me to fulfill. Mineau
21 has never told me that further performance was required from me.

22 4. That I have never been to the Property. I do not know what, if any, personal
23 property is stored at the Property. I do not know when, or if, the pipes burst. I called ComEd to
24 transfer the bills to Brian Mineau on Friday, April 6, 2018. The transfer was not possible, so
25 service was cancelled effective that same day, April 6, 2018. That is apparent from the ComEd
26 Final Bill that was provided as Exhibit "2" to my Motion to Dismiss Counterclaim and for
27 Summary Judgment. The Final Bill correctly states "Issued 4/9/18" and covers "Service From
28 3/19/18 Through 4/6/18."

5. I did not transfer money from the Atlas checking account on March 6, 2018 to pay
off a credit card. That is also apparent from the bank statement that was provided as Exhibit "4"
to my Motion to Dismiss Counterclaim and for Summary Judgment. According to that bank
statement, the transfers complained of on March 6, 2018 were to and from account 9494. I did not
make those transfers. I do not know who made the transfers or who the account holders and

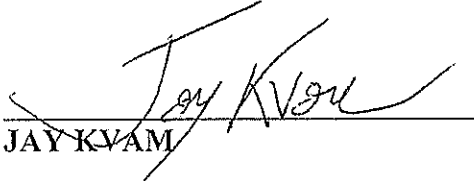
signatories are for account 9494. Brian Mineau would be the best source of information regarding those transfers.

6. That I have never had any communications with the process servers in this case, whether spoken, written or otherwise. I have no knowledge of what, if anything, happened between the process servers, Brian Mineau and his wife, except for what is contained in the Declaration of Service that was filed in this case wherein the process server stated under oath and penalty of perjury that: "(I observed 2 cars there and I took photos of the license plates). He told me to get off his porch. I felt unsafe, so I left."

7. That I incorporate my prior affidavit in support of the motion for dissolution that was filed on July 11, 2018 regarding the joint venture agreement and the status of the project.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

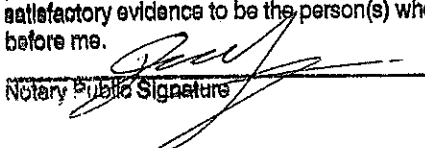
Dated this 15 day of November, 2018.

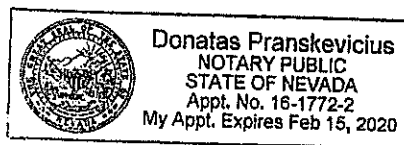

JAY KVAM

SUBSCRIBED and SWORN before me
this 15 day of November, 2018,
by JAY KVAM.


NOTARY PUBLIC

State of Nevada } ss.
County of Washoe
Subscribed and sworn to (or affirmed) before me on this
15th day of November 2018 by Donatas
Pranskevicius
personally known to me or proved to me on the basis of
satisfactory evidence to be the person(s) who appeared
before me.


Notary Public Signature



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 19th day of November 2018, I served a true and correct copy of the preceding document entitled **AFFIDAVIT OF JAY KWAM IN SUPPORT OF REPLY TO OPPOSITION TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person named above.

☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY:**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

/s/ SUZETTE TURLEY
SUZETTE TURLEY

For Questions, Support, and Outages visit ComEd.com

English 1.800.EDISONI (1.800.334.7661)
 Español 1.800.95.LUCES (1.800.955.8237)
 Hearing/Speech Impaired 1.800.572.5789 (TTY)
 Federal Video Relay Services (VRS) Fedvrs.us/session/new

Past Balance Due Immediately	\$16.81
New Charges Due by 3/12/18	\$15.51
Total Amount Due	\$32.32

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
1/18-2/16	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

Residential - Single 1/18/18 - 2/16/18 (29 Days)

 DELIVERY - ComEd	\$15.51
Customer Charge	\$10.87
Standard Metering Charge	\$4.64

TAXES & FEES

Service Period Total	\$15.51
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MISCELLANEOUS

Charges from previous bill	\$16.81
Total Amount Due	\$32.32

UPDATES

ComEd

- **APPLIANCE REBATES:** Get rebates of \$25 to \$50 from the ComEd Energy Efficiency Program on select ENERGY STAR appliances. Details at ComEd.com/Rebates
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- **Omit previous balance if paid.** Unpaid previous balances are subject to late charges.

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Set up an automatic payment, enroll in paperless billing, or make a convenience payment at ComEd.com/Pay.



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Download the ComEd mobile app on your Apple® or Android™ device to view and pay your bill, or manage your account.



Phone

Call us to make a convenience payment with a credit card, ATM card, or your bank account: 1.800.588.9477. (Fee Applies)



In-Person

Pay your bill in-person at many ComEd authorized agents located throughout the region. Visit ComEd.com/Pay for details.

When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



An Exelon Company

Issued 3/19/18 Account # 7766172077

SERVICE FROM 2/16/18 THROUGH 3/19/18 (31 DAYS)
Residential - Single

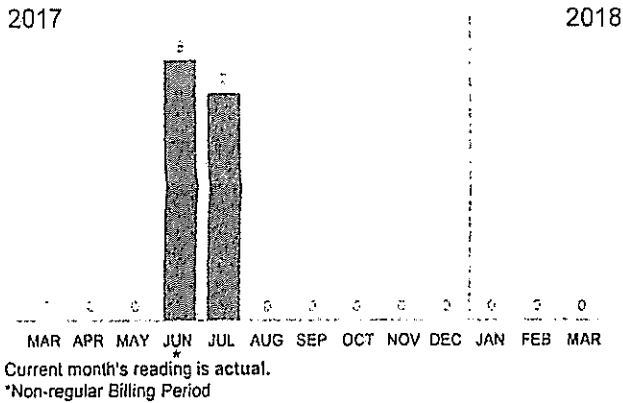
Jay Kvam
7747 S May St
Chicago, IL 60620
775.434.8230

Total Amount Due by 4/10/18

\$15.51

Thank you for your payments totaling \$32.32.

TOTAL USAGE (kWh)



AVERAGE DAILY USE (monthly usage/days in period)

Current Month	37° avg. temp
0.0 kWh	
Last Month	27° avg. temp
0.0 kWh	
Last Year	Not Available

💡 Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details ➡

SUPPLY
\$0.00

DELIVERY
\$15.51

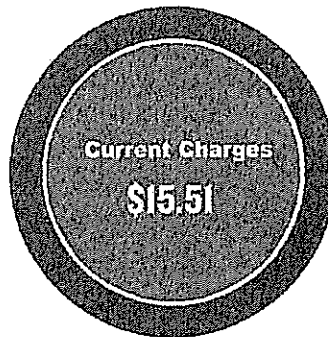


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1.800.334.7661



For Electric Supply Choices visit pluginillinois.org

TAXES & FEES \$0.00

Return only this portion with your check made payable to ComEd. Please write your account number on your check.



0116292 02 MB 0.421 **AUTO T9 0 1055 89511-147665 -C06-B1-P16308-11 6789ABC



JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476



COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111



Pay your bill online, by phone or by mail.

See reverse side for more info ➡

Account # 7766172077

Total Amount Due by 4/10/18

\$15.51

Payment Amount:

776617207700000155181000015516

LEG0101²¹⁰

For Questions, Support, and Outages visit ComEd.com

English 1.800.EDISON1 (1.800.334.7661)
 Español 1.800.95.LUCES (1.800.955.8237)
 Hearing/Speech Impaired 1.800.572.5789 (TTY)
 Federal Video Relay Services (VRS) Fedvrs.us/session/new

Total Amount Due by 4/10/18


\$15.51

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
2/16-3/19	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

Residential - Single 2/16/18 - 3/19/18 (31 Days)

 DELIVERY - ComEd	\$15.51
Customer Charge	\$10.87
Standard Metering Charge	\$4.64

TAXES & FEES \$0.00

Service Period Total \$15.51

Thank you for your payment of \$32.32 on March 8, 2018

Total Amount Due \$15.51

UPDATES

ComEd

- IT'S A SNAP - GET THE APP! ComEd's free app now offers fingerprint login, account alerts & notifications, and easy pay options on smartphones and tablets. Download the new app today at ComEd.com/App
- ILLINOIS COMMERCE COMMISSION CONSUMER DIVISION: (800-524-0795): The Consumer Services Division is available to help resolve disputes with ComEd. However, customers should contact ComEd before seeking assistance from the ICC.
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Download the ComEd mobile app on your Apple® or Android™ device to view and pay your bill, or manage your account.



Phone

Call us to make a convenience payment with a credit card, ATM card, or your bank account: 1.800.588.9477. (Fee Applies)



In-Person

Pay your bill in-person at many ComEd authorized agents located throughout the region. Visit ComEd.com/Pay for details.

When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



FINAL BILL

Issued 4/9/18 Account # 7766172077

An Exelon Company

SERVICE FROM 3/19/18 THROUGH 4/6/18 (18 DAYS)

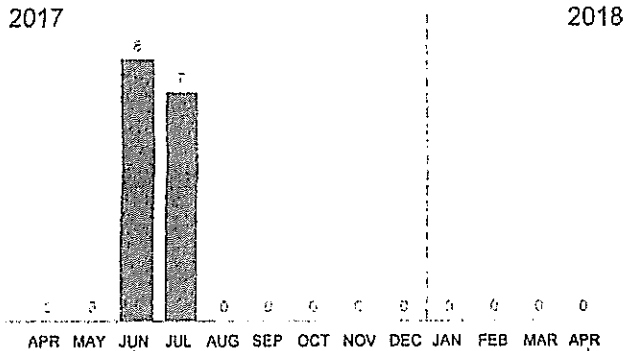
Residential - Single

Jay Kvam
7747 S May St
Chicago, IL 60620
530.251.3205

Total Amount Due by 5/1/18

\$24.82

Late payment charges will continue until bill is paid.

TOTAL USAGE (kWh)**AVERAGE DAILY USE (monthly usage/days in period)**

Current Month

38° avg. temp

0.0 kWh

Last Month

37° avg. temp

Last Year

0.0 kWh**Not Available**

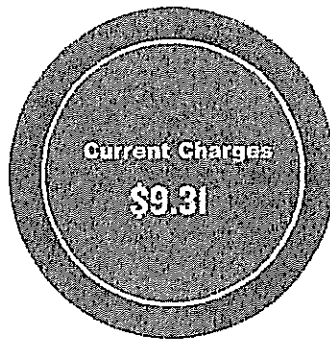
💡 Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details ➡

**SUPPLY**
\$0.00

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1.800.334.7661**TAXES & FEES \$0.00****DELIVERY**
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Return only this portion with your check made payable to ComEd. Please write your account number on your check.



0109288 01 MB 0.421 **AUTO T8 0 1070 89511-147655 -C10-B1-P09297-11 45

JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111**Pay your bill online, by phone or by mail.**

See reverse side for more info ➡

Account # 7766172077

Total Amount Due by 5/1/18

\$24.82

Payment Amount:

776617207700000248281210024826

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 Español 1.800.95.LUCES (1.800.955.8237)
 Hearing/Speech Impaired 1.800.572.5789 (TTY)
 Federal Video Relay Services (VRS) Fedvrs.us/session/new

Total Amount Due by 5/1/18

\$24.82

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
3/19-4/6	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

• Final Bill

Residential - Single 3/19/18 - 4/6/18 (16 Days)



DELIVERY - ComEd

\$9.31

Customer Charge \$6.53
 Standard Metering Charge \$2.78

TAXES & FEES

\$0.00

Service Period Total \$9.31

MISCELLANEOUS

\$15.51

Charges from previous bill \$15.51

Total Amount Due **\$24.82**

UPDATES

ComEd

- **YOUR COMED BILL:** Need help understanding your bill line item definitions? Please visit us at ComEd.com/UnderstandBill or call us at 1-800-334-7661.
- **ENVIRONMENTAL DISCLOSURE STATEMENT:** ComEd's Environmental Disclosure Statement can now be found online at ComEd.com/EnvironmentalDisclosure
- **ILLINOIS COMMERCE COMMISSION CONSUMER DIVISION:** (800-524-0795): The Consumer Services Division is available to help resolve disputes with ComEd. However, customers should contact ComEd before seeking assistance from the ICC.
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When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

1 **CODE: 2222**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

7 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 JAY KVAM,

10 Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

12 BRIAN MINEAU; LEGION INVESTMENTS,
13 LLC; 7747 S. May Street, an Unincorporated
14 Joint Venture; and DOES I-X, inclusive,

15 Defendants.

16 **MOTION FOR TEMPORARY RESTRAINING ORDER**

17 **AND PRELIMINARY INJUNCTION**

18 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
19 Offices, Ltd., Michael L. Matuska, and hereby moves pursuant to NRCP 65 and NRS 33.010 for a
20 temporary restraining order to prevent Defendants BRIAN MINEAU and LEGION
21 INVESTMENTS; LLC from diverting funds received from the sale of the property located at 7747
22 S. May Street in Chicago, Illinois.

23 This motion is made and based on the points and authorities attached hereto, the Affidavit
24 of Jay Kvam and exhibits submitted herewith, and all other pleadings, exhibits and documents of
25 record.

26 Dated this 30th day of November 2018.

27 MATUSKA LAW OFFICES, LTD.

28 *Michael L. Matuska*

By:

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM,
individually and derivatively on behalf the
unincorporated joint venture identified as 7747

1 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY**
2 **RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

3 **I. BACKGROUND**

4 On or about February 14, 2017, the Plaintiff Jay Kvam ("Kvam") entered into an
5 agreement (the "Agreement") with Defendants Brian Mineau ("Mineau") and Legion Investments,
6 LLC ("Legion") concerning property located at 7747 May Street, Chicago, Illinois (the
7 "Property") as follows:

8 Terms of Agreement between Legion Investments LLC (its Members) and
9 Jay Kvam (Initial Funding Member of Same)
 Re: 7747 May Street, Chicago, Illinois.

10 With Regards to acquisition of the aforementioned property, it is understood that
11 the membership of Legion Investments LLC for this acquisition is Brian Mineau,
12 Jay Kvam and Michael Spinola. All parties are entitled to 33.33% of net profit,
13 after all expenses are accounted for, to include interest due on funds dispersed.
14 Initial purchase is being funded by Kvam, who is there by assigned any remedies
15 due should the transaction fail in anyway. Initial funder will be due a 7% annual
16 return on any funds provided due from date of disbursement. There is expected to
17 be 3 renovation draws necessary on this project. First draw to be funded by Mr.
18 Kvam, Due to present and ongoing business dealings between Jay and Michael,
19 Michael has agreed to allot %50 of his 1/3 profit for both initial funding's.

20 See Affidavit of Jay Kvam ("Kvam Aff.") and Ex. "1" attached hereto.

21 Kvam asserts that the Agreement has two separate components: First, a joint venture
22 agreement to share profits; and Second, a loan agreement which is not conditioned on profits and
23 which must be repaid prior to the distribution of any profits. Kvam funded \$93,781.31 toward the
24 purchase and renovation of the Property as shown on the summary attached as Ex. "2," the
25 February 13, 2017 Settlement Statement (Ex. "3") and Defendants' Response to Interrogatory No.
26 6 attached hereto as Ex. "4". Kvam has predictably demanded his money back.

27 Defendants do not dispute that Kvam is entitled the return of his investment, but only
28 dispute that the loan has to be repaid prior to sale of the Property. In their verified discovery
29 responses, Defendants acknowledge as follows:

30 Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into
31 the Property, despite the fact that the project was incomplete, no disbursements
32 were yet due to anyone under the "Terms of Agreement," and the project had
33 been severely set back by Mr. Kvam's own actions. Brian Mineau and Legion

Investments, LLC nonetheless affirmed that they intended to complete the project and perform their obligations under the "Terms of Agreement."

(Response to Interrogatory No. 10, Ex. "4")

The Property recently sold on November 16, 2018. Payment is now due to Kvam, even under Defendants' theory of the case, and the dispute over whether Defendants could wait until the Property sold to repay Kvam is moot. Unfortunately, Defendants sold the Property without informing Kvam. He only learned about the sale from his own investigation. Defendants' attorney provided the settlement statement only after being confronted about the issue from Kvam's attorney (See Letter, Ex. "5" and Settlement Statement, Ex. "6"). Defendants have not paid Kvam, or otherwise accounted to him, and it is yet unknown what Defendants have done with the proceeds of sale. As such, Kvam requests a temporary restraining order to prevent Defendants from disposing of any proceeds of sale, and either to pay the proceeds to Kvam or at least deposit the proceeds of sale in an interest bearing account with the Clerk of the Court pending further orders.

II. ARGUMENT

NRCP 65(b) provides, *inter alia*, that:

A temporary restraining order may be granted with or without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

NRS 33.010 identifies the cases in which injunctive relief may be granted:

An injunction may be granted in the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

"A preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Dangberg Holdings v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311 (citing *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)). In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest. *University and Community College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 100 P.3d 179, 187 (2004). The decision whether to grant a preliminary injunction is within the Court's discretion. *Id.*

Kvam's showing of great or irreparable harm is supported by the previous statement of facts. In this case, Kvam is entitled to be repaid on his loan with interest at the rate of 7% before Mineau and Legion are paid. There is no excuse for Defendants' failure to pay. It is not enough to simply say that Kvam could obtain a judgment for the amount owing to him. He will suffer great harm if Mineau and Legion divert the funds in that they will have inadequate funds to repay him. Also, Mineau and Legion have recently disposed of other property, as recently as September 20, 2016 (See Deed and Ownership History attached hereto as Ex. "7"). It appears therefore that Defendants are trying to make themselves judgment proof or prepare for filing bankruptcy. Kvam is therefore entitled to a temporary restraining order and preliminary injunction under NRS 33.010 and the "relative hardships" test adopted in *Dangberg* and *Nevadans for Sound Government*.

Although NRS 233B.140 and NRCP 65 both require bonds to support a temporary restraining order and preliminary injunction, no monetary damage can or will inure to Defendants if they are enjoined from diverting the funds and deposit the funds with the Clerk of the Court

1 while this matter is pending. As such, only a nominal cash bond of \$100 should be required.

2 **AFFIRMATION**

3 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
4 document does not contain the social security number of any person.

5 Dated this 30th day of November 2018.

6
7 MATUSKA LAW OFFICES, LTD.

8 *Michael L. Matuska*

9 By:

10 MICHAEL L. MATUSKA, SBN 5711
11 Attorneys for Plaintiff, JAY KVAM,
12 individually and derivatively on behalf
13 the unincorporated joint venture identified as
14 7747
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AFFIDAVIT

STATE OF NEVADA)

) ss.

COUNTY OF Elko)

COMES NOW PLAINTIFF, JAY KVAM, who being first duly sworn deposes and says:

1. That I am the Plaintiff in the above-captioned action. I am over the age of 18, a resident of Washoe County, Nevada, and am competent to make this affidavit. I have first-hand knowledge of the facts alleged herein, the same are true and correct to the best of my knowledge, information and belief, and I am competent to testify to these facts if called upon to do so.

2. On or about February 14, 2017, I entered into an agreement (the "Agreement") with Defendants Brian Mineau ("Mineau") and Legion Investments, LLC ("Legion") concerning the purchase, renovation and resale of a house located at 7747 May Street, Chicago, Illinois (the "Property"). A true and correct copy of the Agreement is attached hereto as Ex. "1".

3. I funded \$93,781.31 toward the purchase and renovation of the Property as shown on the summary attached as Ex. "2" to this affidavit. The initial amount of \$44,784.31 was paid directly to escrow to purchase the property as reflected in the 2/13/2017 Alta Settlement Statement attached hereto as Ex. "3". Legion took title to the Property.

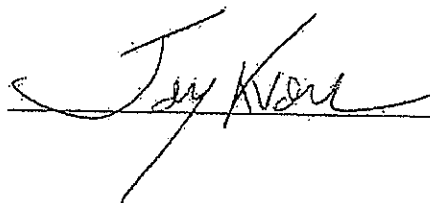
4. I recently discovered that the Property had been sold. Brian Mineau did not inform me that the property was listed for sale, that escrow was pending, or that the Property had in fact sold. I discovered this information by searching websites such as Zillow.com.

6. That on November 28, 2018, my attorney of record, Michael L. Matuska, sent a letter to Defendants' attorney (Ex. "4") and received the settlement statement in return (Ex. "5").

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 30 ^{November} day of ~~November~~, 2018.
20

KVAM



JAY

SUBSCRIBED and SWORN before me
this 30 ^{November} day of ~~July~~, 2018,
by JAY KVAM. ^{Wb}

K Brennan
NOTARY PUBLIC

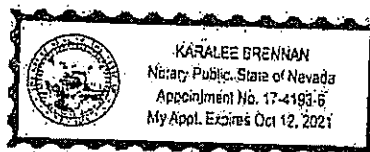


EXHIBIT INDEX

- 1 Terms of Agreement
- 2 Funding Draws
- 3 Settlement Statement 02.13.17
- 4 Defendants' Answers to Interrogatories
- 5 Letter to A. Sweet 11.28.18
- 6 Settlement Statement 11.16.18
- 7 Deed and Ownership History (2489 Sherman Lane, Carson City, NV)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 30th day of November 2018, I served a true and correct copy of the preceding document entitled **REQUEST FOR SUBMISSION** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509
asweet@gundersonlaw.com

☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person named above.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY.**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

/s/ Suzette Turley
SUZETTE TURLEY

EXHIBIT INDEX

1	Terms of Agreement
2	Funding Draws
3	Settlement Statement 02.13.17
4	Defendants' Answers to Interrogatories
5	Letter to A. Sweet 11.28.18
6	Settlement Statement 11.16.18
7	Deed and Ownership History (2489 Sherman Lane, Carson City, NV)

EXHIBIT 1
TERMS AGREEMENT
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 1
TERMS AGREEMENT
(Motion for Temporary Restraining Order and
Preliminary Injunction)

Terms of Agreement between Legion Investments LLC (its Members)

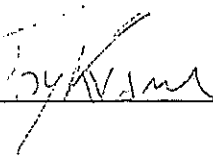
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

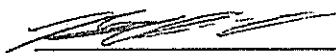
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Jay Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has agreed to allot %50 of his 1/3 profit to Mr. Kvam for both initial funding's.

Jay Kvam



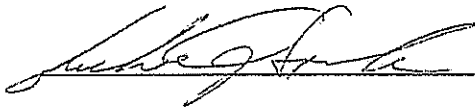
Date 2017-02-14

Brian Mineau

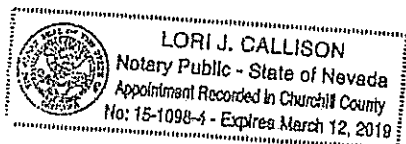


Date 2/13/2017

Michael J. Spinola



Date 2/13/17



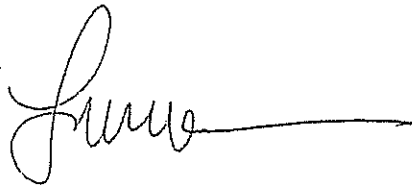


EXHIBIT 2
FUNDING DRAWS
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 2
FUNDING DRAWS
(Motion for Temporary Restraining Order and
Preliminary Injunction)

Exhibit A

item	value	date
property purchase	\$44,781.31	2017-02-13
wire transfer fees, property purchase	\$60.00	2017-02-13
1st draw	\$20,000.00	2017-03-23
wire transfer fee, 1st draw	\$20.00	2017-03-23
2nd draw	\$20,000.00	2017-04-14
wire transfer fee, 2nd draw	\$30.00	2017-04-14
3rd draw	\$9,000.00	2017-05-18
wire transfer fee, 3rd draw	\$30.00	2017-05-18
interest, 1st draw	\$1,143.01	2018-01-15
interest, 2nd draw	\$1,058.63	2018-01-15
interest, 3rd draw	\$417.70	2018-01-15

EXHIBIT 3
SETTLEMENT STATEMENT 02.13.17
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 3
SETTLEMENT STATEMENT 02.13.17
(Motion for Temporary Restraining Order and
Preliminary Injunction)

File No./ Escrow No.: 719630
 Print Date & Time: 02/13/17 6:24 AM
 Officer/ Escrow Officer:
 Settlement Location: Citywide Title

Citywide Title Corporation
 ALTA Universal ID:
 850 W. Jackson
 Suite 320
 Chicago, IL 60607



Property Address: 7747 South May Street
 Chicago, IL 60620

Buyer: Legion Investments

Seller: SDLiVest Group, LLC

Settlement Date: 02/13/2017

Disbursement Date: 02/13/2017

Additional dates per state requirements:

Seller		Description	Borrower/ Buyer	
Debit	Credit		Debit	Credit
		Financial		
	\$44,000.00	Sale Price of Property	\$44,000.00	
		Prorations/ Adjustments		
\$935.17		County Property Taxes from 07/01/2016 thru 12/31/2016		\$935.17
\$250.52		County Property Taxes from 01/01/2017 thru 02/13/2017		\$250.52
		Title Charges & Escrow / Settlement Charges		
\$50.00		Title - CPL Fee to First American	\$25.00	
\$3.00		Title - DFJ Policy Fee to Citywide Title		
\$800.00		Title - Owner's Policy to Rosenthal Law Group, LLC	\$800.00	
\$250.00		Title - Search Fee to Citywide Title		
\$600.00		Title - Settlement Fee to Citywide Title	\$600.00	
\$125.00		Title - Update Fee to Citywide Title	\$125.00	
\$40.00		Title - Wire Fee to Citywide Title	\$40.00	
		Government Recording and Transfer Charges		
		Recording Fee (Deed) to Cook County Recorder	\$50.00	
\$44.00		Transfer Tax to State of Illinois		
\$132.00		City Transfer Tax to City of Chicago	\$330.00	
\$22.00		County Transfer Tax to Cook County		
		Miscellaneous		
\$1,148.99		2016 1st Cook tax to Cook County Treasurer		
\$50.00		Final water to City of Chicago		
\$750.00		Seller Attorney fee to Rosenthal Law Group, LLC		

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
\$320.00		Water/zoning to River North Clerking		
Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
\$5,520.68	\$44,000.00	Subtotals	\$45,970.00	\$1,185.69
		Due From Borrower		\$44,784.31
\$38,479.32		Due To Seller		
\$44,000.00	\$44,000.00	Totals	\$45,970.00	\$45,970.00

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Citywide Title Corporation to cause the funds to be disbursed in accordance with this statement.

Legion Investments

SDLiVest Group, LLC

By _____

Date _____

By _____

Date _____

Escrow Officer

Date

EXHIBIT 4
DEFENDANTS' ANSWERS TO
INTERROGATORIES
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 4
DEFENDANTS' ANSWERS TO
INTERROGATORIES
(Motion for Temporary Restraining Order and
Preliminary Injunction)

1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 JAY KVAM,

Case No. CV18-00764

14 Plaintiff / Counterdefendant,

Dept. No. 3

15 vs.

16 BRIAN MINEAU; LEGION INVESTMENTS,
17 LLC; 7747 S. May Street, an Unincorporated
18 Joint Venture; and DOES I-X, inclusive,

19 Defendants / Counterclaimants.

20 **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO**
21 **PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES**

22 **PROPOUNDING PARTY:** Jay Kvam

23 **RESPONDING PARTY:** Brian Mineau and Legion Investments, LLC

24 Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and
25 LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K.
26 Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 33 of the Nevada Rules of Civil
27 Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s First Set of
28 Interrogatories to Mineau and Legion ("Requests") as follows:

///

///

///

1 **INTERROGATORY NO. 1:**

2 Describe when and how Mr. Kvam allegedly turned off power to the Property. Including the
3 date and time.

4 **RESPONSE TO INTERROGATORY NO. 1:**

5 At some point between March 1, 2018, and March 24, 2018, electrical service to the Property
6 ceased. On April 14, 2018, Mr. Kvam confirmed via email that he had cancelled electrical service to
7 the Property. Further details concerning when and how Mr. Kvam completed this task, including the
8 date and time, are presently unknown.

9 **INTERROGATORY NO. 2:**

10 State the date and approximate time on which the water pipes burst at the house on the
11 Property.

12 **RESPONSE TO INTERROGATORY NO. 2:**

13 The water pipes burst at the house on the Property at some point between March 1, 2018, and
14 March 24, 2018.

15 **INTERROGATORY NO. 3:**

16 State the date on which Legion Investments, LLC's improvements to the house at the Property
17 were completed.

18 **RESPONSE TO INTERROGATORY NO. 3:**

19 Objection. Interrogatory No. 3 assumes incorrect facts and therefore cannot be directly
20 answered. Specifically, Interrogatory No. 3 assumes that Legion Investments, LLC was the party
21 making improvements to the house at the Property and that such improvements were completed.

22 Without waiving this objection, Legion Investments, LLC has not itself made improvements
23 to the house at the Property and the improvements which were being made to the house at the Property
24 by licensed contractors have not been completed.

25 **INTERROGATORY NO. 4:**

26 State the date and amount of each expenditure for improvements to the Property.

27 ///

28 ///

1 **RESPONSE TO INTERROGATORY NO. 4:**

2 Legion Investments, LLC and Brian Mineau are aware of the following expenditures made
3 for improvements to the Property:

4 March 23, 2017 \$20,000.00

5 April 14, 2017 \$20,000.00

6 May 18, 2017 \$9,000.00

7 May 26, 2017 \$20,000.00

8 **INTERROGATORY NO. 5:**

9 State date [sic] and amount of each capital call or funding request for the property.

10 **RESPONSE TO INTERROGATORY NO. 5:**

11 None.

12 **INTERROGATORY NO. 6:**

13 Identify all persons who contributed capital or funds for the purchase and improvement of the
14 Property. Including the names, addresses, phone numbers, dates and amounts of the contributions.

15 **RESPONSE TO INTERROGATORY NO. 6:**

16 Jay Kvam
17 7565 Michaela Dr.
18 Reno, NV 89511

19 Contributions: February 13, 2017 \$44,000.00
20 March 23, 2017 \$20,000.00
21 April 14, 2017 \$20,000.00
22 May 18, 2017 \$9,000.00

20 Criterion NV LLC
21 7560 Michaela Dr.
22 Reno, NV 89511

23 Contributions: March 26, 2017 \$20,000.00

23 **INTERROGATORY NO. 7:**

24 Describe the heating system for the property, including the heater model and number, and
25 whether it a [sic] gas or electric heater.

26 **RESPONSE TO INTERROGATORY NO. 7:**

27 The heating system on the property is electric. The heater model and number are unknown.

28 ///

1 **INTERROGATORY NO. 8:**

2 Identify all dates that Brian Mineau was present at the Property.

3 **RESPONSE TO INTERROGATORY NO. 8:**

4 Brian Mineau has never been present at the Property.

5 **INTERROGATORY NO. 9:**

6 Identify all prospective economic relationships alleged in your Fourth Claim for Relief.
7 Include the name, address, phone numbers and describe any contracts and the dates and contents
8 thereof.

9 **RESPONSE TO INTERROGATORY NO. 9:**

10 The earlier completion of the project and profitable sale of the Property. Although most
11 potential buyers are not specifically known, Mutual Happiness LLC was in contract to purchase the
12 Property but cancelled that contract. Documentation of this lost prospective economic relationship
13 has been produced and identified as LEG0023 – LEG0036.

14 **INTERROGATORY NO. 10:**

15 Describe all acts of coercion, duress and intimidation identified in your Fifth claim for Relief
16 (Deceptive Trade Practices). Include the date, time and manner of the alleged acts and any identify
17 any [sic] witness thereto.

18 **RESPONSE TO INTERROGATORY NO. 10:**

19 Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into the Property,
20 despite the fact that the project was incomplete, no disbursements were yet due to anyone under the
21 "Terms of Agreement," and the project had been severely set back by Mr. Kvam's own actions. Brian
22 Mineau and Legion Investments, LLC nonetheless affirmed that they intended to complete the project
23 and perform their obligations under the "Terms of Agreement." However, Mr. Kvam demanded that
24 the "Terms of Agreement" be renegotiated to his benefit and threatened Mr. Mineau and Legion
25 Investments, LLC with frivolous legal action if they refused to acquiesce to those demands. Mr.
26 Kvam also wrongfully and fraudulently accessed Atlas Investors Southside LLC ("Atlas")'s bank
27 accounts and fraudulently, and without authorization, used Atlas's operating funds to pay off an
28 interest-free debt held by Atlas which would not come due for several more years, causing Atlas's

1 operating account to be overdrawn and forcing Mr. Mineau and Legion Investments, LLC to liquidate
2 other assets to provide Atlas with adequate operating funds and avoid drastic financial and business
3 consequences. Mr. Kvam also demanded Legion Investments' historic financial records, without any
4 legal or factual right to such information, again under threat of frivolous litigation. Mr. Kvam also
5 demanded that Mr. Mineau and/or Legion Investments, LLC personally guaranty Mr. Kvam's return
6 on his investment and provide separate collateral to protect his investment, again under threat of
7 frivolous litigation. When Brian Mineau and Legion Investments, LLC refused, Mr. Kvam's agents
8 harassed, threatened, and intimidated Mr. Mineau's family. Each of these acts constitutes acts of
9 coercion, duress, and intimidation designed to compel Mr. Mineau and/or Legion Investments, LLC
10 to buy Mr. Kvam out of the "Terms of Agreement," pay him more than he is entitled under the "Terms
11 of Agreement," and/or pay him sooner than he is entitled under the "Terms of Agreement." The date,
12 time, and manner of these acts is documented in correspondence between the parties' counsel and the
13 pleadings of this action.

14 **INTERROGATORY NO. 11:**

15 Describe all chattels identified in your Eighth Claim for Relief (Trespass to Chattels).

16 **RESPONSE TO INTERROGATORY NO. 11:**

17 Drywall, insulation, and copper plumbing.

18 DATED this 1 day of October, 2018.

19 GUNDERSON LAW FIRM

20
21
22 By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

Mark H. Gunderson, Esq.

Nevada State Bar No. 2134

3895 Warren Way

Reno, Nevada 89509

Telephone: 775.829.1222

*Attorneys for Brian Mineau and Legion
Investments*

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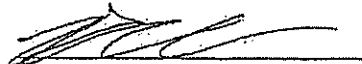
VERIFICATION

I, Brian Mineau, a Defendant and a Manger of Legion Investments, LLC in the above-entitled action, make this verification. I have read the foregoing *Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kyam's First Set of Interrogatories* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged upon information and belief, and as to those matters, I believe them to be true.

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

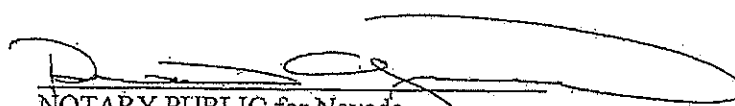
Executed in Reno, NV.

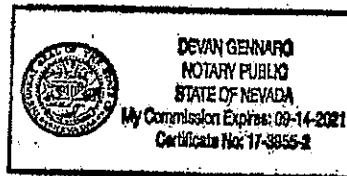
DATED this 1st day of October, 2018.


Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE

This instrument was acknowledged before me
on this 1st day of October, 2018 by Brian Mineau.


NOTARY PUBLIC for Nevada
Commission Expires: 9/14/2021



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 1 day of October, 2018, I deposited for mailing in Reno, Nevada a true and
4 correct copy of the **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO**
5 **PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES**, to the following:

6
7 Michael Matuska, Esq.
8 Matuska Law Offices, Ltd.
9 2310 South Carson Street, Suite 6
Carson City, Nevada 89701
Attorneys for Jay Kvam

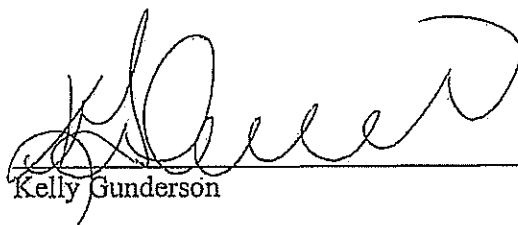
10
11
12 
Kelly Gunderson

EXHIBIT 5
LETTER TO A. SWEET 11.28.18
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 5
LETTER TO A. SWEET 11.28.18
(Motion for Temporary Restraining Order and
Preliminary Injunction)



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

November 28, 2018

Via Email and U.S. Mail

Austin K. Sweet, Esq.
Gunderson Law Firm
3895 Warren Way
Reno NV 89509
asweet@gundersonlaw.com

Re: *Kvam v. Mineau, et al.*
Second Judicial District Court Case No. CV18-00764

Dear Mr. Sweet:

Please confirm by the close of business today that Jay Kvam will be paid from the proceeds of sale of the property located at 7747 May Street, Chicago, Illinois, and that the payment will be received by the close of business on Friday, November 30, 2018. Absent this confirmation and payment, we will immediately move for a temporary restraining order to enjoin the diversion of funds.

Please also see the Second Set of Requests for the Production of Documents provided herewith.

Sincerely,

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By:

MICHAEL L. MATUSKA, ESQ.
2310 South Carson Street, Suite 6
Carson City NV 89701

cc: Client

I:\Client Files\Litigation\Kvam\K. Mineau\Corr\Sent\Sweet 11.28.18.docx

EXHIBIT 6
SETTLEMENT STATEMENT 11.16.18
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 6
SETTLEMENT STATEMENT 11.16.18
(Motion for Temporary Restraining Order and
Preliminary Injunction)

File No./Escrow No.: 730323
 Print Date & Time: 11/16/18 8:49 AM
 Officer/Escrow Officer:
 Settlement Location:
 Citywide Title
 850 W. Jackson Blvd., Ste. 320
 Chicago, IL 60607

Citywide Title Corporation
 ALTA Universal ID:
 850 W. Jackson
 Suite 320
 Chicago, IL 60607

Property Address: 7747 S May St
 Chicago, IL 60620
 Borrower: Thousand Oaks Management, LLC
 Seller: Legion Investments, LLC
 Settlement Date: 11/16/2018
 Disbursement Date: 11/16/2018
 Additional dates per state requirements:

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	\$41,000.00	Sale Price of Property	\$41,000.00	
		Deposit		\$1,000.00
		Prorations/Adjustments		
\$2,233.36		County Property Taxes from 01/01/2018 thru 11/14/2018		\$2,233.36
		Other Loan Charges		
		Appraisal Fee		
		Credit Report Fee		
		Flood Certification Fee		
		Tax Service Fee		
		Title Charges & Escrow / Settlement Charges		
\$50.00		Title - CPL Fee to First American	\$25.00	
\$3.00		Title - DFI Policy Fee to Citywide Title		
\$1,660.00		Title - Owner's Policy to Chi-City Title Co.		
\$250.00		Title - Search Fee to Citywide Title		
\$687.50		Title - Settlement Fee to Citywide Title	\$687.50	
\$150.00		Title - Update Fee to Chi-City Title Co.	\$150.00	
\$40.00		Title - Wire Fee to Citywide Title	\$40.00	
		Commission		
\$700.00		Commission to Altura Realty		
\$1,300.00		Commission to Miller Chicago, LLC		

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Government Recording and Transfer Charges		
		Recording Fee (Deed) to Cook County Recorder	\$50.00	
\$41.00		Transfer Tax to State of Illinois		
\$123.00		City Transfer Tax to City of Chicago	\$307.50	
\$20.50		County Transfer Tax to Cook County		
		Miscellaneous		
		Buyer Attorney Fee to Whitacre & Stefanczuk LTD	\$500.00	
\$650.00		Seller Attorney fee to Rosenthal Law Group, LLC		
\$1,000.00		Sold Tax TI to Citywide TI Account		
\$4,547.87		Sold Taxes to Cook County Treasurer		
\$400.00		Survey to Urchell & Associates		
\$2,000.00		Water Bill TI to Citywide TI Account		
\$320.00		Water/Zoning Certs to River North Clerking		
		Invoice to Altura Realty	\$2,300.00	
\$350.00		fees due prior files to Rosenthal Law Group, LLC		
Seller			Borrower/Buyer	
Debit	Credit		Debit	Credit
\$16,526.23	\$41,000.00	Subtotals	\$45,060.00	\$3,233.36
		Due From Borrower		\$41,826.64
\$24,473.77		Due To Seller		
\$41,000.00	\$41,000.00	Totals	\$45,060.00	\$45,060.00

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Citywide Title Corporation to cause the funds to be disbursed in accordance with this statement.

Buyer/Borrower:

Seller:

Willmetta D. Jones, by
David Shumate as Agent 11-16-18
THOUSAND OAKS MANAGEMENT LLC Date

[Signature] 11-16-18
LEGION INVESTMENTS, LLC Date

[Signature]
Escrow Officer

Michael B Brown

11/16/2018
Date

EXHIBIT 7
DEED AND OWNERSHIP HISTORY (2489
SHERMAN LANE, CARSON CITY, NV)
(Motion for Temporary Restraining Order and
Preliminary Injunction)

EXHIBIT 7
DEED AND OWNERSHIP HISTORY (2489
SHERMAN LANE, CARSON CITY, NV)
(Motion for Temporary Restraining Order and
Preliminary Injunction)

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 8-172-24
b. _____
c. _____
d. _____

FOR RECORDERS OPTIONAL USE ONLY

Document #: **488671**

Date of Recording: **09/20/2018**

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property: _____
b. Deed in Lieu of Foreclosure Only (value of property) _____
c. Transfer Tax Value _____
d. Real Property Transfer Tax Due: _____

\$ 270,000.00

\$ _____

\$ 270,000.00

\$ 1,053.00

4. If Exemption Claimed

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

5. Partial Interest: Percentage being transferred: 100%

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

Signature [Signature] Capacity Grantor

Signature _____ Capacity _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Brian T. Mineau
Address: 2171 San Remo Dr.
City: Sparks
State: NV Zip: 89434

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Jo A. Dodd
Address: 2489 Sherman Lane
City: Carson City
State: NV Zip: 89706

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

Print Name: Ticor Title of Nevada, Inc.

Escrow No.: 01804444-010-DC1

Address: 307 W. Winnie Lane Suite #1

City, State, Zip: Carson City, NV 89703

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

WHEN RECORDED MAIL TO:

Jo A. Dodd
2489 Sherman Lane
Carson City, NV 89706

MAIL TAX STATEMENTS TO:
SAME AS ABOVE

Escrow No. 1804444-DC1

The undersigned hereby affirms that this document
submitted for recording does not contain the social
security number of any person or persons.
(Pursuant to NRS 239b.030)

APN No.: 8-172-24
R.P.T.T. \$1,053.00

RECORDED AT THE REQUEST OF
TICOR TITLE CARSON CITY- 307
09/20/2018 03:42PM
FILE NO.488671
SUSAN MERRIWETHER
CARSON CITY RECORDER
FEE \$35.00 DEP SY

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT, BARGAIN, SALE DEED


THIS INDENTURE WITNESSETH: That Brian T. Mineau, a married man as his sole and separate property

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do/does hereby Grant,
Bargain, Sell and Convey to Jo A. Dodd, a widow

SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

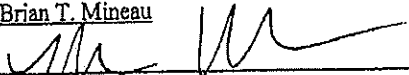
Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in
anywise appertaining.

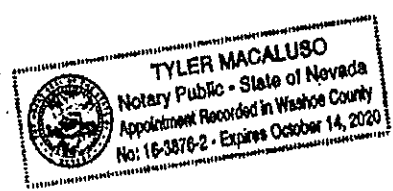
488671247


Brian T. Mineau

STATE OF NEVADA Th
COUNTY OF CARSON CITY ^{Washoe}

This instrument was acknowledged before me on, ^{ss:} SEP 17, 2018
by Brian T. Mineau


NOTARY PUBLIC



Order No.: 01804444-DC1

EXHIBIT A

All that certain real property situate in the County of Carson City, State of Nevada, described as follows:

A portion of the Southwest 1/4 of the Northeast 1/4 of Section 9, Township 15 North, Range 20 East, M. D. B. & M., particularly described as follows:

Beginning at a point in the Southwest 1/4 of the Northeast 1/4 of said Section 9 from which said point, the section corner common to Sections 3, 4, 9 and 10, Township 15 North, Range 20 East, M. D. B. & M., bears North 55°59'47" East a distance of 2388.21 feet and the quarter section corner common to said Sections 4 and 9 bears North 26°31'25" West a distance of 1481.21 feet; thence South 0°01'25" West a distance of 101.00 feet to the Northeast corner of that certain Parcel conveyed to Sylvester P. Loiacano and Edna R. Loiacano by Deed recorded in Book 74 of Deeds, Page 75, Ormsby County, Nevada, records; thence North 89°58'35" West along the North line of the aforesaid Loiacano Parcel a distance of 200.00 feet to the Northwest corner of the aforesaid Loiacano parcel; thence North 0°01'25" East a distance of 100.41 feet; thence North 89°51'15" East a distance of 200.00 feet to the point of beginning.

EXCEPTING THEREFROM the West 95 feet of the above described parcel of land.

ALSO EXCEPTING THEREFROM any portion lying within Sherman Lane.

ALSO KNOWN AS Parcel B as shown on the Parcel Map for Glenn E. and Thelma A. Walker recorded March 25, 1976 in Book 3, Page 496, Document No. 61782, Official Records of Carson City, Nevada amended on November 8, 1978, in Book 3, Page 690, Document No. 83551, Official Records of Carson City, Nevada.

APN: 8-172-24

Note: Document No. 462619 is provided pursuant to the requirements of Section 6.NRS 111.312.

Ownership History for Parcel # 008-172-24

Current Owners

Name	From
DODD, JO A 2489 SHERMAN LN CARSON CITY, NV 89706-0000	2018

Prior Owners

Name	From	To
MINEAU, BRIAN T 2171 SAN REMO DR SPARKS, NV 89434-0000	2016	2018
LEGION INVESTMENTS LLC 2171 SAN REMO DR SPARKS, NV 89434-0000	2015	2016
U S BANK TRUST, TRUSTEE % U S BANK TRUST, TRUSTEE 16745 W BERNARDO DR STE 300 SAN DIEGO, CA 92127-0000	2015	2015
LSF8 MASTER PARTICIPATION TRUST % U S BANK TRUST, TRUSTEE 16745 W BERNARDO DR STE 300 SAN DIEGO, CA 92127-0000	2015	2015
JOHNSON, KATHRYN K 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2015
JOHNSON, JACK 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2015
C C TREAS - TRUSTEE (JOHNSON, J % JACK & KATHRYN K JOHNSON 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2013
JOHNSON, JACK % JACK & KATHRYN K JOHNSON 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2013
JOHNSON, KATHRYN K % JACK & KATHRYN K JOHNSON 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2013
JOHNSON, JACK 210 GROSH AVE DAYTON, NV 89403-9717	1987	2013
JOHNSON, KATHRYN K 210 GROSH AVE DAYTON, NV 89403-9717	1987	2013

NOTE: This is not a complete history and should not be used in place of a title search.

[Go Back](#)