

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

In the matter of:

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION  
INVESTMENTS, LLC,

Respondents.

Electronically Filed  
Jun 10 2022 04:30 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case No. 84443**

District Court Case No. CV18-00764

**JOINT APPENDIX**

**VOLUME 3**

**Pages 251 - 472**

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*Attorney for Appellant*

JAY KVAM

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94.	Reply to Opposition to Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	07/17/18	1	63-72
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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
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**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

**JAY KVAM,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**Case No. CV18-00764**

**Dept. No. 3**

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**ORDER GRANTING TEMPORARY RESTRAINING ORDER**

Currently before this Court is Plaintiff/Counter-Defendant JAY KVAM'S ("KVAM")  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
("Motion") filed on November 30, 2018. The matter was submitted to this Court the same day.

As alleged by Kvam, an agreement was entered into on or about February 14, 2017 with  
Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC ("Defendants"). The  
agreement concerned a loan given by Kvam to Defendants to renovate a property. Kvam funded  
\$93,781.31 toward the purchase and renovation of the property and was due to receive 7% annual  
return on his investment. Kvam has now demanded his money back as a result of not having  
received any interest payment and of the cessation of renovation activity on the property. Kvam has

1 asserted that he is entitled to receive a return of his investment prior to the sale of the property.

2 Defendants have disputed this entitlement.

3 The basis of Kvam's instant request for a temporary restraining order ("TRO") is the recent  
4 sale of the property. Because the property was sold, Kvam argues, the dispute over when his  
5 investment should be returned—before or after sale of the property—has become moot, and he is  
6 due his investment under either theory. Kvam requests a TRO with regard to the sale proceeds, to  
7 prevent Defendants from disposing of them before any claim he has to them has been adjudicated.  
8

9 NRCPC 65 recognizes three kinds of injunctive orders: (1) TRO's, (2) preliminary  
10 injunctions, and (3) permanent injunctions. Generally, a temporary restraining order grants  
11 injunctive relief on an emergency basis for a limited time until the court can hear the matter in a  
12 motion for a preliminary injunction. *See* NRCPC 65. Under Nevada law, a court may issue an  
13 injunction when, it appears from the face of the complaint or affidavit, the commission of some act  
14 during the litigation would produce great or irreparable injury to the plaintiff. NRS 33.010(2). In  
15 order to issue a preliminary injunction or TRO, the moving party must demonstrate that without the  
16 grant of an injunction, he will suffer irreparable harm because there is no adequate remedy at law.  
17 *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1030 (1987). In addition, the movant  
18 must also demonstrate a reasonable probability of success on the merits of his case. *Id.* The purpose  
19 of such an order is to preserve the status quo. *Id.*  
20  
21

22 Injunctive relief is extraordinary relief, and irreparable harm must be articulated in specific  
23 terms by the issuing order or be sufficiently apparent elsewhere in the record. *Foley*, 121 Nev. at 80,  
24 109 P.3d at 762. For the purposes of injunctive relief, irreparable harm is harm for which  
25 compensatory damages would be inadequate. *S.O.C. Inc., v. Mirage Casino-Hotel*, 117 Nev. Adv.  
26 Rep 36, 23 P.3d 243 (2001); *Pickett v. Comanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d  
27  
28

1 42, 44 (1992); *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780-781, 587 P.2d

2 1329, 1330 (1978). If an equitable remedy is "far superior" to a legal remedy or damages are  
3 difficult to calculate, the existence of an adequate remedy at law will not preclude an injunction.

4 *Nevada Escrow Service v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975); *Harmon v. Tanner Motor*  
5 *Tours of Nevada, Ltd.*, 179 Nev. 4, 377 P.2d 622 (1963).

6  
7 The rights asserted by Kvam are certainly prejudiced by the sale of the property and the fact  
8 that he has yet to be repaid even the principal amount of the loan. The relevant question here,  
9 however, is whether compensatory damages, which is, ultimately, what Kvam is asking for, would  
10 be inadequate. Kvam argues that "[i]t appears...Defendants are trying to make themselves judgment  
11 proof or prepare for filing bankruptcy." Mot. 4. If this were the case, compensatory damages may  
12 not be available to Kvam if Defendants are able to dispose of the sale proceeds as they see fit.

13  
14 Kvam further requests that the Court set a nominal bond in the amount of \$100, as the  
15 Defendants will sustain no damage if the injunctive relief is granted. A nominal bond is appropriate  
16 at this time as the Court may always increase the amount of the bond during the pendency of the  
17 injunction if the facts and circumstances so warrant.

18  
19 The Court is satisfied that Kvam's rights to a return of his investment could be irreparably  
20 harmed if the instant Motion is not granted. Kvam has also shown a reasonable likelihood of  
21 success on the merits, as both parties agree that, if an enforceable contract exists, he is entitled  
22 under the Terms of Agreement to receive a return of his investment at some point in the  
23 proceedings.

24  
25 Accordingly,

26 BRIAN MINEAU, LEGION INVESTMENTS, LLC, and any affiliated party/interested  
27 organization are HEREBY ESTOPPED from disposing of any of the proceeds from the sale of the  
28

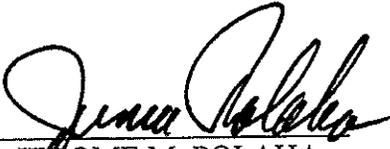
1 property located at 7747 S. May Street, Chicago, Illinois 60620.

2 This TRO is to expire within 15 days from the filing of this Order. A hearing to address  
3 injunctive relief is hereby scheduled for December 17 at 1:30 p.m.

4 Kvam is hereby required to place the sum of \$500.00 in the possession of the Court as  
5 security for the payment of costs and damages as may be suffered by any party.

6  
7 IT IS SO ORDERED.

8 Dated this 3<sup>rd</sup> day of December, 2018.

9   
10 JEROME M. POLAHA  
11 DISTRICT JUDGE  
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**CERTIFICATE OF MAILING**

1 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of  
2 the STATE OF NEVADA, COUNTY OF WASHOE; that on the 3 day of December,  
3 2018 I did the following:

4  Electronically filed with the Clerk of the Court, using the eFlex system which  
5 constitutes effective service for all eFiled documents pursuant to the eFile User

6 Agreement:

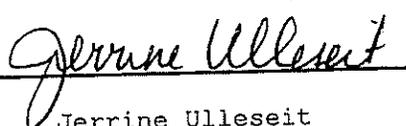
7 MARK HARLAN GUNDERSON, ESQ. for BRIAN  
8 MINEAU, LEGION INVESTMENTS, LLC

9 AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,  
10 LEGION INVESTMENTS, LLC

11 MICHAEL L. MATUSKA, ESQ. for JAY KVAM

12  Transmitted document to the Second Judicial District Court mailing system in a  
13 sealed envelope for postage and mailing by Washoe County using the United States

14 Postal Service in Reno, Nevada:

15   
16 Jerrine Ulleseit

1 **CODE 4050**  
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*

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

JAY KVAM, Case No. CV18-00764  
Plaintiff / Counterdefendant, Dept. No. 3  
vs.  
BRIAN MINEAU; LEGION INVESTMENTS,  
LLC; 7747 S. May Street, an Unincorporated  
Joint Venture; and DOES I-X, inclusive,  
Defendants / Counterclaimants.

---

**STIPULATION TO DEPOSIT FUNDS; ORDER**

On November 30, 2018, Plaintiff / Counterdefendant JAY KVAM ("Kvam") filed a *Motion for Temporary Restraining Order and Preliminary Injunction* ("Motion"), requesting an order restraining and enjoining Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion") from diverting the funds received from the sale of the property located at 7747 S. May Street, Chicago, Illinois (the "Property").

On December 3, 2018, this Court entered an *Order Granting Temporary Restraining Order* ("Order"), estopping Mineau and Legion from disposing of the proceeds from the sale of the Property.

///

///

1 This Court's Order also set a hearing to address the injunctive relief requested in the Motion  
2 on December 17, 2018, at 1:30 p.m. ("Hearing").

3 In lieu of pursuing the preliminary injunction and conducting the Hearing, IT IS  
4 STIPULATED among the parties, by and through their respective counsel, that:

5 1. Pursuant to NRCP 67(a), Legion shall deposit TWENTY-FOUR THOUSAND FOUR  
6 HUNDRED SEVENTY-THREE DOLLARS AND SEVENTY-SEVEN CENTS (\$24,473.77),  
7 representing the proceeds received from the sale of the Property, with the clerk of the court within ten  
8 (10) days of entry of the order approving this stipulation;

9 2. Upon proof that the funds have been deposited with the court, the Hearing shall be  
10 vacated, the Order shall be deemed satisfied and terminated, the preliminary injunction aspect of the  
11 Motion shall be deemed withdrawn without prejudice, and the clerk of court may return the \$500.00  
12 bond posted pursuant to the Order to Kvam;

13 3. The deposited funds shall be invested by the clerk of court in an interest-bearing  
14 instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order by this Court  
15 to dispose of the funds in a specified manner;

16 4. By entering into this stipulation, Legion and Mineau do not acknowledge the validity  
17 or merits of the Motion or the claims or arguments made therein; and

18 5. By entering into this stipulation, no parties waive any rights or claims whatsoever,  
19 including any claims they may have to ultimately receive the sum deposited with the court.

20

21 **AFFIRMATION**

22 The undersigned does hereby affirm that the preceding document filed in the Second Judicial  
23

24 ///

25

26 ///

27

28 ///

1 District Court of the State of Nevada, County of Washoe, does not contain the social security number  
2 of any person.

3 DATED this 10 day of December, 2018.

DATED this 19<sup>th</sup> day of December, 2018.

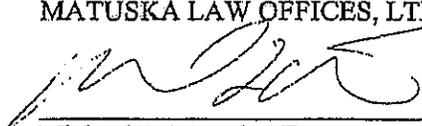
4 GUNDERSON LAW FIRM

MATUSKA LAW OFFICES, LTD.

5  
6 By:

  
Austin K. Sweet, Esq.  
Nevada State Bar No. 11725  
Mark H. Gunderson, Esq.  
Nevada State Bar No. 2134  
Attorneys for Brian Mineau and  
Legion Investments

By:

  
Michael L. Matuska, Esq.  
Nevada State Bar No. 5711  
Attorneys for Jay Kvam

11  
12 ORDER

13 IT IS SO ORDERED.

14 DATED this 11<sup>th</sup> day of Dec. 2018.

15  
16  
17 By:

  
DISTRICT JUDGE

1 **CODE 2540**  
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 \_\_\_\_\_/

22 **NOTICE OF ENTRY OF ORDER**

23 PLEASE TAKE NOTICE that a *Stipulation to Deposit Funds; Order* was entered on  
24 December 12, 2018, a copy of which is attached as Exhibit "1."

25 **AFFIRMATION**

26 The undersigned does hereby affirm that the preceding document, **NOTICE OF ENTRY OF**  
27 **ORDER**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does

28 ///

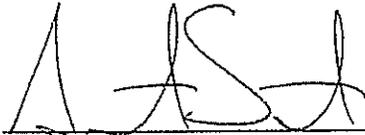
///

///

1 not contain the social security number of any person.

2 DATED this 12 day of December, 2018.

3 GUNDERSON LAW FIRM

4  
5  
6 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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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 1<sup>st</sup> day of December, 2018, I electronically filed a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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

Cindy Stockwell  
Cindy Stockwell

**EXHIBIT LIST**

Exhibit #	Description	Pages
Exhibit "1"	Stipulation to Deposit Funds; Order	4

# Exhibit “1”

# Exhibit “1”

1 **CODE 4050**  
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  
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

JAY KVAM,

Case No. CV18-00764

Plaintiff / Counterdefendant,

Dept. No. 3

vs.

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

Defendants / Counterclaimants.

STIPULATION TO DEPOSIT FUNDS; ORDER

On November 30, 2018, Plaintiff / Counterdefendant JAY KVAM ("Kvam") filed a *Motion for Temporary Restraining Order and Preliminary Injunction* ("Motion"), requesting an order restraining and enjoining Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion") from diverting the funds received from the sale of the property located at 7747 S. May Street, Chicago, Illinois (the "Property").

On December 3, 2018, this Court entered an *Order Granting Temporary Restraining Order* ("Order"), estopping Mineau and Legion from disposing of the proceeds from the sale of the Property.

///

///

1 This Court's Order also set a hearing to address the injunctive relief requested in the Motion  
2 on December 17, 2018, at 1:30 p.m. ("Hearing").

3 In lieu of pursuing the preliminary injunction and conducting the Hearing, IT IS  
4 STIPULATED among the parties, by and through their respective counsel, that:

5 1. Pursuant to NRCP 67(a), Legion shall deposit TWENTY-FOUR THOUSAND FOUR  
6 HUNDRED SEVENTY-THREE DOLLARS AND SEVENTY-SEVEN CENTS (\$24,473.77),  
7 representing the proceeds received from the sale of the Property, with the clerk of the court within ten  
8 (10) days of entry of the order approving this stipulation;

9 2. Upon proof that the funds have been deposited with the court, the Hearing shall be  
10 vacated, the Order shall be deemed satisfied and terminated, the preliminary injunction aspect of the  
11 Motion shall be deemed withdrawn without prejudice, and the clerk of court may return the \$500.00  
12 bond posted pursuant to the Order to Kvam;

13 3. The deposited funds shall be invested by the clerk of court in an interest-bearing  
14 instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order by this Court  
15 to dispose of the funds in a specified manner;

16 4. By entering into this stipulation, Legion and Mineau do not acknowledge the validity  
17 or merits of the Motion or the claims or arguments made therein; and

18 5. By entering into this stipulation, no parties waive any rights or claims whatsoever,  
19 including any claims they may have to ultimately receive the sum deposited with the court.

20  
21  
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**AFFIRMATION**

The undersigned does hereby affirm that the preceding document filed in the Second Judicial

1 District Court of the State of Nevada, County of Washoe, does not contain the social security number  
2 of any person.

3 DATED this 10 day of December, 2018.

DATED this 19 day of December, 2018.

4 GUNDERSON LAW FIRM

MATUSKA LAW OFFICES, LTD.

5  
6 By:

  
Austin K. Sweet, Esq.  
Nevada State Bar No. 11725  
Mark H. Gunderson, Esq.  
Nevada State Bar No. 2134  
*Attorneys for Brian Mineau and  
Legion Investments*

By:

  
Michael L. Matuska, Esq.  
Nevada State Bar No. 5711  
*Attorneys for Jay Kvam*

11  
12 ORDER

13 IT IS SO ORDERED.

14 DATED this 11<sup>th</sup> day of Dec., 2018.

15  
16  
17 By:

  
DISTRICT JUDGE

1 **CODE 2610**  
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 **NOTICE OF DEPOSIT OF PROPERTY PROCEEDS BY BRIAN MINEAU AND LEGION**  
22 **INVESTMENTS, LLC**

23 TO: Plaintiff JAY KVAM, and his attorney of record Michael L. Matuska:

24 PLEASE TAKE NOTICE THAT on December 13, 2018, pursuant to the *Stipulation to Deposit*  
25 *Funds; Order* filed in this matter on December 12, 2018, and pursuant to NRS 18.130(1), Defendants  
26 BRIAN MINEAU and LEGION INVESTMENTS, LLC deposited with the Court in this matter a  
27 check in the amount of \$24,473.77 representing the proceeds received from the sale of the Property  
28 which is the subject matter of this case, receipt of which is attached as Exhibit "1". This amount is to  
be invested by the clerk of the court in an interest-bearing instrument, subject to withdrawal, in whole  
or in part, at any time thereafter upon order by the Court to dispose of the funds in a specified manner.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document, **NOTICE OF DEPOSIT OF PROPERTY PROCEEDS BY BRIAN MINEAU AND LEGION INVESTMENTS, LLC**, 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   3   day of December, 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*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 13 day of December, 2018, I electronically filed a true and correct copy of the **NOTICE OF DEPOSIT OF PROPERTY PROCEEDS BY BRIAN MINEAU AND LEGION INVESTMENTS, LLC**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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

Cindy Stockwell  
Cindy Stockwell

**EXHIBIT LIST**

Exhibit #	Description	Pages
Exhibit "1"	Copy of Second Judicial District Court Receipt #DCDC626746	2

**Exhibit “1”**

**Exhibit “1”**

XX

DUPLICATE

RECEIPT

Second Judicial District Court

Receipt Number: DCDC626746  
Bond ID: TRO-18-00011  
Date: 13-DEC-2018  
Cashier: KTONBOW  
Comment:

Payor: Austin K. Sweet, Esq.  
Address: 3895 Warren Way  
Reno, NV 89509

Description	Amount
Case: CV18-00764 JAY KVAM VS BRIAN MINEAU, ET AL Party: SITE DEFINED TRUST DEPOSI	
TRD Cash Bond	-24,473.77
Total Fees:	0.00
Total Payment:	24,473.77
Amt. Tendered:	0.00
Change:	0.00

1 **CODE: 2490**  
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 LEAVE TO FILE AMENDED COMPLAINT**

17 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
18 Offices, Ltd., Michael L. Matuska, and hereby moves pursuant to NRCP 15(a) to file a First  
19 Amended Complaint to add claims of fraud and breach of contract against Brian Mineau due to his  
20 failure to fund 7747 S. May Street, an Unincorporated Joint Venture, as required by the Joint  
21 Venture Agreement, and to make other changes to the complaint to reflect the recent sale of the  
22 House on November 16, 2018.

23 This motion is made and based on the points and authorities attached hereto, the proposed  
24 First Amended Complaint submitted herewith, and all other pleadings, exhibits and documents of  
25 record.

26 Dated this 24th day of December, 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 of the  
unincorporated joint venture identified as 7747



MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 358-7220

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**AFFIRMATION**

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

Dated this 24th day of December, 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

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 24th day of December 2018, I served a true and correct copy of the preceding document entitled **MOTION FOR LEAVE TO AMEND** as follows:

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

**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	Response to Interrogatory No. 6
3	First Amended Verified Complaint

EXHIBIT 1  
TERMS OF AGREEMENT  
(Motion for Leave to File Amended Complaint)

EXHIBIT 1  
TERMS OF AGREEMENT  
(Motion for Leave to File Amended Complaint)

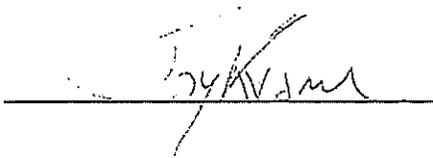
Terms of Agreement between Legion Investments LLC (its Members)  
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

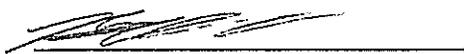
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest 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

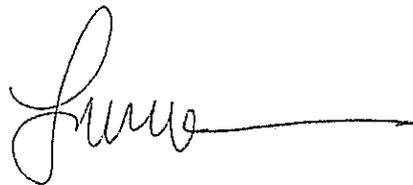
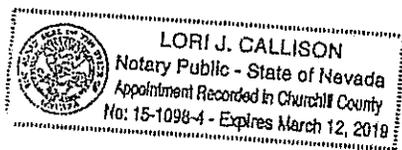


EXHIBIT 2  
RESPONSE TO INTERROGATORY NO. 6  
(Motion for Leave to File Amended Complaint)

EXHIBIT 2  
RESPONSE TO INTERROGATORY NO. 6  
(Motion for Leave to File Amended Complaint)

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 \_\_\_\_\_ /

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.		
17	Reno, NV 89511		
	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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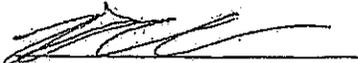
VERIFICATION

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 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.

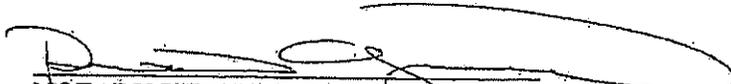
Executed in Reno, NV

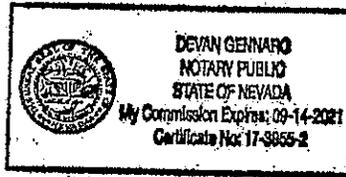
DATED this 1<sup>st</sup> day of October, 2018.

  
Brian Mineau

STATE OF NEVADA  
COUNTY OF WASHOE

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

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

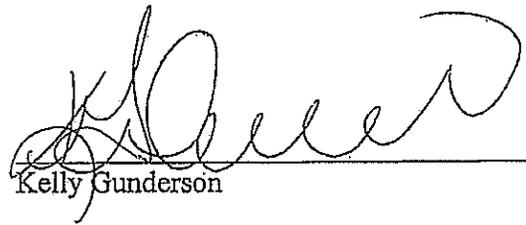


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CERTIFICATE OF SERVICE

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

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



---

Kelly Gunderson

EXHIBIT 3  
FIRST AMENDED VERIFIED COMPLAINT  
(Motion for Leave to File Amended Complaint)

EXHIBIT 3  
FIRST AMENDED VERIFIED COMPLAINT  
(Motion for Leave to File Amended Complaint)

1 **CODE: 1090**  
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  
11 Plaintiff,  
12 v.  
13 BRIAN MINEAU; LEGION INVESTMENTS,  
14 LLC; 7747 S. May Street, an Unincorporated  
15 Joint Venture; and DOES I-X, inclusive,  
16 Defendants.

**FIRST AMENDED VERIFIED  
COMPLAINT**

17 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
18 Offices, Ltd., Michael L. Matuska, and hereby complains, alleges, and avers as follows:

19 **I.**  
20 **PARTIES**

21 1. Plaintiff JAY KVAM ("KVAM") is now and at all times mentioned herein was a  
22 resident of Washoe County, Nevada.

23 2. Defendant LEGION INVESTMENTS, LLC ("LEGION") is a Nevada limited  
24 liability company, duly formed and operating pursuant to Chapter 86 of the Nevada Revised  
25 Statutes, with its principal place of business in Washoe County, Nevada.

26 3. Defendant BRIAN MINEAU ("MINEAU") is now and at all times mentioned  
27 herein was a resident of Washoe County, Nevada and the member/manager of LEGION.

28 4. 7747 S. May Street, Chicago, Illinois, is an unincorporated joint venture formed  
between KVAM, MINEAU, LEGION, and Michael Spinola, and is hereafter referred to "7747."

///



1           b.     Renovation would proceed through three (3) funding draws, one draw to be  
2 funded by each joint venturer;

3           c.     MINEAU would manage the project;

4           d.     The profits would be shared 1/3<sup>rd</sup> each between KVAM, LEGION, and  
5 Spinola; and

6           e.     MINEAU would transfer all interest in the joint venture to KVAM in the  
7 event the joint venture failed.

8           9.     The joint venture created by the Agreement identified above and described herein  
9 as 7747 was an unincorporated association that was not registered with the Nevada Secretary of  
10 State and did not file a Statement of Partnership pursuant to NRS 87.4327.

11          10.    KVAM invested \$93,784.31 in the project to date through a series of five (5) wire  
12 transfers as follows:

13           a.     \$44,000 on February 13, 2017 for the purchase money

14           b.     \$784.31 on February 13, 2017 for closing costs

15           c.     \$20,000 on March 23, 2017 for the first draw

16           d.     \$20,000 on April 14, 2017 for the second draw

17           e.     \$9,000 on May 18, 2014 for the third draw.

18          11.    The amounts listed in Par. 10 are exclusive of any additional costs and interest, and  
19 include KVAM's funding contribution, as well as Spinola's funding contribution, for which  
20 KVAM acceded to Spinola's interest in the joint venture such that Spinola is no longer part of the  
21 joint venture.

22          12.    KVAM has not received his annual interest payment on any of the advances  
23 identified in Par. 10.

24          13.    Title to the House was vested in LEGION, which is MINEAU's limited liability  
25 company.

26          14.    MINEAU initially represented that the project would take approximately six (6)  
27 weeks to complete. The timeframe was later extended to 90 days for the construction phase.

28          15.    MINEAU failed to fund his required renovation draw.



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**IV.**  
**SECOND CAUSE OF ACTION**  
**(Rescission or Reformation of Agreement)**

25. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

26. The parties were mutually mistaken about the viability of the project, the legal status of the joint venture created by the Agreement and identified herein as 7747, and the rights and obligations of the Parties as a result thereof.

27. The Agreement should be rescinded and KVAM should be restored to his original position with all money returned at a reasonable rate of interest of not less than 7%.

28. In the alternative, the Agreement should be reformed to clarify the status of 7747 as a joint venture and the role of the joint venturers.

**V.**  
**THIRD CAUSE OF ACTION**  
**(Breach of Contract - Loan)**

29. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

30. KVAM has demanded his annual payment and repayment of the monies loaned, but Defendants have failed and refused to repay him.

31. KVAM has performed all conditions precedent to his right to be repaid on the loan and, to the extent any further conditions were not performed, KVAM's performance was excused or rendered impossible by the acts of the Defendants.

32. As a result of the foregoing, KVAM has been damaged in an amount to be proven at trial in excess of \$15,000.

**VI.**  
**FOURTH CAUSE OF ACTION**  
**(Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing - Joint Venture Agreement)**

33. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein:



1 fully set forth herein.

2 43. KVAM has disassociated from the joint venture, the joint venture is no longer  
3 viable, the conduct of MINEAU and LEGION has frustrated the joint venture, the purpose of the  
4 joint venture has been completed, and it is not reasonably practicable to carry on the joint venture,  
5 such that 7747 should be dissolved and wound up.

6 44. As part of the winding up, KVAM is entitled to an accounting and settlement of all  
7 partnership accounts and liquidation of the partnership assets.

8 45. The winding up should be conducted with court supervision and a receiver should  
9 be appointed.

10 **IX.**  
11 **SEVENTH CAUSE OF ACTION**  
12 **(Temporary and Permanent Injunction)**

13 46. Plaintiff hereby incorporates by reference all of the paragraphs above as though  
14 fully set forth herein.

15 47. Following dissolution of the joint venture, MINEAU and LEGION should be  
16 temporarily and permanently enjoined from conducting any business on behalf of 7747 or  
17 incurring any liabilities in furtherance of the joint venture, except as approved by the Court and  
18 necessary to preserve the proceeds of sale.

19 **X.**  
20 **EIGHTH CAUSE OF ACTION**  
21 **(Fraud, Fraudulent Inducement and Fraudulent Concealment)**

22 48. Plaintiff hereby incorporates by reference all of the paragraphs above as though  
23 fully set forth herein.

24 49. As parties to the joint venture Agreement, MINEAU and LEGION owed multiple  
25 contractual, legal and fiduciary duties to KVAM and 7747, which included the duty to disclose  
26 material facts.

27 50. Prior to signing the Agreement, MINEAU and LEGION misrepresented and  
28 concealed the true facts, including their intention and ability to fund the project and complete the  
project in a timely manner.



MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

1 agreement to initiate this action.

2 WHEREFORE, Plaintiff prays for relief as follows:

- 3 1. For an order declaring the rights and obligations of KHAM, MINEAU, LEGION,  
4 and 7747;
- 5 2. For Court supervised winding up and an order appointing a receiver to secure any  
6 remaining assets and to complete any remaining steps to winding up 7747;
- 7 3. For a temporary and permanent injunction enjoining MINEAU and LEGION from  
8 any further involvement with 7747 and its assets;
- 9 4. For an order declaring that MINEAU and LEGION are liable for any debts of 7747  
10 existing prior to or after the disassociation of KHAM and that they are further obligated to  
11 indemnify KHAM against any liabilities;
- 12 5. For an equitable accounting;
- 13 6. For compensatory damages in an amount to be proven at trial in excess of \$15,000;
- 14 7. For punitive and exemplary damages in excess of \$100,000;
- 15 8. For an award of costs and attorney fees incurred in prosecuting this action;
- 16 9. For such other and further relief as the Court deems just in the premises.

17 **AFFIRMATION**

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

20 Dated this \_\_\_\_\_ day of December 2018.

22 MATUSKA LAW OFFICES, LTD.

23  
24 By: MICHAEL L. MATUSKA, SBN 5711  
25 Attorneys for Plaintiff, JAY KHAM,  
26 individually and derivatively on behalf  
27 the unincorporated joint venture identified as 7747  
28

VERIFICATION

STATE OF NEVADA )  
COUNTY OF \_\_\_\_\_ ) ss.

JAY KVAM, being first duly sworn, deposes and says:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing instrument and knows the contents thereof and that the same is true of his own knowledge except for those matters stated on information and belief, and as to those matters, he believes them to be true.

\_\_\_\_\_  
JAY KVAM

SUBSCRIBED AND SWORN to before me,  
this \_\_\_\_\_ day of December 2018,  
by JAY KVAM.

\_\_\_\_\_  
NOTARY PUBLIC

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

**JAY KVAM,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**Case No. CV18-00764**

**Dept. No. 3**

---

**ORDER**

Currently before the Court is Plaintiff/Counter-Defendant JAY KVAM'S ("KVAM") MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT ("Motion"), filed October 25, 2018. Defendant/Counter-Claimant BRIAN MINEAU ("Mineau") filed an OPPOSITION on November 13, 2018, and Kvam filed a REPLY to the Opposition on November 19, 2018. This Court heard oral argument on the matter on December 17, 2018.

**I. Background**

This Motion stems from an executed agreement between the parties to purchase, restore, and resell a house in Chicago. Kvam provided funding for the house, and, pursuant to the agreement, was allegedly entitled to a return of 7% per annum on his investment. Mineau was to manage the

1 operation. Kvam brought the instant action claiming that he has not been paid interest and that the  
2 project was abandoned. Mineau filed a Counterclaim, which is the subject of the instant Motion.  
3 This Court previously dismissed Mineau's eighth and ninth counterclaims,<sup>1</sup> and ordered Mineau to  
4 present to the Court a more definite statement of his fifth, tenth, and eleventh claims. The instant  
5 Motion puts in question the remaining claims, as subject either to dismissal or summary judgment.  
6 Those claims break down as follows:  
7

- 8 1) Breach of Contract.
- 9 2) Breach of the Covenant of Good Faith and Fair Dealing.
- 10 3) Declaratory Relief.
- 11 4) Intentional interference with prospective economic advantage.
- 12 5) Deceptive trade practices.
- 13 6) Abuse of Process.
- 14 7) Trespass.
- 15 10) Fraud.
- 16 11) Negligence.

17  
18  
19 The Court will consider these claims in turn.

## 20 **II. Analysis**

### 21 **A. Legal Standards**

#### 22 **i. Dismiss**

23  
24 Under Nevada Rule of Civil Procedure 12(b)(5), a complaint will not be dismissed for  
25 failure to state a claim unless "it appears beyond a reasonable doubt that the plaintiff could prove no  
26 set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Simpson v.*  
27

28 <sup>1</sup> The parties make arguments regarding summary judgment on the eighth and ninth counterclaims, but these claims have already been dismissed. The Court will not consider these arguments.

1 *Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997); *Vacation Village v. Hitachi America*, 110  
2 Nev. 481, 484, 874 P.2d 744, 746 (1994). There is a strong presumption against dismissing an  
3 action for failure to state a claim. *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 249 (9th Cir.  
4 1997). When determining whether to grant a moving party's motion to dismiss, all factual  
5 allegations of the complaint must be accepted as true. *Vacation Village, Inc.*, 110 Nev. at 484, 874  
6 P.2d at 746. The court must construe the pleading liberally and draw every fair inference in favor of  
7 the nonmoving party. *Id.* at 484, 874 P.2d at 746. A motion to dismiss should not be granted unless  
8 it appears beyond a doubt that a party could prove no set of facts that would entitle them to relief.  
9 *Pankopf v. Peterson*, 124 Nev. 43, 45, 175 P.3d 910, 912 (2008) (citing *Vacation Village*, 110 Nev.  
10 at 484). Specifically, "the test for determining whether the allegations of a complaint are sufficient  
11 to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a  
12 legally sufficient claim and the relief requested." *Id.* at 485.

## 15 **ii. Summary Judgment**

16 Under NRCP 56, a party seeking to recover upon a claim may move for summary judgment  
17 upon all or any part of the claim. Such relief is appropriate when the pleadings, discovery and  
18 exhibits show that there is no genuine dispute as to any material fact and that the moving party is  
19 entitled to judgment as a matter of law. NRCP 56(c); *Nelson v. Calif. State Auto Ass'n Inter-Ins.*  
20 *Bureau*, 114 Nev. 345, 956 P.2d 803 (1998). The burden on the moving party may be met by  
21 showing that there is an absence of evidence to support any one or more of the prima facie elements  
22 of the non-moving party's case. *See, NGA #2, LLC v. Rains*, 113 Nev. 1151, 1156 (1997) (citing  
23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548 (1986)). Once the moving party has met  
24 its burden to show that no genuine issue of material fact exists, the non-moving party must produce  
25 specific facts supported by competent admissible evidence that demonstrates the presence of a  
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1 genuine issue of material fact for trial. *See, Elizabeth E. v. ADT Security Sys. W.*, 108 Nev. 889, 892  
2 (1992). While the pleadings and other proof must be construed in a light most favorable to the non-  
3 moving party, that party must do more than simply show that there is some metaphysical doubt as to  
4 the operative facts in order to avoid entry of summary judgment, and is not entitled to build a case  
5 on the gossamer threads of whimsy, speculation and conjecture. *Wood v. Safeway, Inc.*, 121 Nev.  
6 724, 732, 121 P.3d 1026, 1031 (2005). The mere existence of some issues of fact does not  
7 necessarily preclude summary judgment. *Scott v. Harris*. 550 U.S. 372 (2007). An issue of material  
8 fact is “genuine” if the evidence is such that a reasonable jury, in applying the correct standard of  
9 proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
10 242, 248 (1986). A fact is “material” if it must be decided in order to resolve the substantive issue  
11 of the claim or defense to which the motion is directed. *Id.*  
12

13  
14 NRCP 56(f) is potentially available to the non-moving party where further discovery is  
15 required to present facts required to oppose summary judgment. The provision states,

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

22 NRCP 56(f).

### 23 **B. Mineau's Claims**

24 The Court will note from the outset that Mineau's First Amended Counterclaim (“FACC”)  
25 included two new factual allegations incorporated into claims five, ten, and eleven pursuant to this  
26 Court's Order for clarification. First, Mineau alleges that on or about March 24, 2018 the power to  
27 the property had been turned off by Kvam, causing the pipes to freeze, burst, and leak. Second,  
28 Mineau alleges that Kvam accessed the checking account of a company called Atlas and used

1 \$20,000 from the account to pay off an interest free credit card, depriving Atlas of the use of those  
2 funds. As to this latter claim, Mineau's counsel at hearing could not articulate the date of the  
3 transfer or the amount transferred, despite having clearly alleged in the pleading that it happened  
4 March 6, 2018 and in the amount of \$20,000. Counsel asserted at argument that the confusion may  
5 have stemmed from miscommunication between him and his client. At hearing on a motion for  
6 summary judgment is a particularly inopportune time for such miscommunication, especially when  
7 both the opposing party and the Court are seeking clarification on the issue. Atlas is not a party to  
8 this litigation. Furthermore, the relationship between Atlas and the parties and the property that was  
9 the subject of the agreement, if any, is entirely unclear. Mineau has provided no evidence clarifying  
10 the connection either in his filings or at hearing, and as it appears to the Court, anything having to  
11 do with Atlas is irrelevant to the adjudication of this case's issues. As such, the Court will proceed  
12 without reference to the allegation regarding Atlas' assets.  
13  
14

15 Mineau believes that summary judgment is at this time premature, and invokes NRCP 56(f)  
16 to allow for additional discovery before the Court considers summary judgment.  
17

18 *First Claim – Breach of Contract*

19 The first claim for breach of contract is not extensively discussed in the parties' briefing, but  
20 the Court did hear argument with regard to the factual allegations underlying the claim. Mineau  
21 alleges, first of all, that Kvam breached the agreement by demanding the repayment of his  
22 investment before repayment was due. However, paragraph eight of the FACC simultaneously  
23 states that "[t]he Agreement does not include a defined maturity date or a defined rate of return."  
24 FACC 2. It is unclear then how Mineau maintains that Kvam's demand for repayment was early. It  
25 is true that the validity of the agreement and the specifics of its terms have not yet been determined,  
26  
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28

1 but it is also clear that demanding repayment does not constitute a breach.<sup>2</sup> Kvam's obligation was  
2 to fund the project and it is undisputed that he performed.

3 Mineau also alleges that Kvam shut off the power to the property sometime in March, which  
4 caused the pipes to freeze, burst, and leak. Kvam counters with a copy of the utility bill for the  
5 property, which is dated April 9, 2018. It is undisputed that Kvam told Mineau on or about April 14,  
6 2018 that he was shutting off the power. At argument, counsel for Mineau claimed that a property  
7 manager had contacted Mineau on March 24, 2018 and told him the power was off and the pipes  
8 were leaking. However, no admissible evidence has been provided to support this contention.<sup>3</sup>  
9 Facing summary judgment, Mineau failed to provide the Court with an affidavit, his own or the  
10 property manager's, which would serve to combat the summary judgment motion and the utility bill  
11 that directly contradicts Mineau's account. Mineau presented no reasons why an affidavit  
12 containing "facts essential to justify the party's opposition" was not presented to the Court.  
13 Mineau's NRCP 56(f) request cannot, therefore, be granted.  
14  
15

16 Finally, the April utility bill shows 0.0kWh usage for the eight months leading up to April  
17 when Kvam notified Mineau that he was turning off the power. This suggests that nothing had  
18 changed with regard to power usage at the property from August through March. Furthermore,  
19 while the validity of the agreement has yet to be determined, nothing on the face of the agreement  
20 suggests the Kvam had a responsibility to keep the power on, or that turning it off would constitute  
21 a breach. And again, no evidence has been offered to show that the agreement did somehow  
22 contemplate these obligations.  
23  
24

25 \_\_\_\_\_  
26 <sup>2</sup> Mineau's counsel's affidavit in support of his NRCP 56(f) request asserts that they expect to learn, through further  
27 discovery, the expectations of the parties with regard to the agreement. Opp. Ex. 1. Mineau could have opposed the  
28 summary judgment motion by providing an affidavit stating his expectations and understanding of the agreement and  
thereby put the question of Kvam's performance at issue; alternately, counsel, arguing pursuant to NRCP 56(f), could  
have presented to the Court reasons why such an affidavit was unavailable.

<sup>3</sup> Exhibit 2 to Mineau's Opposition purports to be a letter, dated May 22, 2018, from the property manager explaining  
that on March 24 the electricity was not operating, pipes had burst, and water damage had occurred.

1 Mineau has failed to put forth evidence creating a genuine issue of material fact as to  
2 whether or not Kvam breached the agreement. Therefore, summary judgment will be entered as to  
3 his first claim.

4 *Second Claim – Breach of the Covenant of Good Faith and Fair Dealing*

5 The FACC states, “[b]y the actions described above, Kvam has breached the implied  
6 covenant of good faith and fair dealing by performing in a manner that was unfaithful to the purpose  
7 of the Agreement.” FACC 4. The “actions described above” presumably refer to the allegations  
8 discussed above with regard to the first claim for breach of contract. They are equally, and for the  
9 same reasons, unavailing here. Summary judgment will be entered as to Mineau’s second claim.  
10

11 *Third Claim – Declaratory Relief*

12 Neither party has argued the issue of declaratory relief, even though Kvam requests  
13 summary judgment be entered on it. Furthermore, the validity of the Agreement and the precise  
14 meaning of its terms are matters yet to be adjudicated. The Court finds that this claim may go  
15 forward.  
16

17 *Fourth Claim – Intentional interference with prospective economic advantage*

18 The elements required for a claim of intentional interference with prospective economic  
19 advantage are: (1) a prospective contractual relationship between the plaintiff and a third party; (2)  
20 knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by  
21 preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5)  
22 actual harm to the plaintiff as a result of the defendant's conduct. *In re Amerco Derivative Litig.*,  
23 127 Nev. 196, 226, 252 P.3d 681, 702 (2011).  
24  
25

26 In this Court’s previous Order regarding Kvam’s first motion to dismiss, the Court stated  
27 that it was sufficient for Mineau to identify the theory and basic facts of the claim to survive a  
28



1 alleging injury to another person.

2 Mineau claims that "Kvam used coercion, duress, and intimidation in an attempt to force  
3 Mineau and Legion to pay him more than he is entitled under the Agreement." However, there is no  
4 basis upon which this claim is properly made. The actions of a process server do not constitute  
5 deceptive trade practices. This claim must be dismissed.

6 Mineau's fifth claim can alternatively be disposed of by summary judgment. Mineau has not  
7 presented evidence of specific facts supporting the claim. If Mineau somehow could recover for the  
8 injury of another, an affidavit sworn by his wife who allegedly experienced the harassment would  
9 have sufficed to survive summary judgment, but Mineau has not endeavored to provide such  
10 evidence. The claim thus presents a bald allegation.

11 Mineau's fifth claim for deceptive trade practices is dismissed.

12  
13  
14 *Sixth Claim – Abuse of Process*

15 Mineau's abuse of process claim challenges the very filing of the instant suit but describes  
16 no conduct that suggests the complaint was "malicious, fraudulent, and oppressive." FACC 8. It is  
17 unclear, then, on what basis Mineau believes the present action is being fraudulently prosecuted.  
18 Filing a complaint does not become fraudulent just because the party opposing it does not believe it  
19 has merit. Mineau argues that the Court already considered this claim on a motion to dismiss and  
20 that it survived. This is true; however, the claim now faces a summary judgment attack and no  
21 evidence in support of the claim containing a genuine issue of material fact has been presented.  
22 Neither has Mineau's counsel indicated in the NRCP 56(f) affidavit that further discovery will assist  
23 in generating evidence of abuse of process. The Court cannot rely on "metaphysical doubt" as to  
24 Kvam's motivation in filing his complaint. Nothing in the record demonstrates a triable issue of fact  
25 with regard to this claim, and summary judgment must therefore be entered against it.  
26  
27  
28

*Seventh Claim – Trespass*

1  
2 The facts alleged in support of this claim state, “Kvam caused his process servers to harass,  
3 threaten, and intimidate Mineau’s family.” FACC 3. Specifically, Mineau claims that Kvam’s  
4 process servers “raised their voices, threatened, and harassed” his wife.” *Id.* It is undisputed that  
5 Mineau was the registered agent for Legion investments, and that his private residence was the  
6 registered address at which he was required to receive process. For the purposes of serving process,  
7 then, a process server must have access to the property. Though Mineau cannot recover for the  
8 injury of his wife who is a non-party, actions engaged in by process servers at his residence beyond  
9 the service of process *might* be shown to constitute trespass to Mineau’s *property*; but Mineau has  
10 presented no affidavit sworn by his wife who allegedly experienced the harassment. Furthermore,  
11 Mineau’s counsel’s NRCP 56(f) affidavit does not present a reason why such an affidavit was  
12 unavailable.  
13  
14

15 Mineau’s seventh claim must be disposed of by summary judgment. Mineau has not  
16 presented evidence of specific facts supporting this claim. The claim thus presents a bald allegation  
17 unsupported by any evidence, let alone evidence that would allow a finder of fact to rule in favor of  
18 Mineau.  
19

*Tenth Claim – Fraud*

20  
21 In its previous Order deciding Kvam’s first motion to dismiss, this Court noted that “Mineau  
22 does not meet [the fraud] standard regarding his pleadings.” Aug. 29, 2018 Ord. 3. The Court  
23 ordered a more definite statement supporting this claim. Mineau added to the factual allegations  
24 supporting this claim the Atlas transaction which the Court has found irrelevant, and the allegation  
25 that Kvam had cut off the electricity to the property prior to March 24. This latter allegation indeed  
26 attempts to detail “the time, the place, the identity of the parties involved, and the nature of the  
27  
28

1 fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981) (discussing the  
2 heightened pleading standard for fraud). Dismissal for failure to state a claim upon which relief can  
3 be granted is, therefore, improper. However, Kvam also challenges this claim in his motion for  
4 summary judgment.

5 Paragraph 12 of Mineau’s counsel’s NRCP 56(f) affidavit states, “[t]hrough discovery,  
6 Mineau and Legion expect to learn how Kvam turned off the power to the Property, when he did so,  
7 why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.”  
8 Mineau is already in possession of the utility bill and the corresponding usage report, and his  
9 counsel was unable to identify at the hearing what additional evidence could be discovered to refute  
10 it. As we have seen, the allegation itself is directly contradicted by the utility bill, and no affidavit  
11 from the property manager that might bring the bill’s reliability into question has been presented.  
12 Furthermore, Mineau’s counsel’s NRCP 56(f) request does not endeavor to explain why such an  
13 affidavit was unavailable to counter the summary judgment motion. Summary judgment is granted  
14 as to the tenth claim.  
15  
16

17 *Eleventh Claim – Negligence*

18 Mineau’s eleventh claim for negligence restates the irrelevant Atlas allegation and the  
19 allegation that Kvam had cut off the electricity to the property prior to March 24. To the extent that  
20 this claim relies on these allegations, summary judgment is granted for the same reasons described  
21 in the analysis of the tenth claim, *supra*.  
22

23 Mineau includes in his eleventh claim the allegation that Kvam’s process servers harassed  
24 his wife. Again, Mineau cannot recover for the injury of another. Furthermore, the alleged actions  
25 of Kvam’s process servers do not provide an appropriate basis for a negligence claim against Kvam.  
26 Therefore, to the extent that it relies on the actions of Kvam’s process servers, the eleventh claim  
27  
28

1 for negligence is dismissed.

### 2 III. Conclusion

3 Based on the foregoing, dismissal of two and summary judgment on seven of Mineau's  
4 claims is appropriate at this time. Mineau's repeated claim that summary judgment in this case is  
5 premature is mistaken. NRCP 56(b) allows a defending party to move for summary judgment "at  
6 any time." It is true that a district court can abuse its discretion by granting summary judgment too  
7 early in the proceedings. *See, e.g., Halimi v. Blacketor*, 105 Nev. 105, 770 P.2d 531 (1989); *see also*  
8 *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642 (1987); *see also Summerfield v.*  
9 *Coca Cola Bottling Company of the Southwest*, 113 Nev. 1291, 948 P.2d 704 (1997). Here,  
10 however, it is not too early.  
11

12 A premature grant of summary judgment risks overlooking a factual dispute that may arise  
13 in the course of litigation but is not readily apparent at the time of the case's disposal. The factual  
14 disputes relied on by Mineau as a basis for his claims are either irrelevant (Atlas allegations) or  
15 have been resolved by the utility bill that has *already been discovered*.<sup>4</sup> To the extent that Mineau  
16 could have, by way of affidavits, put other facts (harassment by process servers, the date the  
17 electricity was turned off) in dispute in response to the summary judgment motion, he failed to do  
18 so. Finally, in his attempt to use NRCP 56(f) as a tool for opposing summary judgment, Mineau  
19 failed to explain why the evidence needed to oppose the motion (especially simple affidavits) was  
20 unavailable, or to identify what the evidence he anticipates discovering would be. General  
21 statements as to what a party expects to learn do not suffice.  
22

23 Accordingly, and good cause appearing,  
24

25  
26  
27 <sup>4</sup> Contrary to Mineau's counsel's assertion in his NRCP 56(f) affidavit, the parties *have* commenced some discovery. As  
28 was brought out at the hearing, there has been at least one request for interrogatories as well as a request for production.  
Furthermore, Kvam's exhibits to his motion, including the utility bill, were produced as the result of a discovery  
request.

1 IT IS HEREBY ORDERED that Kvam's Motion to Dismiss Counterclaim and for Summary  
2 Judgment is GRANTED IN PART AND DENIED IN PART.

3 IT IS HEREBY ORDERED that the fifth claim relief in the First Amended Counterclaim is  
4 DISMISSED. To the extent that the eleventh claim relies on allegations concerning the actions of  
5 process servers, that claim is also DISMISSED.

6 SUMMARY JUDGMENT is HEREBY GRANTED as to the first, second, fourth, sixth,  
7 seventh, and tenth claims for relief in the First Amended Counterclaim, and also as to the eleventh  
8 claim to the extent that it relies on allegations concerning Atlas and turning off the electricity.

9 The Motion is DENIED as to the third claim for relief in the First Amended Counterclaim.

10 IT IS SO ORDERED.

11 Dated this 9th day of January, 2019.

12  
13  
14   
15 JEROME M. POLAHA  
16 DISTRICT JUDGE  
17  
18  
19  
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**CERTIFICATE OF MAILING**

1 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of  
2 the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of ~~December~~ January  
3 2019 I did the following:

4  Electronically filed with the Clerk of the Court, using the eFlex system which  
5 constitutes effective service for all eFiled documents pursuant to the eFile User

6 Agreement:

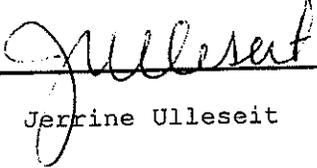
7 MARK HARLAN GUNDERSON, ESQ. for BRIAN  
8 MINEAU, LEGION INVESTMENTS, LLC

9 AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,  
10 LEGION INVESTMENTS, LLC

11 MICHAEL L. MATUSKA, ESQ. for JAY KVAM

12  Transmitted document to the Second Judicial District Court mailing system in a  
13 sealed envelope for postage and mailing by Washoe County using the United States

14 Postal Service in Reno, Nevada:

15   
16 Jerrine Ulleseit

1 **CODE: 2540**  
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,	Plaintiff,	Case No. CV18-00764
10 v.		Dept. No. 3
11 BRIAN MINEAU; LEGION INVESTMENTS,		
12 LLC; 7747 S. May Street, an Unincorporated		
13 Joint Venture; and DOES I-X, inclusive,		
	Defendants.	

14 **NOTICE OF ENTRY OF ORDER**

15 PLEASE TAKE NOTICE that on January 9, 2019, the Court entered its *Order* in the  
16 above-mentioned matter, a copy of which is attached hereto as Exhibit "1."

17 **AFFIRMATION**

18 The undersigned does hereby affirm that the preceding document, NOTICE OF ENTRY  
19 OF ORDER, filed in the Second Judicial District Court of the State of Nevada, County of Washoe,  
20 does not contain the social security number of any person.

21 Dated this 10th day of January 2019.

22 MATUSKA LAW OFFICES, LTD.

23 

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

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 10th day of January 2019, I served a true and correct copy of the preceding document entitled **Notice of Entry of Order** as follows:

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

**BY CM/ECF:** 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 EMAIL:** (as listed 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

EXHIBIT	DOCUMENT
1	Order

EXHIBIT 1  
ORDER  
(Notice of Entry of Order)

EXHIBIT 1  
ORDER  
(Notice of Entry of Order)

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

**JAY KVAM,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**Case No. CV18-00764**

**Dept. No. 3**

---

**ORDER**

Currently before the Court is Plaintiff/Counter-Defendant JAY KVAM'S ("KVAM") MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT ("Motion"), filed October 25, 2018. Defendant/Counter-Claimant BRIAN MINEAU ("Mineau") filed an OPPOSITION on November 13, 2018, and Kvam filed a REPLY to the Opposition on November 19, 2018. This Court heard oral argument on the matter on December 17, 2018.

**I. Background**

This Motion stems from an executed agreement between the parties to purchase, restore, and resell a house in Chicago. Kvam provided funding for the house, and, pursuant to the agreement, was allegedly entitled to a return of 7% per annum on his investment. Mineau was to manage the

1 operation. Kvam brought the instant action claiming that he has not been paid interest and that the  
2 project was abandoned. Mineau filed a Counterclaim, which is the subject of the instant Motion.  
3 This Court previously dismissed Mineau's eighth and ninth counterclaims,<sup>1</sup> and ordered Mineau to  
4 present to the Court a more definite statement of his fifth, tenth, and eleventh claims. The instant  
5 Motion puts in question the remaining claims, as subject either to dismissal or summary judgment.  
6 Those claims break down as follows:  
7

- 8 1) Breach of Contract.
- 9 2) Breach of the Covenant of Good Faith and Fair Dealing.
- 10 3) Declaratory Relief.
- 11 4) Intentional interference with prospective economic advantage.
- 12 5) Deceptive trade practices.
- 13 6) Abuse of Process.
- 14 7) Trespass.
- 15 10) Fraud.
- 16 11) Negligence.

17  
18  
19 The Court will consider these claims in turn.

20 **II. Analysis**

21 **A. Legal Standards**

22 **i. Dismiss**

23  
24 Under Nevada Rule of Civil Procedure 12(b)(5), a complaint will not be dismissed for  
25 failure to state a claim unless "it appears beyond a reasonable doubt that the plaintiff could prove no  
26 set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Simpson v.*  
27

28 <sup>1</sup> The parties make arguments regarding summary judgment on the eighth and ninth counterclaims, but these claims  
have already been dismissed. The Court will not consider these arguments.

1 *Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997); *Vacation Village v. Hitachi America*, 110  
2 Nev. 481, 484, 874 P.2d 744, 746 (1994). There is a strong presumption against dismissing an  
3 action for failure to state a claim. *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 249 (9th Cir.  
4 1997). When determining whether to grant a moving party's motion to dismiss, all factual  
5 allegations of the complaint must be accepted as true. *Vacation Village, Inc.*, 110 Nev. at 484, 874  
6 P.2d at 746. The court must construe the pleading liberally and draw every fair inference in favor of  
7 the nonmoving party. *Id.* at 484, 874 P.2d at 746. A motion to dismiss should not be granted unless  
8 it appears beyond a doubt that a party could prove no set of facts that would entitle them to relief.  
9  
10 *Pankopf v. Peterson*, 124 Nev. 43, 45, 175 P.3d 910, 912 (2008) (citing *Vacation Village*, 110 Nev.  
11 at 484). Specifically, "the test for determining whether the allegations of a complaint are sufficient  
12 to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a  
13 legally sufficient claim and the relief requested." *Id.* at 485.

## 15 **ii. Summary Judgment**

16 Under NRCP 56, a party seeking to recover upon a claim may move for summary judgment  
17 upon all or any part of the claim. Such relief is appropriate when the pleadings, discovery and  
18 exhibits show that there is no genuine dispute as to any material fact and that the moving party is  
19 entitled to judgment as a matter of law. NRCP 56(c); *Nelson v. Calif. State Auto Ass'n Inter-Ins.*  
20 *Bureau*, 114 Nev. 345, 956 P.2d 803 (1998). The burden on the moving party may be met by  
21 showing that there is an absence of evidence to support any one or more of the prima facie elements  
22 of the non-moving party's case. *See, NGA #2, LLC v. Rains*, 113 Nev. 1151, 1156 (1997) (citing  
23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548 (1986)). Once the moving party has met  
24 its burden to show that no genuine issue of material fact exists, the non-moving party must produce  
25 specific facts supported by competent admissible evidence that demonstrates the presence of a  
26  
27  
28

genuine issue of material fact for trial. *See, Elizabeth E. v. ADT Security Sys. W.*, 108 Nev. 889, 892 (1992). While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party must do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid entry of summary judgment, and is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The mere existence of some issues of fact does not necessarily preclude summary judgment. *Scott v. Harris*. 550 U.S. 372 (2007). An issue of material fact is “genuine” if the evidence is such that a reasonable jury, in applying the correct standard of proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” if it must be decided in order to resolve the substantive issue of the claim or defense to which the motion is directed. *Id.*

NRCP 56(f) is potentially available to the non-moving party where further discovery is required to present facts required to oppose summary judgment. The provision states,

(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).

### **B. Mineau's Claims**

The Court will note from the outset that Mineau's First Amended Counterclaim (“FACC”) included two new factual allegations incorporated into claims five, ten, and eleven pursuant to this Court's Order for clarification. First, Mineau alleges that on or about March 24, 2018 the power to the property had been turned off by Kvam, causing the pipes to freeze, burst, and leak. Second, Mineau alleges that Kvam accessed the checking account of a company called Atlas and used

1 \$20,000 from the account to pay off an interest free credit card, depriving Atlas of the use of those  
2 funds. As to this latter claim, Mineau's counsel at hearing could not articulate the date of the  
3 transfer or the amount transferred, despite having clearly alleged in the pleading that it happened  
4 March 6, 2018 and in the amount of \$20,000. Counsel asserted at argument that the confusion may  
5 have stemmed from miscommunication between him and his client. At hearing on a motion for  
6 summary judgment is a particularly inopportune time for such miscommunication, especially when  
7 both the opposing party and the Court are seeking clarification on the issue. Atlas is not a party to  
8 this litigation. Furthermore, the relationship between Atlas and the parties and the property that was  
9 the subject of the agreement, if any, is entirely unclear. Mineau has provided no evidence clarifying  
10 the connection either in his filings or at hearing, and as it appears to the Court, anything having to  
11 do with Atlas is irrelevant to the adjudication of this case's issues. As such, the Court will proceed  
12 without reference to the allegation regarding Atlas' assets.

13  
14  
15 Mineau believes that summary judgment is at this time premature, and invokes NRC 56(f)  
16 to allow for additional discovery before the Court considers summary judgment.

17  
18 *First Claim – Breach of Contract*

19 The first claim for breach of contract is not extensively discussed in the parties' briefing, but  
20 the Court did hear argument with regard to the factual allegations underlying the claim. Mineau  
21 alleges, first of all, that Kvam breached the agreement by demanding the repayment of his  
22 investment before repayment was due. However, paragraph eight of the FACC simultaneously  
23 states that "[t]he Agreement does not include a defined maturity date or a defined rate of return."  
24 FACC 2. It is unclear then how Mineau maintains that Kvam's demand for repayment was early. It  
25 is true that the validity of the agreement and the specifics of its terms have not yet been determined,  
26  
27  
28

1 but it is also clear that demanding repayment does not constitute a breach.<sup>2</sup> Kvam's obligation was  
2 to fund the project and it is undisputed that he performed.

3 Mineau also alleges that Kvam shut off the power to the property sometime in March, which  
4 caused the pipes to freeze, burst, and leak. Kvam counters with a copy of the utility bill for the  
5 property, which is dated April 9, 2018. It is undisputed that Kvam told Mineau on or about April 14,  
6 2018 that he was shutting off the power. At argument, counsel for Mineau claimed that a property  
7 manager had contacted Mineau on March 24, 2018 and told him the power was off and the pipes  
8 were leaking. However, no admissible evidence has been provided to support this contention.<sup>3</sup>  
9 Facing summary judgment, Mineau failed to provide the Court with an affidavit, his own or the  
10 property manager's, which would serve to combat the summary judgment motion and the utility bill  
11 that directly contradicts Mineau's account. Mineau presented no reasons why an affidavit  
12 containing "facts essential to justify the party's opposition" was not presented to the Court.  
13 Mineau's NRCP 56(f) request cannot, therefore, be granted.  
14  
15

16 Finally, the April utility bill shows 0.0kWh usage for the eight months leading up to April  
17 when Kvam notified Mineau that he was turning off the power. This suggests that nothing had  
18 changed with regard to power usage at the property from August through March. Furthermore,  
19 while the validity of the agreement has yet to be determined, nothing on the face of the agreement  
20 suggests the Kvam had a responsibility to keep the power on, or that turning it off would constitute  
21 a breach. And again, no evidence has been offered to show that the agreement did somehow  
22 contemplate these obligations.  
23  
24

25  
26 <sup>2</sup> Mineau's counsel's affidavit in support of his NRCP 56(f) request asserts that they expect to learn, through further  
27 discovery, the expectations of the parties with regard to the agreement. Opp. Ex. 1. Mineau could have opposed the  
28 summary judgment motion by providing an affidavit stating his expectations and understanding of the agreement and  
thereby put the question of Kvam's performance at issue; alternately, counsel, arguing pursuant to NRCP 56(f), could  
have presented to the Court reasons why such an affidavit was unavailable.

<sup>3</sup> Exhibit 2 to Mineau's Opposition purports to be a letter, dated May 22, 2018, from the property manager explaining  
that on March 24 the electricity was not operating, pipes had burst, and water damage had occurred.

1 Mineau has failed to put forth evidence creating a genuine issue of material fact as to  
2 whether or not Kvam breached the agreement. Therefore, summary judgment will be entered as to  
3 his first claim.

4 *Second Claim – Breach of the Covenant of Good Faith and Fair Dealing*

5 The FACC states, “[b]y the actions described above, Kvam has breached the implied  
6 covenant of good faith and fair dealing by performing in a manner that was unfaithful to the purpose  
7 of the Agreement.” FACC 4. The “actions described above” presumably refer to the allegations  
8 discussed above with regard to the first claim for breach of contract. They are equally, and for the  
9 same reasons, unavailing here. Summary judgment will be entered as to Mineau’s second claim.  
10

11 *Third Claim – Declaratory Relief*

12 Neither party has argued the issue of declaratory relief, even though Kvam requests  
13 summary judgment be entered on it. Furthermore, the validity of the Agreement and the precise  
14 meaning of its terms are matters yet to be adjudicated. The Court finds that this claim may go  
15 forward.  
16

17 *Fourth Claim – Intentional interference with prospective economic advantage*

18 The elements required for a claim of intentional interference with prospective economic  
19 advantage are: (1) a prospective contractual relationship between the plaintiff and a third party; (2)  
20 knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by  
21 preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5)  
22 actual harm to the plaintiff as a result of the defendant's conduct. *In re Amerco Derivative Litig.*,  
23 127 Nev. 196, 226, 252 P.3d 681, 702 (2011).  
24  
25

26 In this Court’s previous Order regarding Kvam’s first motion to dismiss, the Court stated  
27 that it was sufficient for Mineau to identify the theory and basic facts of the claim to survive a  
28

1 motion to dismiss. Now, however, the claim faces a motion for summary judgment and Mineau  
2 must present facts that demonstrate a potential to create a genuine issue of material fact for trial.  
3 Mineau has failed to do so. No third party has been identified that could have prospectively been  
4 contracted with. It is not enough to simply rely on a hypothetical pool of property purchasers  
5 because the accused party is charged with knowledge of the prospective relationship and  
6 intentionally interfering with it. No third party has been adequately identified to support Mineau's  
7 claim. Furthermore, the factual allegations supporting the claim are the same as those disposed of  
8 above with regard to claims one and two.  
9

10 While dismissal of this claim is not proper, summary judgment is. There is a set of facts that,  
11 if true, would bolster the claim, but Mineau has presented no evidence that those facts exist in this  
12 case. In the affidavit supporting Mineau's 56(f) request, his counsel does not claim further  
13 discovery will reveal a proper third party to sustain this claim. Therefore, Mineau has presented no  
14 evidence that would otherwise create a genuine issue of material fact as to Kvam's intentional  
15 interference with prospective economic advantage and summary judgment is hereby entered on the  
16 fourth claim.  
17  
18

19 *Fifth Claim – Deceptive Trade Practices*

20 In its previous Order deciding Kvam's first motion to dismiss, this Court noted that "Mineau  
21 does not meet [the deceptive trade practices and fraud] standard regarding his pleadings." Aug. 29,  
22 2018 Ord. 3. The Court ordered a more definite statement supporting this claim. Mineau added to  
23 the factual allegations supporting this claim the Atlas transaction which the Court has found  
24 irrelevant, and the allegation that "Kvam caused his process servers to harass, threaten, and  
25 intimidate Mineau's family." FACC 6. Specifically, Mineau claims that Kvam's process servers  
26 "raised their voices, threatened, and harassed" his wife." *Id.* Mineau cannot recover on a claim  
27  
28

1 alleging injury to another person.

2 Mineau claims that "Kvam used coercion, duress, and intimidation in an attempt to force  
3 Mineau and Legion to pay him more than he is entitled under the Agreement." However, there is no  
4 basis upon which this claim is properly made. The actions of a process server do not constitute  
5 deceptive trade practices. This claim must be dismissed.

6 Mineau's fifth claim can alternatively be disposed of by summary judgment. Mineau has not  
7 presented evidence of specific facts supporting the claim. If Mineau somehow could recover for the  
8 injury of another, an affidavit sworn by his wife who allegedly experienced the harassment would  
9 have sufficed to survive summary judgment, but Mineau has not endeavored to provide such  
10 evidence. The claim thus presents a bald allegation.

11 Mineau's fifth claim for deceptive trade practices is dismissed.

12  
13  
14 *Sixth Claim – Abuse of Process*

15 Mineau's abuse of process claim challenges the very filing of the instant suit but describes  
16 no conduct that suggests the complaint was "malicious, fraudulent, and oppressive." FACCC 8. It is  
17 unclear, then, on what basis Mineau believes the present action is being fraudulently prosecuted.  
18 Filing a complaint does not become fraudulent just because the party opposing it does not believe it  
19 has merit. Mineau argues that the Court already considered this claim on a motion to dismiss and  
20 that it survived. This is true; however, the claim now faces a summary judgment attack and no  
21 evidence in support of the claim containing a genuine issue of material fact has been presented.  
22 Neither has Mineau's counsel indicated in the NRCP 56(f) affidavit that further discovery will assist  
23 in generating evidence of abuse of process. The Court cannot rely on "metaphysical doubt" as to  
24 Kvam's motivation in filing his complaint. Nothing in the record demonstrates a triable issue of fact  
25 with regard to this claim, and summary judgment must therefore be entered against it.  
26  
27  
28

*Seventh Claim – Trespass*

1  
2 The facts alleged in support of this claim state, “Kvam caused his process servers to harass,  
3 threaten, and intimidate Mineau’s family.” FACC 3. Specifically, Mineau claims that Kvam’s  
4 process servers “raised their voices, threatened, and harassed” his wife.” *Id.* It is undisputed that  
5 Mineau was the registered agent for Legion investments, and that his private residence was the  
6 registered address at which he was required to receive process. For the purposes of serving process,  
7 then, a process server must have access to the property. Though Mineau cannot recover for the  
8 injury of his wife who is a non-party, actions engaged in by process servers at his residence beyond  
9 the service of process *might* be shown to constitute trespass to Mineau’s *property*; but Mineau has  
10 presented no affidavit sworn by his wife who allegedly experienced the harassment. Furthermore,  
11 Mineau’s counsel’s NRCP 56(f) affidavit does not present a reason why such an affidavit was  
12 unavailable.  
13  
14

15 Mineau’s seventh claim must be disposed of by summary judgment. Mineau has not  
16 presented evidence of specific facts supporting this claim. The claim thus presents a bald allegation  
17 unsupported by any evidence, let alone evidence that would allow a finder of fact to rule in favor of  
18 Mineau.  
19

*Tenth Claim – Fraud*

20  
21 In its previous Order deciding Kvam’s first motion to dismiss, this Court noted that “Mineau  
22 does not meet [the fraud] standard regarding his pleadings.” Aug. 29, 2018 Ord. 3. The Court  
23 ordered a more definite statement supporting this claim. Mineau added to the factual allegations  
24 supporting this claim the Atlas transaction which the Court has found irrelevant, and the allegation  
25 that Kvam had cut off the electricity to the property prior to March 24. This latter allegation indeed  
26 attempts to detail “the time, the place, the identity of the parties involved, and the nature of the  
27  
28

1 fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981) (discussing the  
2 heightened pleading standard for fraud). Dismissal for failure to state a claim upon which relief can  
3 be granted is, therefore, improper. However, Kvam also challenges this claim in his motion for  
4 summary judgment.

5 Paragraph 12 of Mineau’s counsel’s NRCP 56(f) affidavit states, “[t]hrough discovery,  
6 Mineau and Legion expect to learn how Kvam turned off the power to the Property, when he did so,  
7 why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.”  
8 Mineau is already in possession of the utility bill and the corresponding usage report, and his  
9 counsel was unable to identify at the hearing what additional evidence could be discovered to refute  
10 it. As we have seen, the allegation itself is directly contradicted by the utility bill, and no affidavit  
11 from the property manager that might bring the bill’s reliability into question has been presented.  
12 Furthermore, Mineau’s counsel’s NRCP 56(f) request does not endeavor to explain why such an  
13 affidavit was unavailable to counter the summary judgment motion. Summary judgment is granted  
14 as to the tenth claim.  
15  
16

17 *Eleventh Claim – Negligence*

18  
19 Mineau’s eleventh claim for negligence restates the irrelevant Atlas allegation and the  
20 allegation that Kvam had cut off the electricity to the property prior to March 24. To the extent that  
21 this claim relies on these allegations, summary judgment is granted for the same reasons described  
22 in the analysis of the tenth claim, *supra*.  
23

24 Mineau includes in his eleventh claim the allegation that Kvam’s process servers harassed  
25 his wife. Again, Mineau cannot recover for the injury of another. Furthermore, the alleged actions  
26 of Kvam’s process servers do not provide an appropriate basis for a negligence claim against Kvam.  
27 Therefore, to the extent that it relies on the actions of Kvam’s process servers, the eleventh claim  
28

1 for negligence is dismissed.

### 2 III. Conclusion

3 Based on the foregoing, dismissal of two and summary judgment on seven of Mineau's  
4 claims is appropriate at this time. Mineau's repeated claim that summary judgment in this case is  
5 premature is mistaken. NRCP 56(b) allows a defending party to move for summary judgment "at  
6 any time." It is true that a district court can abuse its discretion by granting summary judgment too  
7 early in the proceedings. *See, e.g., Halimi v. Blacketor*, 105 Nev. 105, 770 P.2d 531 (1989); *see also*  
8 *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642 (1987); *see also Summerfield v.*  
9 *Coca Cola Bottling Company of the Southwest*, 113 Nev. 1291, 948 P.2d 704 (1997). Here,  
10 however, it is not too early.  
11

12 A premature grant of summary judgment risks overlooking a factual dispute that may arise  
13 in the course of litigation but is not readily apparent at the time of the case's disposal. The factual  
14 disputes relied on by Mineau as a basis for his claims are either irrelevant (Atlas allegations) or  
15 have been resolved by the utility bill that has *already been discovered*.<sup>4</sup> To the extent that Mineau  
16 could have, by way of affidavits, put other facts (harassment by process servers, the date the  
17 electricity was turned off) in dispute in response to the summary judgment motion, he failed to do  
18 so. Finally, in his attempt to use NRCP 56(f) as a tool for opposing summary judgment, Mineau  
19 failed to explain why the evidence needed to oppose the motion (especially simple affidavits) was  
20 unavailable, or to identify what the evidence he anticipates discovering would be. General  
21 statements as to what a party expects to learn do not suffice.  
22

23 Accordingly, and good cause appearing,  
24

25  
26  
27 <sup>4</sup> Contrary to Mineau's counsel's assertion in his NRCP 56(f) affidavit, the parties *have* commenced some discovery. As  
28 was brought out at the hearing, there has been at least one request for interrogatories as well as a request for production.  
Furthermore, Kvam's exhibits to his motion, including the utility bill, were produced as the result of a discovery  
request.

1 IT IS HEREBY ORDERED that Kvam's Motion to Dismiss Counterclaim and for Summary  
2 Judgment is GRANTED IN PART AND DENIED IN PART.

3 IT IS HEREBY ORDERED that the fifth claim relief in the First Amended Counterclaim is  
4 DISMISSED. To the extent that the eleventh claim relies on allegations concerning the actions of  
5 process servers, that claim is also DISMISSED.

6 SUMMARY JUDGMENT is HEREBY GRANTED as to the first, second, fourth, sixth,  
7 seventh, and tenth claims for relief in the First Amended Counterclaim, and also as to the eleventh  
8 claim to the extent that it relies on allegations concerning Atlas and turning off the electricity.

9 The Motion is DENIED as to the third claim for relief in the First Amended Counterclaim.

10 IT IS SO ORDERED.

11 Dated this 9th day of January, 2019.

12  
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14   
15 JEROME M. POLAHA  
16 DISTRICT JUDGE  
17  
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**CERTIFICATE OF MAILING**

1 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of  
2 the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of January  
3 2018 I did the following:

4  Electronically filed with the Clerk of the Court, using the eFlex system which  
5 constitutes effective service for all eFiled documents pursuant to the eFile User

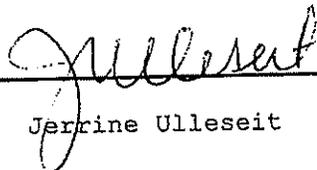
6 Agreement:

7 MARK HARLAN GUNDERSON, ESQ. for BRIAN  
8 MINEAU, LEGION INVESTMENTS, LLC

9 AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,  
10 LEGION INVESTMENTS, LLC

11 MICHAEL L. MATUSKA, ESQ. for JAY KVAM

12  Transmitted document to the Second Judicial District Court mailing system in a  
13 sealed envelope for postage and mailing by Washoe County using the United States  
14 Postal Service in Reno, Nevada:

15   
16 Jerrine Ulleseit

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 FOR LEAVE TO FILE AMENDED COMPLAINT**

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

///

///

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///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 A party may amend the party's pleading only by leave of court or by written consent of the  
3 adverse party; and leave shall be freely given when justice so requires. NRCP 15(a).

4 Kvam seeks leave to amend his *Complaint* on two grounds. First, Kvam argues that in his  
5 responses to Interrogatories, Mineau admits "that Mineau did not provide any funding for the project."  
6 Motion at 2. Kvam claims that "This admission creates obvious new causes of action, including breach  
7 of contract and fraud, including fraudulent inducement and concealment." *Id.*

8 Kvam points to Response to Interrogatory No. 6 to support this allegation. However, Response  
9 to Interrogatory No. 6 plainly shows that Criterion NV LLC, a company affiliated with Mineau and  
10 Legion, contributed \$20,000.00 to the project. *See* Motion at Ex. 2, p. 3. Mineau and Michael Spinola  
11 are the principals of Criterion NV LLC and caused Criterion NV LLC to contribute \$20,000.00 to the  
12 project on behalf of Legion. *See* Declaration of Brian Mineau, attached as Exhibit "1." These funds  
13 were wired directly to the contractor, TNT Complete Facility Care Inc., as a construction draw for the  
14 project. *Id.*; *see also* Mutual of Omaha Bank Outgoing Domestic Wire Transfer Request, attached as  
15 Exhibit "2."<sup>1</sup> Indeed, Kvam also funded construction draws by wiring funds directly to the contractor.

16 Kvam's assertion that Mineau admitted in this response that he "did not provide any funding  
17 for the project" is simply inaccurate and cannot form the basis for granting Kvam leave to amend his  
18 complaint. NRCP 15. Kvam's request for leave to amend to add new causes of action for breach of  
19 contract, fraud, fraudulent inducement, and concealment should therefore be denied.

20 Second, Kvam seeks leave to amend his *Complaint* because "the House was sold on November  
21 16, 2018 for a loss." Motion at 2. Kvam does not seek leave to add any new claims based upon this  
22 event. *Id.* Upon reasonable notice and upon such terms as are just, the court may permit a party to  
23 serve a supplemental pleading setting forth transactions or occurrences or events which have happened  
24 since the date of the pleading sought to be supplemented. NRCP 15(d). Legion and Mineau do not  
25 oppose Kvam's right to supplement his *Complaint* to set forth this event pursuant to NRCP 15(d).

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> This document was also produced to Kvam on July 19, 2018, as part of Legion and Mineau's NRCP  
16.1(a)(1) initial disclosures.

1 For these reasons, Kvam's motion should be granted only for the limited purpose of  
2 supplementing his *Complaint* to set forth that "the House was sold on November 16, 2018 for a loss."  
3 All other aspects of Kvam's motion should be denied.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the preceding document, **OPPOSITION TO**  
6 **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**, filed in the Second Judicial District  
7 Court of the State of Nevada, County of Washoe, does not contain the social security number of any  
8 person.

9 DATED this 14 day of January, 2019.

10 GUNDERSON LAW FIRM

11   
12  
13 By: \_\_\_\_\_

14 Austin K. Sweet, Esq.  
15 Nevada State Bar No. 11725  
16 Mark H. Gunderson, Esq.  
17 Nevada State Bar No. 2134  
18 3895 Warren Way  
19 Reno, Nevada 89509  
20 Telephone: 775.829.1222  
21 *Attorneys for Brian Mineau and Legion*  
22 *Investments*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 14 day of January, 2019, I deposited for mailing in Reno, Nevada AND electronically filed a true and correct copy of the **OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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



Kelly Gunderson

**EXHIBIT LIST**

Exhibit #	Description	Pages
Exhibit "1"	Declaration of Brian Mineau	1
Exhibit "2"	Mutual of Omaha Bank Outgoing Domestic Wire Transfer Request	1

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# Exhibit “1”

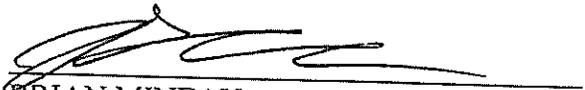
# Exhibit “1”

DECLARATION OF BRIAN MINEAU

I, BRIAN MINEAU, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18.
  2. I am a named defendant in this action.
  3. I am the manager of Legion Investments, LLC ("Legion").
  4. Michael Spinola and I are the principals of Criterion NV LLC.
  5. In 2017, Michael Spinola and I caused Criterion NV LLC to contribute \$20,000 to the project at 7747 S. May Street, Chicago, Illinois ("Property") on behalf of Legion.
  6. These funds were wired directly to the contractor, TNT Complete Facility Care Inc., as a construction draw for the project.
  7. A true and correct copy of the wire request evidencing this contribution is attached to the Motion as Exhibit "2."
  8. Jay Kvam also funded construction draws for the project by wiring money directly to the contractor, TNT Complete Facility Care Inc.
  9. The foregoing is true and correct and based upon my own personal knowledge.
- I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed at 1613 \_\_\_\_\_ this 14<sup>th</sup> day of January, 2019.

  
BRIAN MINEAU

# Exhibit “2”

# Exhibit “2”

**Mutual of Omaha Bank**  
 Outgoing Domestic Wire Transfer Request

Sequence #: \_\_\_\_\_  
 Effective Date: \_\_\_\_\_

**SENDER INFORMATION** – Complete all fields- MUST HAVE PHYSICAL ADDRESS- \*REQUIRED FIELDS

*Name/ Business Name:	CRITERION NV LLC
*SSN/Tax ID#:	81-4026317
*Physical Address:	7560 MICHAELA DR
*City/State/Zip/ Country:	RENO NV 89511-1475
*From Account #:	██████████7990
*WIRE AMOUNT \$: 20,000	

**RECEIVING BANK INFORMATION** – Complete all fields that apply

Bank Name:	Chase Bank	ABA (9 digits)	██████████
Bank Address:	9000 Haggerty- MI 1-8205	Acct #:	_____
City/State/Zip/Country: Belleville, MI 48111			

**FOR FURTHER CREDIT INFORMATION** – Complete If applicable

Bank Name:	_____	ABA (9 digits)	_____
Bank Address:	_____	Acct #:	_____
City/State/Zip/Country: _____			

**RECEIVING CUSTOMER INFORMATION** – Complete all fields that apply- \*REQUIRED INFO

* Name/s:	TNT COMPLETE FACILITY CARE INC	*Acct #:	██████████
*Address:	919 North LaFox,		
*City/State/Zip/Country:	South Elgin IL 60177	Advice Info	_____
*Relationship to Sender:	PROJECT MANAGER	*Purpose of Wire:	construction draw
Special Instructions: May Street			

The Bank shall not be liable for any error or delay due to any cause other than the Bank's own negligence. The Bank shall only be liable for the Customer's actual loss arising from such negligence, not to exceed the amount of the funds transferred which the Bank is unable to recover. In no event shall the Bank be liable for indirect or consequential damages. I have read the above information and request the wire transfer of funds as stated.

I authorize Mutual of Omaha Bank to debit the account listed above for the wire plus the applicable wire fee.

DATE: 5-26-17

*[Signature]*  
 Customer Signature

MICHAEL J. SPINDO  
 Printed Name

**BANK USE ONLY**

Employee Calling back:  Contact Name:  Contact Phone:  Time:	Customer Identification:	Request made via:	Available funds:
	<input type="checkbox"/> ID <input type="checkbox"/> Wire Transfer Agreement <input type="checkbox"/> Signature Card <input type="checkbox"/> Known By: <input type="checkbox"/> eBank Confirmation By:	<input type="checkbox"/> In Person <input type="checkbox"/> Telephone <input type="checkbox"/> Fax <input type="checkbox"/> Email	Wire Fee:

CREATED BY \_\_\_\_\_  
 EMPLOYEE # \_\_\_\_\_

VERIFIED BY \_\_\_\_\_  
 EMPLOYEE # \_\_\_\_\_

Revised 05/18/2015

1 **CODE: 3790**  
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 **REPLY TO OPPOSITION**

17 **TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

18 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
19 Offices, Ltd., Michael L. Matuska, and hereby replies to the Opposition of Brian Mineau and  
20 Legion Investments, LLC (collectively, "Mineau") to the Motion for Leave to File Amended  
21 Complaint ("Motion" and "Opposition," respectively).

22 Mineau's Opposition is difficult to characterize. He seems to contest two (2) factual issues  
23 raised in Kvam's Motion rather than the [proposed] First Amended Complaint ("FAC") that was  
24 provided as Ex. "3" to the Motion. Either way, the District Court does not resolve factual disputes  
25 when ruling on a Motion for Leave, and Mineau's Opposition is therefore misplaced.

26 Leave to amend should be freely given when justice requires. *Cohen v. Mirage Resorts,*  
27 *Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). Here, the case is in its early stages, there have been  
28 new developments, the request is not made in bad faith or with a dilatory motive, so the traditional  
requirements for granting leave to amend are satisfied and leave to amend should be freely given.  
*Stephens v. S. Nev. Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (Nev. 1973). The  
District Court does not try the merits of the case in a Motion for Leave, as Mineau would ask this

1 Court to do.

2 The new cause of action for fraud in the FAC incorporates all the prior allegations in the  
3 FAC and is based on Mineau's multiple, repeated and continuing breach of fiduciary, concealment  
4 and fraud. For instance, the FAC alleges as follows:

5 48. Plaintiff hereby incorporates by reference all of the paragraphs  
6 above as though fully set forth herein.

7 49. As parties to the joint venture Agreement, MINEAU and LEGION  
8 owed multiple contractual, legal and fiduciary duties to KVAM and 7747, which  
included the duty to disclose material facts.

9 50. Prior to signing the Agreement, MINEAU and LEGION  
10 misrepresented and concealed the true facts, including their intention and ability  
to fund the project and complete the project in a timely manner.

11 51. MINEAU and LEGION misrepresented and concealed the true  
12 facts in order to induce KVAM to execute the Agreement and invest in the  
13 project.

14 52. KVAM relied to his detriment on the misrepresentations of  
15 MINEAU and LEGION and would not have signed the Agreement and invested  
16 in the project if he had known that MINEAU and LEGION lacked the intent and  
ability to provide their funding and complete the project. KVAM only learned the  
true facts after filing his lawsuit in this case.

17 53. The fraud and concealment perpetrated by MINEAU and LEGION  
18 continued throughout their performance of the Agreement and after this lawsuit  
19 was filed, and included concealment about the status of the project, problems with  
the project, the listing and sale of the House, and the close of escrow and receipt  
20 of funds.

21 54. As a result of the foregoing, KVAM and 7747 have been damaged  
in an amount to be determined at trial in excess of \$15,000.

22 55. As a further result of the above-described wrongful, fraudulent,  
23 oppressive, and malicious conduct, KVAM and 7747 are also entitled to punitive  
and exemplary damages in an amount to be determined at trial.

24 In order to contest the allegation that Mineau failed to meet his funding requirement,  
25 Mineau argues that:

26 Criterion NV LLC, a company affiliated with Mineau and Legion, contributed  
27 \$20,000.00 to the project. See Motion at Ex. 2, p. 3. Mineau and Michael  
28 Spinola are the principals of Criterion NV LLC and caused Criterion NV LLC to

1 contribute \$20,000.00 to the project on behalf of Legion. See Declaration of  
2 Brian Mineau, attached as Exhibit "1." These funds were wired directly to the  
3 contractor, TNT Complete Facility Care, Inc., as a construction draw for the  
4 project. Id. *see also* Mutual of Omaha Outgoing Domestic Wire Transfer  
5 Request, attached as Exhibit "2". (Opposition at 9-15).

6 Aside from the fact that these assertions do not affect the Motion for Leave to Amend,  
7 Criterion is not a party to this lawsuit or the Terms of Agreement. This reference to Criterion is  
8 strikingly similar to Mineau's failed attempt to invoke Atlas as a defense. Mineau's practice of  
9 moving money around through different companies that are not parties to the Terms of Agreement  
10 will likely be revealed as further evidence of fraudulent conduct.

11 Also, the terms "affiliated with" and "principals" are intentionally vague and misleading,  
12 and in fact, have no application to limited liability companies. By statute, limited liability  
13 companies identify members and managers, not "principals" or "affiliates." Brian Mineau's name  
14 does not appear anywhere on his Exhibit "2." Criterion NV LLC is in default status with the  
15 Nevada Secretary of State, and Michael Spinola is listed as the sole member/manager (Ex. "4").  
16 Kvam has requested the records of any contributions, including bank statements, and also  
17 requested any and all agreement between Mineau and Michael Spinola. To date, Mineau has  
18 failed and refused to provide this information, and his refusal is the subject of pending meet and  
19 confer efforts and a likely motion to compel. (See Meet and Confer Letter attached hereto as Ex.  
20 "5" at Request Nos. 1, 18, 22 and 33). The only way Criterion can be "affiliated with" Brian  
21 Mineau is if there is some type of agreement which has been withheld in violation of Nevada's  
22 civil procedure discovery rules.

23 Moreover, any such affiliation does not diminish Kvam's allegations of fraud that Mineau  
24 concealed his inability to provide his funding. In other words, Kvam expected to be a joint  
25 venture with Mineau, not Criterion, and Mineau concealed these facts regarding who was paying  
26 (if a payment was actually made). Mineau's supposed defense actually enhances Kvam's fraud  
27 claims and adds new, previously unknown facts to his claim.  
28

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

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WHEREFORE, Kvam respectfully requests leave to file his First Amended Complaint.

**AFFIRMATION**

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

Dated this 21 day of January, 2019.

MATUSKA LAW OFFICES, LTD.

*Michael L. Matuska*

By:

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

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 21 day of January, 2019, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** as follows:

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

**BY CM/ECF:** 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
4	Criterion NV LLC – NV Secretary of State
5	Meet and Confer Letter of January 15, 2019

**EXHIBIT 4**  
**CRITERION NV LLC – NV SECRETARY OF STATE**  
**(Reply to Opposition to Motion for Leave**  
**to File Amended Complaint)**

**EXHIBIT 4**  
**CRITERION NV LLC – NV SECRETARY OF STATE**  
**(Reply to Opposition to Motion for Leave**  
**to File Amended Complaint)**

# CRITERION NV LLC

Business Entity Information			
Status:	Default	File Date:	10/01/2016
Type:	Domestic Limited- Liability Company	Entity Number:	E0431662016-1
Qualifying State:	NV	List of Officers Due:	10/31/2018
Managed By:	Managing Members	Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20161582266	Business License Exp:	10/31/2018

Additional Information	
	Central Index Key

Registered Agent Information			
Name:	MICHAEL SPINOLA	Address 1:	795 MANZANITA LANE
Address 2:		City:	RENO
State:	NV	Zip Code:	89509
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		
View all business entities under this registered agent ()			

Officers		<input type="checkbox"/> Include Inactive Officers	
Managing Member - MICHAEL J SPINOLA			
Address 1:	7560 MICHAELA DR	Address 2:	
City:	RENO	State:	NV
Zip Code:	89511	Country:	
Status:	Active	Email:	

Actions/Amendments
Click here to view 3 actions/amendments associated with this company ()

Supported Internet Browser versions or above: Apple iOS 9.3.5, Internet Explorer 11.0.9600.18665, FireFox 53.0.3, Google Chrome 58.0.3029.110  
Disclaimer

**EXHIBIT 5**  
**MEET AND CONFER LETTER of**  
**JANUARY 15, 2019**  
**(Reply to Opposition to Motion for Leave**  
**to File Amended Complaint)**

**EXHIBIT 5**  
**MEET AND CONFER LETTER of**  
**JANUARY 15, 2019**  
**(Reply to Opposition to Motion for Leave**  
**to File Amended Complaint)**



January 15, 2019

Via Email and U.S. Mail

Austin K. Sweet, Esq.  
Gunderson Law Firm  
3895 Warren Way  
Reno NV 89509  
[asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com)

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

Dear Mr. Sweet:

Please accept this letter regarding the incomplete responses of Brian Mineau and Legion Investments, LLC to the Plaintiff Jay Kvam's First Request for Production of Documents and Second Request for Production of Documents. I will call you to set a time to meet and confer if you have any questions about this letter or your clients' obligations under NRC 34.

**PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:**

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

**Response:**

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

**Discussion:**

Mineau and Legion Investments only produced the February, 2017 Terms of Agreement. All other documents to which these parties are a party are within their care, custody and control and must be produced. These documents are relevant to establish the background of the parties, their relationship to each other, course of dealing, and the interpretation of the Terms of Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make Kvam a member and he is entitled to the documents under NRS 86.241. Also, although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also signed documents as the member/manager of Legion Investments. It is unclear whether he draws his



authority from the February, 2017 Terms of Agreement or some other agreement that has not been produced.

**REQUEST NO. 6:**

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Legion Investments' tax returns are not confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-chief and for the claim of punitive damages. I had this exact issue in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994) and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence. Defendants also have a fiduciary duty to account to Kvam and provide him access to the books and records pursuant to NRS 87.4335. In addition, the finances, governance and operation of Legion Investments is a primary issue in this case, especially as it relates to an accounting for the project at 7747 May Street, Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is necessary to review the returns for these reasons, and to see how and whether Legion Investments reported this investment, including any expenses, loans and proceeds. Discovery of the tax returns is also allowed for purposes of the claim to pierce the company's limited liability shield.

**REQUEST NO. 7:**

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investments should have been providing Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information for his own tax reporting requirements.



**REQUEST NO. 8:**

Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his own tax returns.

**REQUEST NO. 9:**

Produce all meeting minutes for Legion Investments, LLC.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Legion Investment's meeting minutes are not confidential. Kvan needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project. The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

**REQUEST NO. 10:**

Produce all resolutions of the members and/or managers of Legion Investments, LLC.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing documents are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 9, *supra*.



**REQUEST NO. 11:**

Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam.

**REQUEST NO. 12:**

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investment's income and expense statements are not confidential and will show whether and how Legion Investments documented and reported the loan from Kvam and expenses related to the project at 7747 May Street, Chicago, Illinois. Income and expense statements relate to the accounting, which is a primary issue in this case.

**REQUEST NO. 13:**

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.



**Discussion:**

See Request No. 6, *supra*. In addition, the bank statements are necessary to verify the disposition of Kvam's loan proceeds, and other sources of income from the project at 7747 May Street, Chicago, Illinois, and expenses related to that project. The bank statements are also relevant to the issue of whether Kvam's loan proceeds and project funds were co-mingled with Legion Investments' other funds. The bank statements are also necessary to verify whether the wire transfer from Criterion Investments was received. LEG 121.

**REQUEST NO. 14:**

Produce all escrow and title records for the real property located at 7747 S. May Street, Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing statements.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

**Discussion:**

All of the requested documents are within Brian Mineau's control and should have been produced. Unfortunately, the only escrow documents produced to date were the Purchase and Sale Contract and Alta Settlement Statement for the November 16, 2018 escrow (LEG 131-138). Defendants did not produce any documents regarding the February, 2017 escrow.

**REQUEST NO. 15:**

Produce all contracts for work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All contracts are within Defendant's possession, custody or control, but only one contract was produced at LEG 2-15.

**REQUEST NO. 16:**

Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



**Discussion:**

All invoices are within Defendant's possession, custody or control, but none were provided. To date, Defendants have not provided an accounting, and all invoices are therefore relevant to the income and expense accounting, particularly the invoices from the contractor(s) who worked on the project.

**REQUEST NO. 17:**

Produce copies of checks written to pay, or other evidence of payment for, invoices for materials purchased for the Property, or work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All checks are within Defendant's possession, custody or control, but none were provided.

**REQUEST NO. 18:**

Produce any all documents, including copies of checks and bank statements, showing payments from any investor for the purchase or improvement of the Property, including but not limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All responsive documents are within Defendant's possession, custody or control, but none were provided.

**REQUEST NO. 19:**

Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC, regarding the status of the Property, materials to be used on the Property, or work performed or to be performed on the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

The reports would have been generated by Brian Mineau and are within Defendant's possession, custody or control, but none were provided.



**REQUEST NO. 20:**

Produce copies of all business or professional licenses ever held by Brian Mineau.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Brian Mineau's business or professional licenses are not confidential and are relevant for background information and to determine his qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to his lender and joint venture partners.

**REQUEST NO. 21:**

Produce copies of all utility bills for the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

**Discussion:**

All utility bills are in the care, custody or control of Brian Mineau and Legion Investments, but only a few, scattered bills have been provided. Although the January 9, 2019 Order dismissed the Defendants' counterclaims, including the counterclaims based on the false allegation that Kvam turned off the power and caused the pipes to burst, Defendants still have not provided an accounting, and all bills are therefore relevant to the income and expense accounting.

**REQUEST NO. 22:**

Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment in or improvement to the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

Michael Spinola is a party to the February, 2017 Terms of Agreement. The documents responsive to this request are within Defendant's possession, custody or control, but none were provided. Other than the Terms of Agreement, the only document produced to date relevant to Michael Spinola is a redacted wire transfer signed by Michael Spinola on behalf of Criterion Investments LEG 121. There is no other correspondence with Michael Spinola. Defendants also failed to provide a bank statement or other document showing that funds were actually wired and



received. (See Request No. 18.)

**REQUEST NO. 24:**

Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM 403," and any correspondence referring to that document.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

Drafts of the Terms of Agreement are within Defendants' possession, custody and control, but have not been provided.

**REQUEST NO. 33:**

Produce any and all documents requesting a capital call or payment from any of the Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All documents relevant to this request are within Defendants' possession, custody and control, but have not been provided.

**PLAINTIFF JAY KVAM'S SECOND SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

Jay Kvam's Second Request for Production of Documents contained a single request as follows:

**REQUEST NO. 34:**

Produce any and all documents regarding the escrow and sale of the Property, including but not limited to listing information, purchase and sale agreements, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



Austin K. Sweet, Esq.  
January 15, 2019  
Page 9 of 9

**Discussion:**

Unfortunately, this Response does not seem to be accurate. LEG 0121-0130 relate to Atlas Southside Investors and do not relate to the Property at 7747 S. May Street, Chicago, Illinois at all. The other documents include the Purchase and Sale Contract and the Settlement Statement. The Settlement Statement reports "\$24,473.77 Due to Seller." Please identify by date and Bates No. when and where the other requested documents have been produced, including: listing information, title reports, escrow instructions, checks or other documents showing the disposition of the proceeds of sale. The proceeds of sale obviously include "24,473.77 Due to Seller." Defendants need to provide the account statement showing the deposit of the funds. Defendants also need to provide the photos that went along with the listing agreement. To date, the only photos provided by the Defendants were six (6) grainy photos of the interior produced as LEG 0037-0042.

The requested documents should be received in this office no later than January 31, 2019. I will have to move forward with a motion to compel if they are not required by that date. You may be aware that Mr. Kvam will be entitled to recover his attorney's fees incurred in connection with the letter and the motion to compel.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

A handwritten signature in black ink, appearing to read 'M. Matuska', written over a horizontal line.

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

cc: Client

1 **CODE: 3790**  
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**

<p>9 JAY KVAM, 10 11 Plaintiff, 12 v. 13 BRIAN MINEAU; LEGION INVESTMENTS, 14 LLC; 7747 S. May Street, an Unincorporated 15 Joint Venture; and DOES I-X, inclusive, 16 17 Defendants.</p>	<p>Case No. CV18-00764 Dept. No. 3</p>
---	--

18 **REPLY TO OPPOSITION**  
19 **TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

20 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
21 Offices, Ltd., Michael L. Matuska, and hereby replies to the Opposition of Brian Mineau and  
22 Legion Investments, LLC (collectively, "Mineau") to the Motion for Leave to File Amended  
23 Complaint ("Motion" and "Opposition," respectively).

24 Mineau's Opposition is difficult to characterize. He seems to contest two (2) factual issues  
25 raised in Kvam's Motion rather than the [proposed] First Amended Complaint ("FAC") that was  
26 provided as Ex. "3" to the Motion. Either way, the District Court does not resolve factual disputes  
27 when ruling on a Motion for Leave, and Mineau's Opposition is therefore misplaced.

28 Leave to amend should be freely given when justice requires. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). Here, the case is in its early stages, there have been new developments, the request is not made in bad faith or with a dilatory motive, so the traditional requirements for granting leave to amend are satisfied and leave to amend should be freely given. *Stephens v. S. Nev. Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (Nev. 1973). The District Court does not try the merits of the case in a Motion for Leave, as Mineau would ask this

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

1 Court to do.

2 The new cause of action for fraud in the FAC incorporates all the prior allegations in the  
3 FAC and is based on Mineau's multiple, repeated and continuing breach of fiduciary, concealment  
4 and fraud. For instance, the FAC alleges as follows:

5 48. Plaintiff hereby incorporates by reference all of the paragraphs  
6 above as though fully set forth herein.

7 49. As parties to the joint venture Agreement, MINEAU and LEGION  
8 owed multiple contractual, legal and fiduciary duties to KVAM and 7747, which  
included the duty to disclose material facts.

9 50. Prior to signing the Agreement, MINEAU and LEGION  
10 misrepresented and concealed the true facts, including their intention and ability  
to fund the project and complete the project in a timely manner.

11 51. MINEAU and LEGION misrepresented and concealed the true  
12 facts in order to induce KVAM to execute the Agreement and invest in the  
13 project.

14 52. KVAM relied to his detriment on the misrepresentations of  
15 MINEAU and LEGION and would not have signed the Agreement and invested  
16 in the project if he had known that MINEAU and LEGION lacked the intent and  
ability to provide their funding and complete the project. KVAM only learned the  
true facts after filing his lawsuit in this case.

17 53. The fraud and concealment perpetrated by MINEAU and LEGION  
18 continued throughout their performance of the Agreement and after this lawsuit  
19 was filed, and included concealment about the status of the project, problems with  
the project, the listing and sale of the House, and the close of escrow and receipt  
of funds.

20 54. As a result of the foregoing, KVAM and 7747 have been damaged  
21 in an amount to be determined at trial in excess of \$15,000.

22 55. As a further result of the above-described wrongful, fraudulent,  
23 oppressive, and malicious conduct, KVAM and 7747 are also entitled to punitive  
24 and exemplary damages in an amount to be determined at trial.

25 In order to contest the allegation that Mineau failed to meet his funding requirement,  
26 Mineau argues that:

27 Criterion NV LLC, a company affiliated with Mineau and Legion, contributed  
28 \$20,000.00 to the project. See Motion at Ex. 2, p. 3. Mineau and Michael  
Spinola are the principals of Criterion NV LLC and caused Criterion NV LLC to

1 contribute \$20,000.00 to the project on behalf of Legion. See Declaration of  
2 Brian Mineau, attached as Exhibit "1." These funds were wired directly to the  
3 contractor, TNT Complete Facility Care, Inc., as a construction draw for the  
4 project. Id. see also Mutual of Omaha Outgoing Domestic Wire Transfer  
5 Request, attached as Exhibit "2". (Opposition at 9-15).

6  
7 Aside from the fact that these assertions do not affect the Motion for Leave to Amend,  
8 Criterion is not a party to this lawsuit or the Terms of Agreement. This reference to Criterion is  
9 strikingly similar to Mineau's failed attempt to invoke Atlas as a defense. Mineau's practice of  
10 moving money around through different companies that are not parties to the Terms of Agreement  
11 will likely be revealed as further evidence of fraudulent conduct.

12 Also, the terms "affiliated with" and "principals" are intentionally vague and misleading,  
13 and in fact, have no application to limited liability companies. By statute, limited liability  
14 companies identify members and managers, not "principals" or "affiliates." Brian Mineau's name  
15 does not appear anywhere on his Exhibit "2." Criterion NV LLC is in default status with the  
16 Nevada Secretary of State, and Michael Spinola is listed as the sole member/manager (Ex. "4").  
17 Kvam has requested the records of any contributions, including bank statements, and also  
18 requested any and all agreement between Mineau and Michael Spinola. To date, Mineau has  
19 failed and refused to provide this information, and his refusal is the subject of pending meet and  
20 confer efforts and a likely motion to compel. (See Meet and Confer Letter attached hereto as Ex.  
21 "5" at Request Nos. 1, 18, 22 and 33). The only way Criterion can be "affiliated with" Brian  
22 Mineau is if there is some type of agreement which has been withheld in violation of Nevada's  
23 civil procedure discovery rules.

24 Moreover, any such affiliation does not diminish Kvam's allegations of fraud that Mineau  
25 concealed his inability to provide his funding. In other words, Kvam expected to be a joint  
26 venture with Mineau, not Criterion, and Mineau concealed these facts regarding who was paying  
27 (if a payment was actually made). Mineau's supposed defense actually enhances Kvam's fraud  
28 claims and adds new, previously unknown facts to his claim.

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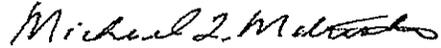
WHEREFORE, Kvam respectfully requests leave to file his First Amended Complaint.

**AFFIRMATION**

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

Dated this 21 day of January, 2019.

MATUSKA LAW OFFICES, LTD.



By:

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

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 21 day of January, 2019, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** as follows:

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

**BY CM/ECF:** 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.

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**BY FACSIMILE:**

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

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/s/ SUZETTE TURLEY  
SUZETTE TURLEY

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# CRITERION NV LLC

Business Entity Information			
Status:	Default	File Date:	10/01/2016
Type:	Domestic Limited-Liability Company	Entity Number:	E0431662016-1
Qualifying State:	NV	List of Officers Due:	10/31/2018
Managed By:	Managing Members	Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20161582266	Business License Exp:	10/31/2018

Additional Information	
Central Index Key	

Registered Agent Information			
Name:	MICHAEL SPINOLA	Address 1:	795 MANZANITA LANE
Address 2:		City:	RENO
State:	NV	Zip Code:	89509
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

[View all business entities under this registered agent \(\)](#)

Officers		<input type="checkbox"/> Include Inactive Officers	
Managing Member - MICHAEL J SPINOLA			
Address 1:	7560 MICHAELA DR	Address 2:	
City:	RENO	State:	NV
Zip Code:	89511	Country:	
Status:	Active	Email:	

Actions\Amendments
<a href="#">Click here to view 3 actions\amendments associated with this company ()</a>

Supported Internet Browser versions or above: Apple iOS 9.3.5, Internet Explorer 11.0.9600.18665, FireFox 53.0.3, Google Chrome 58.0.3029.110  
Disclaimer

**EXHIBIT 5**  
**MEET AND CONFER LETTER of**  
**JANUARY 15, 2019**  
**(Reply to Opposition to Motion for Leave**  
**to File Amended Complaint)**

**EXHIBIT 5**  
**MEET AND CONFER LETTER of**  
**JANUARY 15, 2019**  
**(Reply to Opposition to Motion for Leave**  
**to File Amended Complaint)**



January 15, 2019

Via Email and U.S. Mail

Austin K. Sweet, Esq.  
Gunderson Law Firm  
3895 Warren Way  
Reno NV 89509  
[asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com)

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

Dear Mr. Sweet:

Please accept this letter regarding the incomplete responses of Brian Mineau and Legion Investments, LLC to the Plaintiff Jay Kvam's First Request for Production of Documents and Second Request for Production of Documents. I will call you to set a time to meet and confer if you have any questions about this letter or your clients' obligations under NRCPC 34.

**PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:**

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

**Response:**

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

**Discussion:**

Mineau and Legion Investments only produced the February, 2017 Terms of Agreement. All other documents to which these parties are a party are within their care, custody and control and must be produced. These documents are relevant to establish the background of the parties, their relationship to each other, course of dealing, and the interpretation of the Terms of Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make Kvam a member and he is entitled to the documents under NRS 86.241. Also, although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also signed documents as the member/manager of Legion Investments. It is unclear whether he draws his



authority from the February, 2017 Terms of Agreement or some other agreement that has not been produced.

**REQUEST NO. 6:**

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Legion Investments' tax returns are not confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-chief and for the claim of punitive damages. I had this exact issue in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994) and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence. Defendants also have a fiduciary duty to account to Kvam and provide him access to the books and records pursuant to NRS 87.4335. In addition, the finances, governance and operation of Legion Investments is a primary issue in this case, especially as it relates to an accounting for the project at 7747 May Street, Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is necessary to review the returns for these reasons, and to see how and whether Legion Investments reported this investment, including any expenses, loans and proceeds. Discovery of the tax returns is also allowed for purposes of the claim to pierce the company's limited liability shield.

**REQUEST NO. 7:**

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investments should have been providing Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information for his own tax reporting requirements.



**REQUEST NO. 8:**

Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his own tax returns.

**REQUEST NO. 9:**

Produce all meeting minutes for Legion Investments, LLC.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Legion Investment's meeting minutes are not confidential. Kvam needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project. The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

**REQUEST NO. 10:**

Produce all resolutions of the members and/or managers of Legion Investments, LLC.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing documents are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 9, *supra*.



**REQUEST NO. 11:**

Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam.

**REQUEST NO. 12:**

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investment's income and expense statements are not confidential and will show whether and how Legion Investments documented and reported the loan from Kvam and expenses related to the project at 7747 May Street, Chicago, Illinois. Income and expense statements relate to the accounting, which is a primary issue in this case.

**REQUEST NO. 13:**

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.



**Discussion:**

See Request No. 6, *supra*. In addition, the bank statements are necessary to verify the disposition of Kvam's loan proceeds, and other sources of income from the project at 7747 May Street, Chicago, Illinois, and expenses related to that project. The bank statements are also relevant to the issue of whether Kvam's loan proceeds and project funds were co-mingled with Legion Investments' other funds. The bank statements are also necessary to verify whether the wire transfer from Criterion Investments was received. LEG 121.

**REQUEST NO. 14:**

Produce all escrow and title records for the real property located at 7747 S. May Street, Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing statements.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

**Discussion:**

All of the requested documents are within Brian Mineau's control and should have been produced. Unfortunately, the only escrow documents produced to date were the Purchase and Sale Contract and Alta Settlement Statement for the November 16, 2018 escrow (LEG 131-138). Defendants did not produce any documents regarding the February, 2017 escrow.

**REQUEST NO. 15:**

Produce all contracts for work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All contracts are within Defendant's possession, custody or control, but only one contract was produced at LEG 2-15.

**REQUEST NO. 16:**

Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



**Discussion:**

All invoices are within Defendant's possession, custody or control, but none were provided. To date, Defendants have not provided an accounting, and all invoices are therefore relevant to the income and expense accounting, particularly the invoices from the contractor(s) who worked on the project.

**REQUEST NO. 17:**

Produce copies of checks written to pay, or other evidence of payment for, invoices for materials purchased for the Property, or work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All checks are within Defendant's possession, custody or control, but none were provided.

**REQUEST NO. 18:**

Produce any all documents, including copies of checks and bank statements, showing payments from any investor for the purchase or improvement of the Property, including but not limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All responsive documents are within Defendant's possession, custody or control, but none were provided.

**REQUEST NO. 19:**

Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC, regarding the status of the Property, materials to be used on the Property, or work performed or to be performed on the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

The reports would have been generated by Brian Mineau and are within Defendant's possession, custody or control, but none were provided.



**REQUEST NO. 20:**

Produce copies of all business or professional licenses ever held by Brian Mineau.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Brian Mineau's business or professional licenses are not confidential and are relevant for background information and to determine his qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to his lender and joint venture partners.

**REQUEST NO. 21:**

Produce copies of all utility bills for the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

**Discussion:**

All utility bills are in the care, custody or control of Brian Mineau and Legion Investments, but only a few, scattered bills have been provided. Although the January 9, 2019 Order dismissed the Defendants' counterclaims, including the counterclaims based on the false allegation that Kvam turned off the power and caused the pipes to burst, Defendants still have not provided an accounting, and all bills are therefore relevant to the income and expense accounting.

**REQUEST NO. 22:**

Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment in or improvement to the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

Michael Spinola is a party to the February, 2017 Terms of Agreement. The documents responsive to this request are within Defendant's possession, custody or control, but none were provided. Other than the Terms of Agreement, the only document produced to date relevant to Michael Spinola is a redacted wire transfer signed by Michael Spinola on behalf of Criterion Investments LEG 121. There is no other correspondence with Michael Spinola. Defendants also failed to provide a bank statement or other document showing that funds were actually wired and



received. (See Request No. 18.)

**REQUEST NO. 24:**

Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM 403," and any correspondence referring to that document.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

Drafts of the Terms of Agreement are within Defendants' possession, custody and control, but have not been provided.

**REQUEST NO. 33:**

Produce any and all documents requesting a capital call or payment from any of the Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spínola.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All documents relevant to this request are within Defendants' possession, custody and control, but have not been provided.

**PLAINTIFF JAY KVAM'S SECOND SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

Jay Kvam's Second Request for Production of Documents contained a single request as follows:

**REQUEST NO. 34:**

Produce any and all documents regarding the escrow and sale of the Property, including but not limited to listing information, purchase and sale agreements, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



Austin K. Sweet, Esq.  
January 15, 2019  
Page 9 of 9

**Discussion:**

Unfortunately, this Response does not seem to be accurate. LEG 0121-0130 relate to Atlas Southside Investors and do not relate to the Property at 7747 S. May Street, Chicago, Illinois at all. The other documents include the Purchase and Sale Contract and the Settlement Statement. The Settlement Statement reports "\$24,473.77 Due to Seller." Please identify by date and Bates No. when and where the other requested documents have been produced, including: listing information, title reports, escrow instructions, checks or other documents showing the disposition of the proceeds of sale. The proceeds of sale obviously include "24,473.77 Due to Seller." Defendants need to provide the account statement showing the deposit of the funds. Defendants also need to provide the photos that went along with the listing agreement. To date, the only photos provided by the Defendants were six (6) grainy photos of the interior produced as LEG 0037-0042.

The requested documents should be received in this office no later than January 31, 2019. I will have to move forward with a motion to compel if they are not required by that date. You may be aware that Mr. Kvam will be entitled to recover his attorney's fees incurred in connection with the letter and the motion to compel.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

A handwritten signature in black ink, appearing to read 'M. Matuska', written over a horizontal line.

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

cc: Client

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

**JAY KVAM,**

**Plaintiff,**

**vs.**

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

**Defendants.**

**Case No. CV18-00764  
Dept. No. 3**

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**ORDER**

Currently before the Court is Plaintiff JAY KVAM'S ("Plaintiff") MOTION FOR LEAVE TO FILE AMENDED COMPLAINT ("Motion"), filed December 24, 2018. Defendant BRIAN MINEAU ("Defendant") filed an OPPOSITION on January 14, 2019. Plaintiff filed a REPLY to the Opposition on January 22, 2019, and the matter was submitted for the Court's consideration the same day.

NRCP 15(a) allows parties to amend pleadings by leave of court or by written consent of the adverse party. Because Defendant opposes the Motion, Plaintiff here requires leave of Court. Leave to amend shall be freely given where no evidence is of undue delay, bad faith, or dilatory motive is presented to the Court. *See, e.g., Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138

X

1 (1973). Of course, granting or denying the motion is within the discretion of the Court, but the  
2 Court must give justification for its denial or it is an abuse of discretion. *Adamson v. Bowker*, 85  
3 Nev. 115, 121, 450 P.2d 796, 800 (1969).

4 The Court finds no undue delay, bad faith, or dilatory motive on Plaintiff's part. Defendant  
5 contends that the amendments Plaintiff seeks to make are premised on a false allegation that  
6 Defendant did not provide funding for the real-estate venture at the center of this dispute. Defendant  
7 offers as proof a wire transfer request from an entity called Criterion NV LLC. The Court is not  
8 informed as to this entity's relation to the above-entitled matter. Furthermore, the transfer request is  
9 signed by a Michael J. Spinola, who is apparently the sole registered agent and managing member  
10 of the LLC. The document does not identify Defendant as having any involvement in the transfer.  
11 In any event, the Court is not as yet sitting as fact-finder in this matter, and absent a showing of  
12 undue delay, bad faith, or dilatory motive the Court cannot deny Plaintiff leave to amend.  
13  
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15 Accordingly, and good cause appearing,

16 IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Amended Complaint is  
17 GRANTED.

18 Dated this 29<sup>th</sup> day of January, 2019.

19  
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22 JEROME M. POLAHA  
23 DISTRICT JUDGE  
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**CERTIFICATE OF MAILING**

1 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of  
2 the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29 day of January,  
3 2018 I did the following:

4  Electronically filed with the Clerk of the Court, using the eFlex system which  
5 constitutes effective service for all eFiled documents pursuant to the eFile User

6 Agreement:

7 MARK HARLAN GUNDERSON, ESQ. for BRIAN  
8 MINEAU, LEGION INVESTMENTS, LLC

9 AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,  
10 LEGION INVESTMENTS, LLC

11 MICHAEL L. MATUSKA, ESQ. for JAY KVAM

12  Transmitted document to the Second Judicial District Court mailing system in a  
13 sealed envelope for postage and mailing by Washoe County using the United States  
14 Postal Service in Reno, Nevada:

15   
16 Jerrine Ulleseit

1 **CODE: 1090**  
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,

Plaintiff,

10 v.

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

Defendants.

Case No. CV18-00764

Dept. No. 3

**FIRST AMENDED VERIFIED  
COMPLAINT**

14 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
15 Offices, Ltd., Michael L. Matuska, and hereby complains, alleges, and avers as follows:

16 **I.**  
17 **PARTIES**

18 1. Plaintiff JAY KVAM ("KVAM") is now and at all times mentioned herein was a  
19 resident of Washoe County, Nevada.

20 2. Defendant LEGION INVESTMENTS, LLC ("LEGION") is a Nevada limited  
21 liability company, duly formed and operating pursuant to Chapter 86 of the Nevada Revised  
22 Statutes, with its principal place of business in Washoe County, Nevada.

23 3. Defendant BRIAN MINEAU ("MINEAU") is now and at all times mentioned  
24 herein was a resident of Washoe County, Nevada and the member/manager of LEGION.

25 4. 7747 S. May Street, Chicago, Illinois, is an unincorporated joint venture formed  
26 between KVAM, MINEAU, LEGION, and Michael Spinola, and is hereafter referred to "7747."

27 ///

28



1                   b.     Renovation would proceed through three (3) funding draws, one draw to be  
2 funded by each joint venturer;

3                   c.     MINEAU would manage the project;

4                   d.     The profits would be shared 1/3<sup>rd</sup> each between KVAM, LEGION, and  
5 Spinola; and

6                   e.     MINEAU would transfer all interest in the joint venture to KVAM in the  
7 event the joint venture failed.

8                   9.     The joint venture created by the Agreement identified above and described herein  
9 as 7747 was an unincorporated association that was not registered with the Nevada Secretary of  
10 State and did not file a Statement of Partnership pursuant to NRS 87.4327.

11                  10.    KVAM invested \$93,784.31 in the project to date through a series of five (5) wire  
12 transfers as follows:

13                   a.     \$44,000 on February 13, 2017 for the purchase money

14                   b.     \$784.31 on February 13, 2017 for closing costs

15                   c.     \$20,000 on March 23, 2017 for the first draw

16                   d.     \$20,000 on April 14, 2017 for the second draw

17                   e.     \$9,000 on May 18, 2014 for the third draw.

18                  11.    The amounts listed in Par. 10 are exclusive of any additional costs and interest, and  
19 include KVAM's funding contribution, as well as Spinola's funding contribution, for which  
20 KVAM acceded to Spinola's interest in the joint venture such that Spinola is no longer part of the  
21 joint venture.

22                  12.    KVAM has not received his annual interest payment on any of the advances  
23 identified in Par. 10.

24                  13.    Title to the House was vested in LEGION, which is MINEAU's limited liability  
25 company.

26                  14.    MINEAU initially represented that the project would take approximately six (6)  
27 weeks to complete. The timeframe was later extended to 90 days for the construction phase.

28                  15.    MINEAU failed to fund his required renovation draw.



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**IV.**  
**SECOND CAUSE OF ACTION**  
**(Rescission or Reformation of Agreement)**

25. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

26. The parties were mutually mistaken about the viability of the project, the legal status of the joint venture created by the Agreement and identified herein as 7747, and the rights and obligations of the Parties as a result thereof.

27. The Agreement should be rescinded and KVAM should be restored to his original position with all money returned at a reasonable rate of interest of not less than 7%.

28. In the alternative, the Agreement should be reformed to clarify the status of 7747 as a joint venture and the role of the joint venturers.

**V.**  
**THIRD CAUSE OF ACTION**  
**(Breach of Contract - Loan)**

29. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

30. KVAM has demanded his annual payment and repayment of the monies loaned, but Defendants have failed and refused to repay him.

31. KVAM has performed all conditions precedent to his right to be repaid on the loan and, to the extent any further conditions were not performed, KVAM's performance was excused or rendered impossible by the acts of the Defendants.

32. As a result of the foregoing, KVAM has been damaged in an amount to be proven at trial in excess of \$15,000.

**VI.**  
**FOURTH CAUSE OF ACTION**  
**(Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing - Joint Venture Agreement)**

33. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.



1 fully set forth herein.

2 43. KVAM has disassociated from the joint venture, the joint venture is no longer  
3 viable, the conduct of MINEAU and LEGION has frustrated the joint venture, the purpose of the  
4 joint venture has been completed, and it is not reasonably practicable to carry on the joint venture,  
5 such that 7747 should be dissolved and wound up.

6 44. As part of the winding up, KVAM is entitled to an accounting and settlement of all  
7 partnership accounts and liquidation of the partnership assets.

8 45. The winding up should be conducted with court supervision and a receiver should  
9 be appointed.

10 **IX.**  
11 **SEVENTH CAUSE OF ACTION**  
12 **(Temporary and Permanent Injunction)**

13 46. Plaintiff hereby incorporates by reference all of the paragraphs above as though  
14 fully set forth herein.

15 47. Following dissolution of the joint venture, MINEAU and LEGION should be  
16 temporarily and permanently enjoined from conducting any business on behalf of 7747 or  
17 incurring any liabilities in furtherance of the joint venture, except as approved by the Court and  
18 necessary to preserve the proceeds of sale.

19 **X.**  
20 **EIGHTH CAUSE OF ACTION**  
21 **(Fraud, Fraudulent Inducement and Fraudulent Concealment)**

22 48. Plaintiff hereby incorporates by reference all of the paragraphs above as though  
23 fully set forth herein.

24 49. As parties to the joint venture Agreement, MINEAU and LEGION owed multiple  
25 contractual, legal and fiduciary duties to KVAM and 7747, which included the duty to disclose  
26 material facts.

27 50. Prior to signing the Agreement, MINEAU and LEGION misrepresented and  
28 concealed the true facts, including their intention and ability to fund the project and complete the  
project in a timely manner.

1 51. MINEAU and LEGION misrepresented and concealed the true facts in order to  
2 induce KVAM to execute the Agreement and invest in the project.

3 52. KVAM relied to his detriment on the misrepresentations of MINEAU and LEGION  
4 and would not have signed the Agreement and invested in the project if he had known that  
5 MINEAU and LEGION lacked the intent and ability to provide their funding and complete the  
6 project. KVAM only learned the true facts after filing his lawsuit in this case.

7 53. The fraud and concealment perpetrated by MINEAU and LEGION continued  
8 throughout their performance of the Agreement and after this lawsuit was filed, and included  
9 concealment about the status of the project, problems with the project, the listing and sale of the  
10 House, and the close of escrow and receipt of funds.

11 54. As a result of the foregoing, KVAM and 7747 have been damaged in an amount to  
12 be determined at trial in excess of \$15,000.

13 55. As a further result of the above-described wrongful, fraudulent, oppressive, and  
14 malicious conduct, KVAM and 7747 are also entitled to punitive and exemplary damages in an  
15 amount to be determined at trial.

16 **XI.**  
17 **NINTH CAUSE OF ACTION**  
18 **(Derivative Claim)**

19 56. Plaintiff hereby incorporates by reference all of the paragraphs above as though  
20 fully set forth herein.

21 57. KVAM is disassociated from the joint venture identified herein as 7747.

22 58. Any all claims, causes of action, and prayers for relief asserted by KVAM are also  
23 asserted derivatively on behalf of 7747 to the fullest extent permitted by law.

24 59. KVAM has made multiple requests for MINEAU and LEGION to return his  
25 investment and to provide an accounting.

26 60. Because Defendants have already refused KVAM's numerous requests to cure the  
27 multiple breaches of the Agreement and to comply with the Nevada Revised Statutes, it would be  
28 futile for him to delay the filing of this Complaint in order to attempt to secure Defendants'

1 agreement to initiate this action.

2 WHEREFORE, Plaintiff prays for relief as follows:

- 3 1. For an order declaring the rights and obligations of KVAM, MINEAU, LEGION,  
4 and 7747;
- 5 2. For Court supervised winding up and an order appointing a receiver to secure any  
6 remaining assets and to complete any remaining steps to winding up 7747;
- 7 3. For a temporary and permanent injunction enjoining MINEAU and LEGION from  
8 any further involvement with 7747 and its assets;
- 9 4. For an order declaring that MINEAU and LEGION are liable for any debts of 7747  
10 existing prior to or after the disassociation of KVAM and that they are further obligated to  
11 indemnify KVAM against any liabilities;
- 12 5. For an equitable accounting;
- 13 6. For compensatory damages in an amount to be proven at trial in excess of \$15,000;
- 14 7. For punitive and exemplary damages in excess of \$100,000;
- 15 8. For an award of costs and attorney fees incurred in prosecuting this action;
- 16 9. For such other and further relief as the Court deems just in the premises.

17 **AFFIRMATION**

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

20 Dated this 31th day of January, 2019.

21  
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 31st day of January, 2019, I served a true and correct copy of the preceding document entitled **FIRST AMENDED VERIFIED COMPLAINT** as follows:

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

**BY CM/ECF:** 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 EMAIL:** (as listed 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

1 **CODE 1140**  
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 **ANSWER TO FIRST AMENDED VERIFIED COMPLAINT**

21 BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and  
22 through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., answer the  
23 First Amended Verified Complaint ("Complaint") filed by JAY KVAM ("Kvam") as follows:

- 24 1. Mineau and Legion admit the allegations set forth in Paragraphs 1 through 3 of the  
25 Complaint.  
26 2. Mineau and Legion deny the allegations set forth in Paragraphs 4 through 7 of the  
27 Complaint.  
28 3. Mineau and Legion admit that, in February 2017, Kvam and Legion entered into an  
agreement (the "Agreement") involving a property located at 7747 S. May Street, Chicago, Illinois  
(the "House"). The Agreement speaks for itself. Mineau and Legion deny all other allegations set  
forth in Paragraph 8 of the Complaint, including all subparts.

- 1 4. Mineau and Legion deny the allegations set forth in Paragraph 9 of the Complaint.
- 2 5. Mineau and Legion admit that Kvam funded \$93,781.31 pursuant to the Agreement.
- 3 Mineau and Legion deny all other allegations set forth in Paragraph 10 of the Complaint, including
- 4 all subparts.
- 5 6. Mineau and Legion deny the allegations set forth in Paragraph 11 of the Complaint.
- 6 7. Mineau and Legion admit that Kvam has not received any annual interest payments
- 7 pursuant to the Agreement. Mineau and Legion deny all other allegations set forth in Paragraph 12
- 8 of the Complaint.
- 9 8. Mineau and Legion admit that the House is owned by Legion and that Mineau is
- 10 Legion's sole member. Mineau and Legion deny all other allegations set forth in Paragraph 13 of the
- 11 Complaint.
- 12 9. Mineau and Legion deny the allegations set forth in Paragraphs 14 through 29 of the
- 13 Complaint.
- 14 10. Mineau and Legion admit that Kvam has demanded repayment of the monies funded
- 15 pursuant to the Agreement and that Legion has failed and refused to make such payments at this time.
- 16 Mineau and Legion deny all other allegations set forth in Paragraph 30 of the Complaint.
- 17 11. Mineau and Legion deny the allegations set forth in Paragraphs 31 through 60 of the
- 18 Complaint.
- 19 12. To the extent any allegations set forth in the Complaint are not specifically addressed
- 20 in this Answer, such allegations are denied.

21 **AFFIRMATIVE DEFENSES**

- 22 1. Kvam has failed to state a claim upon which relief can be granted.
- 23 2. To the extent any joint venture exists, this Court lacks subject matter jurisdiction to
- 24 resolve any dispute involving such a joint venture.
- 25 3. To the extent any joint venture exists, this Court lacks personal jurisdiction over such
- 26 a joint venture.
- 27 4. The Agreement is vague and ambiguous.
- 28 5. The Agreement lacks essential terms and is therefore not an enforceable contract.

- 1 6. Kvam's claims are barred by the parol evidence rule.
- 2 7. Kvam's claims are barred by the statute of frauds.
- 3 8. Mineau's and/or Legion's performance under the Contract was excused because
- 4 Kvam's actions made Mineau's and/or Legion's performance impossible.
- 5 9. Kvam has failed to exhaust his statutory remedies.
- 6 10. Kvam's claims are barred by the doctrine of waiver.
- 7 11. Kvam's claims are barred by the doctrine of release.
- 8 12. Kvam's claims are barred by the doctrine of estoppel.
- 9 13. Kvam's claims are barred by the doctrine of laches.
- 10 14. Kvam's claims are barred by the doctrine of unclean hands.
- 11 15. Kvam has suffered no damages for which Mineau or Legion can be held liable.
- 12 16. Kvam's claims are mitigated by assumption of the risk.
- 13 17. Kvam has failed to join all necessary parties to this action.
- 14 18. Kvam's damages, if any, were caused by the negligence of others.
- 15 19. Kvam's damages, if any, were caused by his own actions.
- 16 20. Kvam's damages, if any, were caused by the acts or omissions of others.
- 17 21. Kvam failed to mitigate his damages.
- 18 22. Kvam's damages, if any, resulted from an independent, intervening cause over which
- 19 Mineau and Legion had no control.
- 20 23. Mineau's and Legion's contractual obligations, if any, were excused because Kvam
- 21 breached the Contract first.
- 22 24. Mineau's or Legion's conduct was not wrongful, fraudulent, oppressive, or malicious.
- 23 25. Any and all actions taken by Mineau and Legion were just, fair, privileged, with good
- 24 cause, in good faith, and without malice.
- 25 26. Mineau and Legion reserve the right to assert additional affirmative defenses after
- 26 further investigation and discovery.

27 WHEREFORE, Mineau and Legion pray for relief as follows:

- 28 1. That Kvam take nothing by way of the Complaint;

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- 2. That Kvam’s Complaint be dismissed with prejudice;
  - 3. That Mineau and Legion be awarded their reasonable attorneys’ fees and costs of suit;
- and
- 4. Such further relief as the Court deems proper.

**AFFIRMATION**

The undersigned does hereby affirm that the preceding document, **ANSWER TO FIRST AMENDED VERIFIED COMPLAINT**, 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 19 day of February, 2019.

GUNDERSON LAW FIRM

By: 

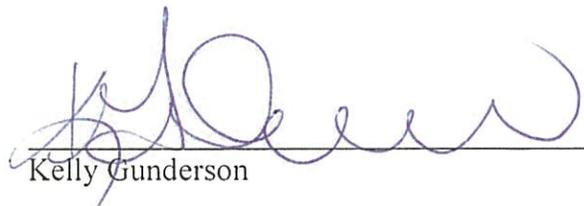
Austin K. Sweet, Esq.  
 Nevada State Bar No. 11725  
 Mark H. Gunderson, Esq.  
 Nevada State Bar No. 2134  
 3895 Warren Way  
 Reno, Nevada 89509  
 Telephone: 775.829.1222  
*Attorneys for Brian Mineau and Legion Investments*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 19 day of February, 2019, I electronically filed a true and correct copy of the **ANSWER TO FIRST AMENDED VERIFIED COMPLAINT**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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

  
\_\_\_\_\_  
Kelly Gunderson

1 **CODE: 2270**  
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,

Defendants.

15 **PLAINTIFF'S FIRST MOTION TO COMPEL**

16 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
17 Offices, Ltd., Michael L. Matuska, pursuant to NRCP 26, NRCP 34, and NRCP 37, and hereby  
18 moves this Court for an Order compelling responses to Plaintiff's Requests for Production of  
19 Documents, specifically, Request Nos. 1, 6, 7, 8, 9, 10, 11, 12, 13, and 20.

20 This motion is made and based on the points and authorities attached hereto, the  
21 Declaration of Michael L. Matuska submitted herewith, and all other documents, exhibits and  
22 pleadings of record.

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

25 ///

26 ///

27 ///

28 ///

1 Dated this 15th day of March 2019.

3 MATUSKA LAW OFFICES, LTD.

4 *Michael L. Matuska*

5 By:

6 MICHAEL L. MATUSKA, SBN 5711  
7 Attorneys for Plaintiff, JAY KVAM,  
8 individually and derivatively on behalf of  
9 the unincorporated joint venture identified as  
10 7747

9 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL**

10 **I. BACKGROUND**

11 This case concerns the February 17, 2017 Terms of Agreement to buy, fix and resell  
12 property at 7747 May Street, Chicago, Illinois (the "Property"). The Terms of Agreement state as  
13 follows:  
14

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

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

28 Jay Kvam, Brian Mineau and Michael Spinola are all parties to the Terms of Agreement,  
and based on the face of the Terms of Agreement, members of Legion Investments, LLC. Despite  
the foregoing, Mineau has never accounted to Kvam. At the time Kvam filed the Verified  
Complaint on April 11, 2018 (#6624468), he had invested \$93,784.31 in the project through a  
series of five (5) wire transfers as follows:

- 1 i. \$44,000 on February 13, 2017 for the purchase money
- 2 ii. \$784.31 on February 13, 2017 for closing costs
- 3 iii. \$20,000 on March 23, 2017 for the first draw
- 4 iv. \$20,000 on April 14, 2017 for the second draw
- 5 v. \$9,000 on May 18, 2014 for the third draw.<sup>1</sup>

6 Although Kvam funded the purchase and construction work, Legion took title to the  
7 property and Mineau signed the construction contract and acted as the project manager.  
8 Unfortunately, the project had experienced multiple difficulties and delays, did not have a  
9 completion date, Kvam did not know whether Mineau and Legion funded their share of the project  
10 draws, they had refused Kvam's request for information, and Mineau seemed to be denying the  
11 joint venture agreement. As such, the Complaint contained causes of action as follows:

- 12 i. Declaration of Joint Venture;
- 13 ii. Rescission or Reformation of Agreement;
- 14 iii. Breach of Loan Agreement;
- 15 iv. Tortious Breach of Covenant of Good Faith and Fair Dealing;
- 16 v. Court Supervision of Dissolution and Winding Up and Appointment of  
17 Receiver; and
- 18 vi. Temporary and Permanent Injunction.

19 The above listed claims were asserted individually by Jay Kvam and derivatively on behalf  
20 of the joint venture. Mineau and Legion asserted various counterclaims which were ultimately  
21 dismissed. (See Order dated January 9, 2019, #7059540).

22 The Property sold for a loss on November 16, 2018. (See Closing Statement attached  
23 hereto as **Ex. "1"**, showing net proceeds of \$24,473.77). Mineau signed the sales agreement,  
24 escrow papers and deed. He did not inform Kvam of the sale or disclose what happened to the  
25

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26 <sup>1</sup> These payments are not contested and are supported by Kvam's multiple affidavits already on file, including  
27 Affidavit of Jay Kvam in Support of Motion for Dissolution (#6771116) and Affidavit of Jay Kvam in Support of  
28 Reply to Opposition to Motion to Dismiss and For Summary Judgment (#6983487). Defendants have also admitted  
these payments. See Responses to First Set of Interrogatories, Response No. 4, provided as Exhibit "3" to Kvam's  
Motion to Dismiss Counterclaim and For Summary Judgment (#6948019).

1 proceeds. Mineau did not keep a separate bank account for the project and Kvam does not even  
2 know what account the proceeds of sale went to. Kvam was left to find out about the sale on his  
3 own, and moved for a temporary restraining order and preliminary injunction on November 30,  
4 2018 to prevent the loss of the sale proceeds. (#7000744). Facing no other options, Mineau and  
5 Legion stipulated to deposit the funds with the clerk of the court, which they have done  
6 (#7021308).

7 Kvam was recently granted leave to file his First Amended Complaint (“FAC”) to add an  
8 additional cause of action for fraud and concealment (#7095466). The causes of action at issue in  
9 the FAC are as follows:

- 10 1. Declaration of Joint Venture
- 11 2. Rescission or Reformation of Agreement
- 12 3. Breach of Contract
- 13 4. Breach of Implied Covenant of Good Faith and Fair Dealing
- 14 5. Accounting
- 15 6. Court supervised dissolution and winding up
- 16 7. Temporary and Permanent Injunction
- 17 8. Fraud and Concealment

18 Kvam has predictably requested agreements between the various parties, records from  
19 Legion, and other financial and accounting records, including tax records. (See Request for  
20 Production of Documents, **Ex. “2”**). Mineau’s responses contained mostly objections, but  
21 referred to various documents being withheld even though he never provided a privilege log (See  
22 **Ex. “3”** and Declaration of Michael L. Matuska, submitted herewith). Kvam’s counsel sent a  
23 meet and confer letter to Mineau’s counsel on January 15, 2019 (See **Ex. “4”**), and subsequently  
24 on February 7, 2019, spent 1 ½ hours in a meet and confer session in Mr. Sweet’s office. (See  
25 Declaration of Michael L. Matuska, submitted herewith). The meet and confer session concluded  
26 with the agreement that, at least for now, Kvam would limit his requests to the time frame  
27 beginning January 1, 2017 (roughly to coincide with the Terms of Agreement) and Mineau would  
28 provide additional information in two (2) weeks. (See Declaration of Michael L. Matuska).

1           Unfortunately Mineau provided only supplemental responses which contained largely the  
2 same objections (Ex. "5"), a series of profit and loss statements with no source documents, and a  
3 listing agreement for the property at 7747 May Street, Chicago, Illinois (the "Property") to give  
4 the impression that Mineau dutifully listed the property for sale when in fact the listing agreement  
5 is unsigned, Mineau has never provided the MLS information, and it is unclear whether the  
6 property was actually listed.

7           It is not even clear if the profit and loss statements provided with the supplement are for  
8 Legion or Mineau, but instead suggest that Legion and Mineau comingled funds on this project.

9           **II. MINEAU HAS PROVIDED INCOMPLETE RESPONSES TO KVAM'S**  
10 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

11           Tax returns are not to be had for the mere asking. *See Cain v. Price*, 134 Nev. Adv. Op. 26  
12 (Nev. April 12, 2018). In that case, the Nevada Supreme Court ruled that "While that evidence  
13 might not amount to 'clear and convincing evidence' that Price and Shackelford committed  
14 'oppression, fraud, or malice,' NRS 42.005(1), such alleged misuse of funds contrary to the [joint  
15 venture agreement] constitutes 'some factual basis' for those claims such that discovery was  
16 property." *Cain v. Price* relied on the earlier case of *Hetter v. Eighth Judicial District Court*, 110  
17 Nev. 513 (1994).

18           The case for production of the requested records in the instant case is even more  
19 compelling than in *Cain v. Price* and *Hetter v. Eighth Judicial District Court* in which the  
20 requested discovery was solely for the case on punitive damages. In this case, the financial  
21 information and tax information is relevant both to Kvam's case-in-chief and his case on punitive  
22 damages. The requested information is necessary to determine income and expenses from the  
23 joint venture. But because Mineau contests Kvam's interpretation of the Terms of Agreement, the  
24 requested information is relevant to determine how Mineau and Legion characterized and reported  
25 the joint venture on their tax returns. The absence of any such reporting is potential evidence,  
26 also, and would confirm Kvam's position that the individuals did not report this investment on  
27 their individual tax returns, but rather, that this investment should have been treated as a joint  
28 venture and reported on an IRS Form 1065 Partnership Tax Return.

1 NRCP 26(b) provides in pertinent part, as follows:

2 (b) **Discovery Scope and Limits.**

3 (1) **Scope.** Unless otherwise limited by order of the court in accordance  
4 with these rules, the scope of discovery is as follows: Parties may obtain discovery  
5 regarding any nonprivileged matter that is relevant to any party's claims or  
6 defenses and proportional to the needs of the case, considering the importance of  
7 the issues at stake in the action, the amount in controversy, the parties' relative  
8 access to relevant information, the parties' resources, the importance of the  
9 discovery in resolving the issues, and whether the burden or expense of the  
10 proposed discovery outweighs its likely benefit. Information within this scope of  
11 discovery need not be admissible in evidence to be discoverable.

12 Though relevant both to compensatory and punitive damages, Mineau has refused to  
13 provide tax returns and related financial information in response to Kvam's document requests.  
14 The requests at issue are as follows. Request No. 1 should be most interesting to this court  
15 following the March 6, 2019 Order (# 7151158) as that request concerns the missing agreement(s)  
16 between Mineau, Spinola and Criterion.

17 The tax information requested by Kvam is limited to Legion's tax returns and Mineau's  
18 Schedule E, which should show income from the limited liability company. Additional  
19 information may need to be requested in the future.

20 **REQUEST NO. 1:**

21 Produce any and all agreements between any of the following persons: Jay Kvam, Brian  
22 Mineau, Michael Spinola, or Legion Investments, LLC.

23 **Response:**

24 Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of  
25 admissible evidence in this matter. This Request seeks irrelevant information concerning  
26 agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation.  
27 Documents are being withheld on the basis of this objection.

28 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
Investments, LLC's possession, custody and control have been produced.

//

1                    **Supplemental Response**

2                    Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of  
3                    admissible evidence in this matter. This Request seeks irrelevant information concerning  
4                    agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation.  
5                    Documents which are responsive to Request No. 1, but to which Jay Kvam is not a party, are  
6                    being withheld on the basis of this objection.

7  
8                    Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
9                    Investments, LLC's possession, custody and control have been produced.

10                   **Discussion:**

11                   First, Mineau's statement that he is withholding certain documents responsive to Request  
12                   No. 1 is inconsistent with his statement that all responsive materials in Mineau's possession  
13                   custody and control have been produced. The problem with these ambiguous statements is  
14                   compounded by the fact that Mineau has not provided a privilege log, or any identifying  
15                   information whatsoever, in his responses. When read together, in the absence of a privilege log,  
16                   Mineau's responses seem intentionally vague. Even if this Court should conclude that agreements  
17                   between the parties to the Terms of Agreement are not discoverable, Kvam is entitled to clear  
18                   responses, and to additional information regarding the documents Mineau seeks to withhold.

19  
20                   Second, Mineau has provided inconsistent information regarding the source of the alleged  
21                   \$20,000 wire transfer. Mineau claimed in his Opposition to [Plaintiff's] Motion for Leave to File  
22                   Amended Complaint as follows: "Criterion NV LLC, a company affiliated with Mineau and  
23                   Legion, contributed \$20,000.00 to the project. (See Motion at Ex. 2, p. 3). Mineau and Spinola  
24                   are the principals of Criterion NV LLC and caused Criterion NV LLC to contribute \$20,000.00 to  
25                   the project on behalf of Legion." (Opposition # 7067328 at 2:9-12). In support of these  
26                   allegations, Mineau produced a wire transfer from Criterion.  
27  
28

1           However, in the recently provided profit and loss statements, Mineau claims that he gave  
2 Spinola \$20,000 cash to wire to the contractor, because Mineau was out of town (See Ex. "6").  
3 Despite placing this wire transfer and Criterion at issue, Mineau has not produced any agreement  
4 with Michael Spinola and Criterion.

5           Limited liability companies in Nevada operate within the framework of NRS Chapter 86,  
6 which recognizes members and managers, not principals or affiliates. Michael Spinola is listed as  
7 the sole managing member of Criterion on the Nevada Secretary of State's website, not Mineau or  
8 Legion. Likewise, Mineau is not a signatory on Criterion's bank account at Mutual of Omaha. In  
9 fact, based on the records produced to date, there is nothing to support Mineau's assertion that the  
10 \$20,000 wire from Criterion was made on behalf of Legion. Mineau placed Criterion and this  
11 wire transfer at issue and must produce his agreements with Michael Spinola and Criterion.

12           These requested documents are also relevant to establish the background of the parties,  
13 their relationship to each other, course of dealing, and the interpretation of the Terms of  
14 Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make  
15 Kvam a member and he is entitled to the company's documents under NRS 86.241. Also,  
16 although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also  
17 signed documents as the member/manager of Legion Investments. It is unclear whether he draws  
18 his authority from the February, 2017 Terms of Agreement or some other agreement that has not  
19 been produced. The Court should compel production of all such agreements.

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23           **REQUEST NO. 6:**

24           Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014  
25 [Amended by agreement to a request for documents since January 1, 2017].

26           **Response:**

27           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
28

1 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
2 Legion Investments, LLC's financial and tax records are confidential and have no bearing on this  
3 litigation. Documents are being withheld on this basis.

4 **Supplemental Response:**

5 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
6 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
7 Legion Investments, LLC's financial and tax records are confidential and have no bearing on this  
8 litigation. Documents are being withheld on this basis.

9 **Discussion:**

10 Legion is a party to the Terms of Agreement, Legion took title to the property at 7747 May  
11 Street, Chicago, Illinois, and on the face of the Terms of Agreement, Kvam is a member. Legion  
12 sold the property, and must be declaring a profit or a loss. Legion's tax returns are not  
13 confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-  
14 chief and for the claim of punitive damages. The Nevada Supreme Court considered this exact  
15 issue recently, in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the  
16 Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994)  
17 and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the  
18 discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil  
19 conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence.  
20  
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22

23 In addition to the direct relevance of Legion's tax returns, Defendants also have a fiduciary  
24 duty to account to Kvam and provide him access to Legion's books and records pursuant to NRS  
25 87.4335.

26 In addition, the finances, governance and operation of Legion Investments is a primary  
27 issue in this case, especially as it relates to an accounting for the project at 7747 May Street,  
28

1 Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is  
2 necessary to review the returns for these reasons, and to see how and whether Legion Investments  
3 reported this investment, including any expenses, loans and proceeds.

4 Discovery of the tax returns is also allowed for purposes of the claim to pierce the  
5 company's limited liability shield.

6 **REQUEST NO. 7:**

7 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

8 [Amended by agreement to a request for documents since January 1, 2017]

9 **Response:**

10 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
11 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
12 Legion Investments, LLC's financial and tax records are confidential and have no bearing on this  
13 litigation. Documents are being withheld on this basis.

14 **Supplemental Response:**

15 Same.

16 **Discussion:**

17 See Request No. 6, *supra*. In addition, Legion Investments should have been providing  
18 Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information  
19 for his own tax reporting requirements.

20 **REQUEST NO. 8:**

21 Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its  
22 creation on July 2, 2014. [Amended by agreement to a request for documents since January 1,  
23 2017]

24 //

1           **Response:**

2           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
4 Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and  
5 have no bearing on this litigation. Documents are being withheld on this basis.  
6

7           **Supplemental Response:**

8           Same.

9           **Discussion:**

10           Kvam could have requested Mineau's entire 1040 tax return, as it relates to punitive  
11 damages, but has not yet done so. Profit and Loss from sources other than W-2 income (i.e., real  
12 estate investment and limited liability companies) is reported on Schedule E of the individual's  
13 income tax return. Kvam limited his request (at this time) solely to Mineau's Schedule E.  
14 Mineau's Schedule E is relevant for the reasons set forth in the discussion regarding Request No.  
15 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss  
16 for the project at 7747 May Street, Chicago, Illinois on his own tax returns. This relates to the  
17 interpretation of the Terms of Agreement which is one of the primary issues in this case. These  
18 documents also may clear up some of the intentionally vague or ambiguous responses by  
19 Defendants thus far.  
20

21           Mineau's Schedule E would also reflect any income from Criterion, if he is in fact a  
22 "principal" of that company as he claims to be.  
23

24           Mineau's tax returns and Schedule E would be relevant to the question of whether he com-  
25 mingled project funds and would therefore relate to the alter ego allegation.  
26

27           **REQUEST NO. 9:**

28           Produce all meeting minutes for Legion Investments, LLC.

1           **Response:**

2           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
4 Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this  
5 litigation. Documents are being withheld on this basis.

6           **Supplemental Response:**

7           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
8 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
9 Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this  
10 litigation. Documents are being withheld on this basis.

11           Without waving this objection, there are no meeting minutes for Legion Investments, LLC  
12 which mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

13           **Discussion:**

14           Legion Investment's meeting minutes are not confidential. Kvam is a member based on  
15 the face of the Terms of Agreement.

16           Kvam needs the meeting minutes to see whether and if Legion Investments approved the  
17 February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any  
18 other resolutions relevant to the project, or to Kvam's claims in this case.

19           The meeting minutes might also contain information which would relate to interpretation  
20 and construction of the Terms of Agreement, which is disputed, as well as the respective roles of  
21 the different parties in regard to the investment and the project at 7747 May Street, Chicago,  
22 Illinois.

23           The meeting minutes might also reflect any agreements with Criterion, which Mineau has  
24 raised as an issue.

1 This is a fraud case, and Kvam does not have to take the word of Mineau or his attorney on  
2 what is or is not contained in the meeting minutes. In fact, Mineau's evasive answer suggests that  
3 there is information in the meeting minutes that would relate to Criterion or to some other aspect  
4 of this case.

5 The absence of any meeting minutes is also relevant to the issue of alter ego.

6 **REQUEST NO. 10:**

7 Produce all resolutions of the members and/or managers of Legion Investments, LLC.

8 **Response:**

9 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
10 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
11 Legion Investments, LLC's internal governing documents are confidential and have no bearing on  
12 this litigation. Documents are being withheld on this basis.

13 **Supplemental Response:**

14 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
15 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
16 Legion Investments, LLC's internal governing documents are confidential and have no bearing on  
17 this litigation. Documents are being withheld on this basis.

18 Without waving this objection, there are no resolutions for Legion Investments, LLC  
19 which mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

20 **Discussion:**

21 See Request No. 9, *supra*.

22 **REQUEST NO. 11:**

23 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

24 [Amended by agreement to a request for documents since January 1, 2017]

1           **Response:**

2           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
4 Legion Investments, LLC's financial records are confidential and have no bearing on this  
5 litigation. Documents are being withheld on this basis.

6           **Supplemental Response:**

7           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
8 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
9 Legion Investments, LLC's financial records are confidential and have no bearing on this  
10 litigation. Documents are being withheld on this basis.

11           Without waiving this objection, Legion Investments, LLC's financial statements relating to  
12 the real property located at 7747 S. May Street, Chicago, Illinois have been produced.

13           **Discussion:**

14           This supplemental response is intentionally misleading and fraudulent. In standard  
15 accounting jargon, the term "financial statements" encompasses both balance sheets (which show  
16 assets, liability and owner's equity) and profit and loss statements (which show income and  
17 expenses). Mineau has produced only some recently created profit and loss statements (discussed  
18 below), with no source documents. In Request No. 11, Kvam specifically requested Balance  
19 Sheets. Those have not been provided.

20           See Discussion regarding Request No. 6, *supra*. In addition, Legion Investment's balance  
21 sheets are not confidential and will show whether and how Legion Investments documented and  
22 reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from  
23 Kvam. These are the central issues in this case.

1                   **REQUEST NO. 12:**

2                   Produce all income and expense statements, and/or profit and loss statements for Legion  
3 Investments, LLC, since its creation on July 2, 2014.

4                   **Response:**

5                   Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
6 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
7 Legion Investments, LLC's financial records are confidential and have no bearing on this  
8 litigation. Documents are being withheld on this basis.

9                   **Supplemental Response:**

10                   Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
11 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
12 Legion Investments, LLC's financial records are confidential and have no bearing on this  
13 litigation. Documents are being withheld on this basis.

14                   Without waiving this objection, Legion Investments, LLC's financial statements relating to  
15 the real property located at 7747 May Street, Chicago, Illinois, have been produced.

16                   **Discussion:**

17                   This response is intentionally misleading and false. Request No. 12 was not limited to  
18 financial statements only concerning this property, and the financial statements provided were not  
19 reported in the normal course of business, but were developed solely for this response. Moreover,  
20 the so-called financial statements were provided without source documents (invoices, receipts,  
21 bank statements and checks) and do not even show the sale of the Property in November, 2018.  
22 As such, Mineau still has not produced any documents to show who or which entity received the  
23 proceeds of sale, which account it went to, and how it was reported.  
24  
25  
26  
27

28 //

1                   **REQUEST NO. 13:**

2                   Produce all bank statements of Legion Investments, LLC accounts, since its creation on  
3 July 2, 2014. [Amended by agreement to a request for documents since January 1, 2017]

4                   **Response:**

5                   Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
6 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
7 Legion Investments, LLC's financial records are confidential and have no bearing on this  
8 litigation. Documents are being withheld on this basis.

9                   **Supplemental Response:**

10                   Same.

11                   **Discussion:**

12                   See discussion regarding Request No. 6, *supra*. In addition, the bank statements are  
13 necessary to verify the payments listed on Legion's recently produced balance statements, the  
14 source of the funds used for the \$20,000 wire transfer to the contractor through the Criterion  
15 account, and where the proceeds of sale were deposited.

16                   **REQUEST NO. 20:**

17                   Produce copies of all business or professional licenses ever held by Brian Mineau.

18                   **Response:**

19                   Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
20 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
21 Brian Mineau's business or professional licenses are confidential and have no bearing on this  
22 litigation. Documents are being withheld on this basis.

23                   **Supplemental Response:**

24                   Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
25  
26  
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1 information that is not likely to lead to the discovery of admissible evidence in this matter, as  
2 Brian Mineau's business or professional licenses are confidential and have no bearing on this  
3 litigation. Documents are being withheld on this basis.

4 Without waiving this objection, Brian Mineau's professional license relating to real estate  
5 has been produced.

6  
7 **Discussion:**

8 This response is intentionally misleading and false. Mineau has not produced any licenses.  
9 Brian Mineau's business or professional licenses are not confidential and are relevant for  
10 background information and to determine his qualifications to manage a real estate project as well  
11 as to serve as a loan broker and duties owed to his lender and joint venture partners.

12  
13 **III. ATTORNEY'S FEES**

14 NRCP 37 provides in pertinent part as follows:

15 **(3) Evasive or Incomplete Disclosure, Answer or Response.** For  
16 purposes of this subdivision an evasive or incomplete disclosure, answer  
or response is to be treated as a failure to disclose, answer or respond.

17 **(4) Expenses and Sanctions.**

18 (A) If the motion is granted or if the disclosure or requested discovery  
19 is provided after the motion was filed, the court shall, after affording an  
20 opportunity to be heard, require the party or deponent whose conduct  
necessitated the motion or the party or attorney advising such conduct or  
21 both of them to pay to the moving party the reasonable expenses  
incurred in making the motion, including attorney's fees, unless the  
22 court finds that the motion was filed without the movant's first making a  
good faith effort to obtain the disclosure or discovery without court  
23 action, or that the opposing party's nondisclosure, response or objection  
was substantially justified, or that other circumstances make an award of  
24 expenses unjust.

25 Before filing a motion to compel, NRCP 37 requires a good faith effort to meet and confer.  
26 Plaintiffs made extensive efforts to meet and confer and avoid the need to file this motion. The  
27 foregoing recital, along with the Affidavit of Michael L. Matuska provided herewith, certifies  
28 these good faith efforts.

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Kvam is entitled to recover his attorney's fees incurred in connection with the present Motion to Compel.

**IV. CONCLUSION**

Based on the foregoing, Brian Mineau and Legion Investments, LLC should be compelled to provide full and complete responses to Kvam's Requests for Production, Request Nos. 1, 6, 7, 8, 9, 10, 11, 12, 13, and 20, and to pay \$2,485.00 in attorney's fees (See Ex. "7").

Dated this 15th day of March 2019.

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

MATUSKA LAW OFFICES, LTD.  
2310 S. Carson Street, #6  
Carson City NV 89701  
(775) 350-7220

**CERTIFICATE OF SERVICE**

Pursuant to NRCPC 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 15th day of March, 2019, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S FIRST MOTION TO COMPEL** as follows:

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

**BY CM/ECF:** 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 EMAIL:** (as listed 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

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Closing Statement	3
2	Plaintiff's Request for Production of Documents	12
3	Mineau's Responses to Request for Production of Documents	11
4	Meet and Confer letter of January 15, 2019	9
5	Mineau's Supplemental Responses to Request for Production of Documents	11
6	May 2017 Balance Statement	1
7	Attorney's Fees	1

**EXHIBIT 1**  
**CLOSING STATEMENT**  
(Plaintiff's First Motion to Compel)

**EXHIBIT 1**  
**CLOSING STATEMENT**  
(Plaintiff's First Motion to Compel)

File No./Escrow No.: 730323	Citywide Title Corporation
Print Date & Time: 11/16/18 8:49 AM	ALTA Universal ID:
Officer/Escrow Officer:	850 W. Jackson
Settlement Location:	Suite 320
Citywide Title	Chicago, IL 60607
850 W. Jackson Blvd., Ste. 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
		<b>Financial</b>		
	\$41,000.00	Sale Price of Property	\$41,000.00	
		Deposit		\$1,000.00
		<b>Prorations/Adjustments</b>		
\$2,233.36		County Property Taxes from 01/01/2018 thru 11/14/2018		\$2,233.36
		<b>Other Loan Charges</b>		
		Appraisal Fee		
		Credit Report Fee		
		Flood Certification Fee		
		Tax Service Fee		
		<b>Title Charges &amp; Escrow / Settlement Charges</b>		
\$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	
		<b>Commission</b>		
\$700.00		Commission to Altura Realty		
\$1,300.00		Commission to Miller Chicago, LLC		

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		<b>Government Recording and Transfer Charges</b>		
		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		
		<b>Miscellaneous</b>		
		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		
<b>Seller</b>			<b>Borrower/Buyer</b>	
<b>Debit</b>	<b>Credit</b>		<b>Debit</b>	<b>Credit</b>
\$16,526.23	\$41,000.00	<b>Subtotals</b>	\$45,060.00	\$3,233.36
		<b>Due From Borrower</b>		\$41,826.64
\$24,473.77		<b>Due To Seller</b>		
\$41,000.00	\$41,000.00	<b>Totals</b>	\$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 Shonrock 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 2  
**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS**  
(Plaintiff's First Motion to Compel)

EXHIBIT 2  
**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS**  
(Plaintiff's First Motion to Compel)

1 **DISC**  
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 (775) 350-7220

7 Attorneys for Plaintiff/ Counter-Defendant

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

10 JAY KVAM,	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,		
	Defendants.	

15 **PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**  
16 **TO DEFENDANTS BRIAN MINEAU AND LEGION INVESTMENTS, LLC**

17 TO: Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC, and their  
18 attorney of record:

19 COMES NOW Plaintiff, JAY KVAM, by and through his attorneys of record, Michael L.  
20 Matuska, Esq., and MATUSKA LAW OFFICES, LTD., and propounds upon Defendants,  
21 BRIAN MINEAU, and LEGION INVESTMENTS, this First Request for Production of  
22 Documents.  
23

24 Pursuant to the provisions of NRCP 34, you are required to provide the below-requested  
25 documents at MATUSKA LAW OFFICES, LTD., 2310 South Carson Street, Suite 6, Carson  
26 City, Nevada 89701, (775) 350-7220, within thirty (30) days hereof.  
27  
28



1 needed to open and view each DOCUMENT, OR (b) a copy of the software needed to open and  
2 view the document, and (c) instructions and all other materials necessary to open, use, OR  
3 interpret each DOCUMENT. To obtain electronic DOCUMENTS in an efficient manner will  
4 require our consultant to have access to electronic hardware in your possession, custody, OR  
5 control. Plaintiff requests that YOU meet and confer with its attorneys, prior to production, to  
6 develop a mutually-acceptable plan for the production and copying of electronic DOCUMENTS.  
7

8 4. Legible photocopies of front and back of each DOCUMENT will be accepted, in  
9 lieu of production of the originals, provided such photocopies fully and accurately depict any and  
10 all information available from the originals and, if not, the originals must be produced.

11 5. If a privilege OR work-product protection (INCLUDING an asserted statutory OR  
12 protective order prohibition against disclosure) is claimed with respect to any responsive  
13 DOCUMENT such that YOU will not produce the entire DOCUMENT without any redactions,  
14 omissions, interlineations, OR changes, specify the privilege OR work-product protection(s)  
15 YOU claim, and IDENTIFY the DOCUMENT. If a claimed privilege OR work-product  
16 protection applies only to a particular phrase, sentence, paragraph, OR section of a responsive  
17 DOCUMENT, produce the DOCUMENT with the projected portion redacted and a legend OR  
18 privilege log indicating that the withheld portion is the subject of a claimed privilege OR work-  
19 product protection. If YOU withhold any DOCUMENT covered by this Request by reason of a  
20 claim of privilege, furnish a list at the time the DOCUMENTS are produced IDENTIFYING any  
21 such DOCUMENT for which the privilege is claimed, together with the following information,  
22 with respect to any such DOCUMENT withheld: author(s), recipient(s), sender, indicated OR  
23 blind copies, date, general subject matter, basis on which privilege is claimed, and the specific  
24 requests to which the DOCUMENT was responsive. For each DOCUMENT withheld under a  
25 claim that it constitutes OR contains attorney work product, also state whether YOU assert that  
26  
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1 control, which YOU have access to, OR which YOU know of, INCLUDING all copies, no  
2 matter who OR by whom prepared, and all drafts prepared in connection with such  
3 DOCUMENTS, whether or not ever used OR conveyed for any purpose, an INCLUDES any  
4 written, graphic, OR recorded matter, however produced OR reproduced, of any kind OR  
5 description, whether sent OR received, OR neither, INCLUDING drafts, originals, non-identical  
6 copies and information stored magnetically, electronically, photographically, OR otherwise. Any  
7 DOCUMENT shall INCLUDE the original and any copies, reproductions, OR facsimiles thereof  
8 that is in any way different from the original. In addition, this includes, but is not limited to, any  
9 electronically stored data on magnetic or optical storage media as an "active" file or files (readily  
10 readable by one or more computer applications or forensics software); any "deleted" but  
11 recoverable electronic files on said media; any electronic file fragments (files that have been  
12 deleted and partially overwritten with new data); and slack (data fragments stored randomly from  
13 random access memory on a hard drive during normal operation of a computer [RAM slack] or  
14 residual data left on the hard drive after new data has overwritten some but not all previously  
15 stored data).

18 1. "INCLUDE" OR "INCLUDING" OR "INCLUDES" as used herein, are defined  
19 as encompassing OR within the scope of the stated request and should not be limited to just the  
20 items specified.

22 2. "OR" as used herein, is defined as "and," "or," and "and/or" concurrently and/or  
23 as necessary in order to bring within the scope of a request all responses which might otherwise  
24 be construed to be outside its scope.

25 3. "PERSON" as used herein, is defined as, and shall INCLUDE a human being,  
26 natural person, corporation, partnership, association, trust, unincorporated organization, any  
27 nongovernmental legal entity, OR any form of business OR social organization.

28



1 amendments.

2 **REQUEST NO. 5:**

3 Produce the Operating Agreement for Atlas Investors Southside, LLC, including any  
4 amendments.

5 **REQUEST NO. 6:**

6 Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.  
7

8 **REQUEST NO. 7:**

9 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2,  
10 2014.

11 **REQUEST NO. 8:**

12 Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its  
13 creation on July 2, 2014.  
14

15 **REQUEST NO. 9:**

16 Produce all meeting minutes for Legion Investments, LLC.

17 **REQUEST NO. 10:**

18 Produce all resolutions of the members and/or managers of Legion Investments, LLC.

19 **REQUEST NO. 11:**

20 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2,  
21 2014.  
22

23 **REQUEST NO. 12:**

24 Produce all income and expense statements, and/or profit and loss statements for Legion  
25 Investments, LLC, since its creation on July 2, 2014.

26 **REQUEST NO. 13:**

27 Produce all bank statements of Legion Investments, LLC accounts, since its creation on  
28

1 July 2, 2014.

2 **REQUEST NO. 14:**

3 Produce all escrow and title records for the real property located at 7747 S. May Street,  
4 Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing  
5 statements.  
6

7 **REQUEST NO. 15:**

8 Produce all contracts for work performed or to be performed at the Property.

9 **REQUEST NO. 16:**

10 Produce all invoices for materials purchased for the Property, or work performed or to be  
11 performed at the Property.

12 **REQUEST NO. 17:**

13 Produce copies of checks written to pay, or other evidence of payment for, invoices for  
14 materials purchased for the Property, or work performed or to be performed at the Property.  
15

16 **REQUEST NO. 18:**

17 Produce any all documents, including copies of checks and bank statements, showing  
18 payments from any investor for the purchase or improvement of the Property, including but not  
19 limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

20 **REQUEST NO. 19:**

21 Produce any and all reports provided by, or to, Brian Mineau or Legion Investments,  
22 LLC, regarding the status of the Property, materials to be used on the Property, or work  
23 performed or to be performed on the Property.  
24

25 **REQUEST NO. 20:**

26 Produce copies of all business or professional licenses ever held by Brian Mineau.  
27  
28

1 **REQUEST NO. 21:**

2 Produce copies of all utility bills for the Property.

3 **REQUEST NO. 22:**

4 Produce copies of correspondence between Brian Mineau and Michael Spinola regarding  
5 the Property, or any investment in or improvement to the Property.

6 **REQUEST NO. 23:**

7 Produce all photographs of the Property.

8 **REQUEST NO. 24:**

9 Produce any drafts of the "Terms of Agreement" document that has been produced as  
10 "KVAM 403," and any correspondence referring to that document.

11 **REQUEST NO. 25:**

12 Produce any document supporting your contention that Jay Kvam cut power to the  
13 Property.

14 **REQUEST NO. 26:**

15 Produce any document supporting your contention in paragraph 14 of the Counterclaim  
16 that Kvam demanded to be "bought out" of the agreement.

17 **REQUEST NO. 27:**

18 Produce any document supporting your contention in paragraph 15 of the Counterclaim  
19 that Kvam undertook efforts to interfere with Mineau's business investments or harm Mineau's  
20 business relationships.

21 **REQUEST NO. 28:**

22 Produce all documents supporting your contentions in paragraph 16 of the Counterclaim  
23 that Kvam wrongfully and fraudulently accessed Atlas' bank accounts and engaged in  
24 unauthorized and fraudulent online banking transactions.

25

1 **REQUEST NO. 29:**

2 Produce any documents supporting your contention in paragraph 18 of the Counterclaim  
3 that Mr. Kvam caused process servers to harass, threaten, or intimidate Mr. Mineau's family.

4 **REQUEST NO. 30:**

5 Produce any and all documents supporting your contention in Paragraph 39 of the  
6 Counterclaim that Mineau and Legion enjoyed prospective economic relationships with various  
7 third parties involving the marketing and sale of the House.  
8

9 **REQUEST NO. 31:**

10 Produce all documents supporting your contentions in paragraph 41 of the Counterclaim  
11 that Kvam intended to harm Mineau and Legion by preventing and/or interfering with those  
12 relationships.  
13

14 **REQUEST NO. 32:**

15 Produce all documents supporting your contentions in paragraph 43 of the Counterclaim  
16 that Mineau's and Legion's prospective business relationships have been damaged.

17 **REQUEST NO. 33:**

18 Produce any and all documents requesting a capital call or payment from any of the  
19 Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.  
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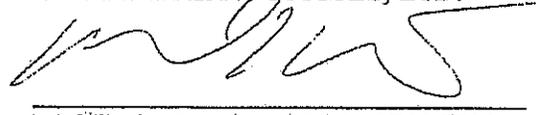
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**AFFIRMATION**

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

Dated this 29<sup>th</sup> of August, 2018

MATUSKA LAW OFFICES, LTD.

By: 

MICHAEL L. MATUSKA, SBN 5711  
2310 South Carson Street, Suite 6  
Carson City, NV 89701  
(775) 350-7220  
Attorneys for Plaintiff /Counter-Defendant

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of MATUSKA LAW OFFICES, LTD., and that on the date shown below, I caused service of a true and correct copy of:

**PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
TO DEFENDANTS BRIAN MINEAU AND LEGION INVESTMENTS, LLC**

to be completed by:

- personally delivering
- delivery via internal Messenger Service
- sending via Federal Express or other overnight delivery service
- depositing for mailing in the U.S. mail with sufficient postage affixed thereto
- delivery via facsimile machine to fax no.
- delivery via electronic mail to:
- delivery via eflex

addressed to:

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

DATED this 29<sup>th</sup> day of August, 2018.

  
An employee of MATUSKA LAW OFFICES, LTD.

**EXHIBIT 3**  
**MINEAU'S RESPONSES TO**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**  
(Plaintiff's First Motion to Compel)

**EXHIBIT 3**  
**MINEAU'S RESPONSES TO**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**  
(Plaintiff's First Motion to Compel)

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 REQUEST FOR PRODUCTION OF DOCUMENTS**

22 **PROPOUNDING PARTY:** Jay Kvam  
23 **RESPONDING PARTY:** Brian Mineau and Legion Investments, LLC

24 Pursuant to NRCPC 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 34 of the Nevada Rules of Civil  
27 Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s Request for Production  
28 to Mineau and Legion ("Requests") as follows:

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1 **REQUEST NO. 1:**

2 Produce any and all agreements between any of the following persons: Jay Kvam, Brian  
3 Mineau, Michael Spinola, or Legion Investments, LLC.

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

5 Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of  
6 admissible evidence in this matter. This Request seeks irrelevant information concerning agreements  
7 to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are  
8 being withheld on the basis of this objection.

9 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
10 Investments, LLC's possession, custody, or control have been produced.

11 **REQUEST NO. 2:**

12 Produce the Articles of Organization for Legion Investments, LLC, including any  
13 amendments.

14 **RESPONSE TO REQUEST NO. 2:**

15 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to  
16 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing  
17 documents have no bearing on this litigation. No documents are being withheld on the basis of this  
18 objection.

19 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
20 Investments, LLC's possession, custody, or control have been produced.

21 **REQUEST NO. 3:**

22 Produce the Operating Agreement for Legion Investments, LLC, including any amendments.

23 **RESPONSE TO REQUEST NO. 3:**

24 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to  
25 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing  
26 documents have no bearing on this litigation. No documents are being withheld on the basis of this  
27 objection.

28 ///

1 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
2 Investments, LLC's possession, custody, or control have been produced.

3 **REQUEST NO. 4:**

4 Produce the Articles of Organization for Atlas Investors Southside, LLC, including any  
5 amendments.

6 **RESPONSE TO REQUEST NO. 4:**

7 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
8 information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas  
9 Investors Southside, LLC is not a party to this action and its internal governing documents have no  
10 bearing on this litigation. Documents are being withheld on the basis of this objection.

11 **REQUEST NO. 5:**

12 Produce the Operating Agreement for Atlas Investors Southside, LLC, including any  
13 amendments.

14 **RESPONSE TO REQUEST NO. 5:**

15 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
16 information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas  
17 Investors Southside, LLC is not a party to this action and its internal governing documents have no  
18 bearing on this litigation. Documents are being withheld on the basis of this objection.

19 **REQUEST NO. 6:**

20 Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

21 **RESPONSE TO REQUEST NO. 6:**

22 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
23 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
24 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.  
25 Documents are being withheld on the basis of this objection.

26 **REQUEST NO. 7:**

27 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

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1 **RESPONSE TO REQUEST NO. 7:**

2           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
4 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.  
5 Documents are being withheld on the basis of this objection.

6 **REQUEST NO. 8:**

7           Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its  
8 creation on July 2, 2014.

9 **RESPONSE TO REQUEST NO. 8:**

10           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
11 information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian  
12 Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no  
13 bearing on this litigation. Documents are being withheld on the basis of this objection.

14 **REQUEST NO. 9:**

15           Produce all meeting minutes for Legion Investments, LLC.

16 **RESPONSE TO REQUEST NO. 9:**

17           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
18 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
19 Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation.  
20 Documents are being withheld on the basis of this objection.

21 **REQUEST NO.10:**

22           Produce all resolutions of the members and/or managers of Legion Investments, LLC.

23 **RESPONSE TO REQUEST NO. 10:**

24           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
25 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
26 Investments, LLC's internal governing documents are confidential and have no bearing on this  
27 litigation. Documents are being withheld on the basis of this objection.

28 ///

1 **REQUEST NO. 11:**

2 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

3 **RESPONSE TO REQUEST NO. 11:**

4 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
5 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
6 Investments, LLC's financial records are confidential and have no bearing on this litigation.  
7 Documents are being withheld on the basis of this objection.

8 **REQUEST NO. 12:**

9 Produce all income and expense statements, and/or profit and loss statements for Legion  
10 Investments, LLC, since its creation on July 2, 2014.

11 **RESPONSE TO REQUEST NO. 12:**

12 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
13 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
14 Investments, LLC's financial records are confidential and have no bearing on this litigation.  
15 Documents are being withheld on the basis of this objection.

16 **REQUEST NO. 13:**

17 Produce all bank statements of Legion Investments, LLC accounts, since its creation on July  
18 2, 2014.

19 **RESPONSE TO REQUEST NO. 13:**

20 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
21 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
22 Investments, LLC's bank records are confidential and have no bearing on this litigation. Documents  
23 are being withheld on the basis of this objection.

24 **REQUEST NO. 14:**

25 Produce all escrow and title records for the real property located at 7747 S. May Street,  
26 Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing  
27 statements.

28 ///

1 **RESPONSE TO REQUEST NO. 14:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
3 custody, or control have been produced.

4 **REQUEST NO. 15:**

5 Produce all contracts for work performed or to be performed at the Property.

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

7 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
8 custody, or control have been produced.

9 **REQUEST NO. 16:**

10 Produce all invoices for materials purchased for the Property, or work performed or to be  
11 performed at the Property.

12 **RESPONSE TO REQUEST NO. 16:**

13 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
14 custody, or control have been produced.

15 **REQUEST NO. 17:**

16 Produce copies of checks written to pay, or other evidence of payment for, invoices for  
17 materials purchased for the Property, or work performed or to be performed at the Property.

18 **RESPONSE TO REQUEST NO. 17:**

19 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
20 custody, or control have been produced.

21 **REQUEST NO. 18:**

22 Produce any all [sic] documents, including copies of checks and bank statements, showing  
23 payments from any investor for the purchase or improvement of the Property, including but not  
24 limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

25 **RESPONSE TO REQUEST NO. 18:**

26 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
27 custody, or control have been produced.

28 ///

1 **REQUEST NO. 19:**

2 Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC,  
3 regarding the status of the Property, materials to be used on the Property, or work performed or to be  
4 performed on the Property.

5 **RESPONSE TO REQUEST NO. 19:**

6 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
7 custody, or control have been produced.

8 **REQUEST NO. 20:**

9 Produce copies of all business or professional licenses ever held by Brian Mineau.

10 **RESPONSE TO REQUEST NO. 20:**

11 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to the  
12 discovery of admissible evidence in this matter, as copies of Brian Mineau's business or professional  
13 licenses have no bearing on this litigation. Documents are being withheld on the basis of this  
14 objection.

15 **REQUEST NO. 21:**

16 Produce copies of all utility bills for the Property.

17 **RESPONSE TO REQUEST NO. 21:**

18 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
19 custody, or control have been produced.

20 **REQUEST NO. 22:**

21 Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the  
22 Property, or any investment in or improvement to the Property.

23 **RESPONSE TO REQUEST NO. 22:**

24 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
25 custody, or control have been produced.

26 **REQUEST NO. 23:**

27 Produce all photographs of the property.

28 ///

1 **RESPONSE TO REQUEST NO. 23:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
3 custody, or control have been produced.

4 **REQUEST NO. 24:**

5 Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM  
6 403," and any correspondence referring to that document.

7 **RESPONSE TO REQUEST NO. 24:**

8 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
9 custody, or control have been produced.

10 **REQUEST NO. 25:**

11 Produce any document supporting your contention that Jay Kvam cut power to the Property.

12 **RESPONSE TO REQUEST NO. 25:**

13 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
14 custody, or control have been produced.

15 **REQUEST NO. 26:**

16 Produce any document supporting your contention in paragraph 14 of the Counterclaim that  
17 Kvam demanded to be "bought out" of the agreement.

18 **RESPONSE TO REQUEST NO. 26:**

19 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
20 custody, or control have been produced.

21 **REQUEST NO. 27:**

22 Produce any document supporting your contention in paragraph 15 of the Counterclaim that  
23 Kvam undertook efforts to interfere with Mineau's business investments or harm Mineau's business  
24 relationships.

25 **RESPONSE TO REQUEST NO. 27:**

26 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
27 custody, or control have been produced.

28 ///

1 **REQUEST NO. 28:**

2 Produce all documents supporting your contentions in paragraph 16 of the Counterclaim that  
3 Kvam wrongfully and fraudulently accessed Atlas' bank accounts and engaged in unauthorized and  
4 fraudulent online banking transactions.

5 **RESPONSE TO REQUEST NO. 28:**

6 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
7 custody, or control have been produced.

8 **REQUEST NO. 29:**

9 Produce any documents supporting your contention in paragraph 18 of the Counterclaim that  
10 Mr. Kvam caused process servers to harass, threaten, or intimidate Mr. Mineau's family.

11 **RESPONSE TO REQUEST NO. 29:**

12 Brian Mineau and Legion Investments, LLC have no responsive documents in their possession,  
13 custody, or control.

14 **REQUEST NO. 30:**

15 Produce any and all documents supporting your contention in paragraph 39 of the  
16 Counterclaim that Mineau and Legion enjoyed prospective economic relationships with various third  
17 parties involving the marketing and sale of the House.

18 **RESPONSE TO REQUEST NO. 30:**

19 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
20 custody, or control have been produced.

21 **REQUEST NO. 31:**

22 Produce all documents supporting your contentions in paragraph 41 of the Counterclaim that  
23 Kvam intended to harm Mineau and Legion by preventing and/or interfering with those relationships.

24 **RESPONSE TO REQUEST NO. 31:**

25 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
26 custody, or control have been produced.

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1 **REQUEST NO. 32:**

2 Produce all documents supporting your contentions in paragraph 43 of the Counterclaim that  
3 Mineau's and Legion's prospective business relationships have been damaged.

4 **RESPONSE TO REQUEST NO. 32:**

5 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
6 custody, or control have been produced.

7 **REQUEST NO. 33:**

8 Produce any and all documents requesting a capital call or payment from any of the Investors  
9 for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

10 **RESPONSE TO REQUEST NO. 33:**

11 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
12 custody, or control have been produced.

13 DATED this 1 day of October, 2018.

14 GUNDERSON LAW FIRM

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16  
17 By: 

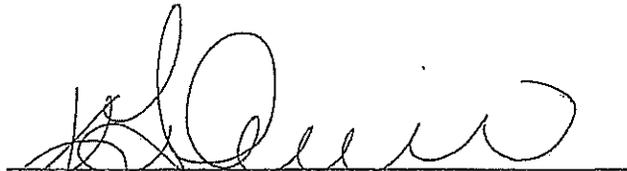
18 Austin K. Sweet, Esq.  
19 Nevada State Bar No. 11725  
20 Mark H. Gunderson, Esq.  
21 Nevada State Bar No. 2134  
22 3895 Warren Way  
23 Reno, Nevada 89509  
24 Telephone: 775.829.1222  
25 *Attorneys for Brian Mineau and Legion*  
26 *Investments*  
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**CERTIFICATE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

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

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

  
\_\_\_\_\_  
Kelly Gunderson

**EXHIBIT 4**  
**MEET AND CONFER LETTER OF JANUARY 15, 2019**  
(Plaintiff's First Motion to Compel)

**EXHIBIT 4**  
**MEET AND CONFER LETTER OF JANUARY 15, 2019**  
(Plaintiff's First Motion to Compel)



January 15, 2019

Via Email and U.S. Mail

Austin K. Sweet, Esq.  
Gunderson Law Firm  
3895 Warren Way  
Reno NV 89509  
[asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com)

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

Dear Mr. Sweet:

Please accept this letter regarding the incomplete responses of Brian Mineau and Legion Investments, LLC to the Plaintiff Jay Kvam's First Request for Production of Documents and Second Request for Production of Documents. I will call you to set a time to meet and confer if you have any questions about this letter or your clients' obligations under NRCP 34.

**PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:**

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

**Response:**

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

**Discussion:**

Mineau and Legion Investments only produced the February, 2017 Terms of Agreement. All other documents to which these parties are a party are within their care, custody and control and must be produced. These documents are relevant to establish the background of the parties, their relationship to each other, course of dealing, and the interpretation of the Terms of Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make Kvam a member and he is entitled to the documents under NRS 86.241. Also, although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also signed documents as the member/manager of Legion Investments. It is unclear whether he draws his



authority from the February, 2017 Terms of Agreement or some other agreement that has not been produced.

**REQUEST NO. 6:**

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Legion Investments' tax returns are not confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-chief and for the claim of punitive damages. I had this exact issue in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994) and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence. Defendants also have a fiduciary duty to account to Kvam and provide him access to the books and records pursuant to NRS 87.4335. In addition, the finances, governance and operation of Legion Investments is a primary issue in this case, especially as it relates to an accounting for the project at 7747 May Street, Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is necessary to review the returns for these reasons, and to see how and whether Legion Investments reported this investment, including any expenses, loans and proceeds. Discovery of the tax returns is also allowed for purposes of the claim to pierce the company's limited liability shield.

**REQUEST NO. 7:**

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investments should have been providing Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information for his own tax reporting requirements.



**REQUEST NO. 8:**

Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his own tax returns.

**REQUEST NO. 9:**

Produce all meeting minutes for Legion Investments, LLC.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Legion Investment's meeting minutes are not confidential. Kvam needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project. The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

**REQUEST NO. 10:**

Produce all resolutions of the members and/or managers of Legion Investments, LLC.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing documents are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 9, *supra*.



**REQUEST NO. 11:**

Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam.

**REQUEST NO. 12:**

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

See Request No. 6, *supra*. In addition, Legion Investment's income and expense statements are not confidential and will show whether and how Legion Investments documented and reported the loan from Kvam and expenses related to the project at 7747 May Street, Chicago, Illinois. Income and expense statements relate to the accounting, which is a primary issue in this case.

**REQUEST NO. 13:**

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.



**Discussion:**

See Request No. 6, *supra*. In addition, the bank statements are necessary to verify the disposition of Kvam's loan proceeds, and other sources of income from the project at 7747 May Street, Chicago, Illinois, and expenses related to that project. The bank statements are also relevant to the issue of whether Kvam's loan proceeds and project funds were co-mingled with Legion Investments' other funds. The bank statements are also necessary to verify whether the wire transfer from Criterion Investments was received. LEG 121.

**REQUEST NO. 14:**

Produce all escrow and title records for the real property located at 7747 S. May Street, Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing statements.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

**Discussion:**

All of the requested documents are within Brian Mineau's control and should have been produced. Unfortunately, the only escrow documents produced to date were the Purchase and Sale Contract and Alta Settlement Statement for the November 16, 2018 escrow (LEG 131-138). Defendants did not produce any documents regarding the February, 2017 escrow.

**REQUEST NO. 15:**

Produce all contracts for work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All contracts are within Defendant's possession, custody or control, but only one contract was produced at LEG 2-15.

**REQUEST NO. 16:**

Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



**Discussion:**

All invoices are within Defendant's possession, custody or control, but none were provided. To date, Defendants have not provided an accounting, and all invoices are therefore relevant to the income and expense accounting, particularly the invoices from the contractor(s) who worked on the project.

**REQUEST NO. 17:**

Produce copies of checks written to pay, or other evidence of payment for, invoices for materials purchased for the Property, or work performed or to be performed at the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All checks are within Defendant's possession, custody or control, but none were provided.

**REQUEST NO. 18:**

Produce any all documents, including copies of checks and bank statements, showing payments from any investor for the purchase or improvement of the Property, including but not limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All responsive documents are within Defendant's possession, custody or control, but none were provided.

**REQUEST NO. 19:**

Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC, regarding the status of the Property, materials to be used on the Property, or work performed or to be performed on the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

The reports would have been generated by Brian Mineau and are within Defendant's possession, custody or control, but none were provided.



**REQUEST NO. 20:**

Produce copies of all business or professional licenses ever held by Brian Mineau.

**Response:**

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

**Discussion:**

Brian Mineau's business or professional licenses are not confidential and are relevant for background information and to determine his qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to his lender and joint venture partners.

**REQUEST NO. 21:**

Produce copies of all utility bills for the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

**Discussion:**

All utility bills are in the care, custody or control of Brian Mineau and Legion Investments, but only a few, scattered bills have been provided. Although the January 9, 2019 Order dismissed the Defendants' counterclaims, including the counterclaims based on the false allegation that Kvam turned off the power and caused the pipes to burst, Defendants still have not provided an accounting, and all bills are therefore relevant to the income and expense accounting.

**REQUEST NO. 22:**

Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment in or improvement to the Property.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

Michael Spinola is a party to the February, 2017 Terms of Agreement. The documents responsive to this request are within Defendant's possession, custody or control, but none were provided. Other than the Terms of Agreement, the only document produced to date relevant to Michael Spinola is a redacted wire transfer signed by Michael Spinola on behalf of Criterion Investments LEG 121. There is no other correspondence with Michael Spinola. Defendants also failed to provide a bank statement or other document showing that funds were actually wired and



received. (See Request No. 18.)

**REQUEST NO. 24:**

Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM 403," and any correspondence referring to that document.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

Drafts of the Terms of Agreement are within Defendants' possession, custody and control, but have not been provided.

**REQUEST NO. 33:**

Produce any and all documents requesting a capital call or payment from any of the Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

**Discussion:**

All documents relevant to this request are within Defendants' possession, custody and control, but have not been provided.

**PLAINTIFF JAY KVAM'S SECOND SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

Jay Kvam's Second Request for Production of Documents contained a single request as follows:

**REQUEST NO. 34:**

Produce any and all documents regarding the escrow and sale of the Property, including but not limited to listing information, purchase and sale agreements, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

**Response:**

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



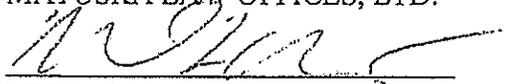
Austin K. Sweet, Esq.  
January 15, 2019  
Page 9 of 9

**Discussion:**

Unfortunately, this Response does not seem to be accurate. LEG 0121-0130 relate to Atlas Southside Investors and do not relate to the Property at 7747 S. May Street, Chicago, Illinois at all. The other documents include the Purchase and Sale Contract and the Settlement Statement. The Settlement Statement reports "\$24,473.77 Due to Seller." Please identify by date and Bates No. when and where the other requested documents have been produced, including: listing information, title reports, escrow instructions, checks or other documents showing the disposition of the proceeds of sale. The proceeds of sale obviously include "24,473.77 Due to Seller." Defendants need to provide the account statement showing the deposit of the funds. Defendants also need to provide the photos that went along with the listing agreement. To date, the only photos provided by the Defendants were six (6) grainy photos of the interior produced as LEG 0037-0042.

The requested documents should be received in this office no later than January 31, 2019. I will have to move forward with a motion to compel if they are not required by that date. You may be aware that Mr. Kvam will be entitled to recover his attorney's fees incurred in connection with the letter and the motion to compel.

Sincerely,

By:   
MATUSKA LAW OFFICES, LTD.  
MICHAEL L. MATUSKA, ESQ.  
2310 South Carson Street, Suite 6  
Carson City NV 89701

cc: Client

**EXHIBIT 5**  
**MINEAU'S SUPPLEMENTAL RESPONSES TO**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**  
(Plaintiff's First Motion to Compel)

**EXHIBIT 5**  
**MINEAU'S SUPPLEMENTAL RESPONSES TO**  
**REQUEST FOR PRODUCTION OF DOCUMENTS**  
(Plaintiff's First Motion to Compel)

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**DISC**  
GUNDERSON LAW FIRM  
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*

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

JAY KVAM, Case No. CV18-00764  
  
Plaintiff / Counterdefendant, Dept. No. 3

vs.

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

**BRIAN MINEAU AND LEGION INVESTMENTS' SUPPLEMENTAL RESPONSES TO  
PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

**PROPOUNDING PARTY:** Jay Kvam

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

Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION  
INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.  
and Mark H. Gunderson, Esq., and pursuant to Rules 26 and 34 of the Nevada Rules of Civil  
Procedure, supplement their responses to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s  
Request for Production to Mineau and Legion ("Requests") as follows:

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1 **REQUEST NO. 1:**

2 Produce any and all agreements between any of the following persons: Jay Kvam, Brian  
3 Mineau, Michael Spinola, or Legion Investments, LLC.

4 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 1:**

5 Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of  
6 admissible evidence in this matter. This Request seeks irrelevant information concerning agreements  
7 to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents which  
8 are responsive to Request No. 1, but to which Jay Kvam is not a party, are being withheld on the basis  
9 of this objection.

10 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
11 Investments, LLC's possession, custody, or control have been produced.

12 **REQUEST NO. 2:**

13 Produce the Articles of Organization for Legion Investments, LLC, including any  
14 amendments.

15 **RESPONSE TO REQUEST NO. 2:**

16 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to  
17 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing  
18 documents have no bearing on this litigation. No documents are being withheld on the basis of this  
19 objection.

20 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
21 Investments, LLC's possession, custody, or control have been produced.

22 **REQUEST NO. 3:**

23 Produce the Operating Agreement for Legion Investments, LLC, including any amendments.

24 **RESPONSE TO REQUEST NO. 3:**

25 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to  
26 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing  
27 documents have no bearing on this litigation. No documents are being withheld on the basis of this  
28 objection.

1 Without waiving this objection, all responsive materials in Brian Mineau's and Legion  
2 Investments, LLC's possession, custody, or control have been produced.

3 **REQUEST NO. 4:**

4 Produce the Articles of Organization for Atlas Investors Southside, LLC, including any  
5 amendments.

6 **RESPONSE TO REQUEST NO. 4:**

7 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
8 information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas  
9 Investors Southside, LLC is not a party to this action and its internal governing documents have no  
10 bearing on this litigation. Documents are being withheld on the basis of this objection.

11 **REQUEST NO. 5:**

12 Produce the Operating Agreement for Atlas Investors Southside, LLC, including any  
13 amendments.

14 **RESPONSE TO REQUEST NO. 5:**

15 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
16 information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas  
17 Investors Southside, LLC is not a party to this action and its internal governing documents have no  
18 bearing on this litigation. Documents are being withheld on the basis of this objection.

19 **REQUEST NO. 6:**

20 Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

21 **RESPONSE TO REQUEST NO. 6:**

22 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
23 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
24 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.  
25 Documents are being withheld on the basis of this objection.

26 **REQUEST NO. 7:**

27 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

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1 **RESPONSE TO REQUEST NO. 7:**

2           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
4 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.  
5 Documents are being withheld on the basis of this objection.

6 **REQUEST NO. 8:**

7           Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its  
8 creation on July 2, 2014.

9 **RESPONSE TO REQUEST NO. 8:**

10           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
11 information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian  
12 Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no  
13 bearing on this litigation. Documents are being withheld on the basis of this objection.

14 **REQUEST NO. 9:**

15           Produce all meeting minutes for Legion Investments, LLC.

16 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 9:**

17           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
18 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
19 Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation.  
20 Documents are being withheld on the basis of this objection.

21           Without waiving this objection, there are no meeting minutes for Legion Investments, LLC  
22 which mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

23 **REQUEST NO.10:**

24           Produce all resolutions of the members and/or managers of Legion Investments, LLC.

25 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 10:**

26           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential

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1 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
2 Investments, LLC's internal governing documents are confidential and have no bearing on this  
3 litigation. Documents are being withheld on the basis of this objection.

4 Without waiving this objection, there are no resolutions for Legion Investments, LLC which  
5 mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

6 **REQUEST NO. 11:**

7 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

8 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 11:**

9 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
10 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
11 Investments, LLC's financial records are confidential and have no bearing on this litigation.  
12 Documents are being withheld on the basis of this objection.

13 Without waiving this objection, Legion Investments, LLC's financial statements relating to  
14 the real property located at 7747 S. May Street, Chicago, Illinois, have been produced.

15 **REQUEST NO. 12:**

16 Produce all income and expense statements, and/or profit and loss statements for Legion  
17 Investments, LLC, since its creation on July 2, 2014.

18 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 12:**

19 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
20 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
21 Investments, LLC's financial records are confidential and have no bearing on this litigation.  
22 Documents are being withheld on the basis of this objection.

23 Without waiving this objection, Legion Investments, LLC's financial statements relating to  
24 the real property located at 7747 S. May Street, Chicago, Illinois, have been produced.

25 **REQUEST NO. 13:**

26 Produce all bank statements of Legion Investments, LLC accounts, since its creation on July  
27 2, 2014.

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1 **RESPONSE TO REQUEST NO. 13:**

2           Objection, relevance and confidentiality. This Request seeks irrelevant, confidential  
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion  
4 Investments, LLC's bank records are confidential and have no bearing on this litigation. Documents  
5 are being withheld on the basis of this objection.

6 **REQUEST NO. 14:**

7           Produce all escrow and title records for the real property located at 7747 S. May Street,  
8 Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing  
9 statements.

10 **RESPONSE TO REQUEST NO. 14:**

11           All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
12 custody, or control have been produced.

13 **REQUEST NO. 15:**

14           Produce all contracts for work performed or to be performed at the Property.

15 **RESPONSE TO REQUEST NO. 15:**

16           All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
17 custody, or control have been produced.

18 **REQUEST NO. 16:**

19           Produce all invoices for materials purchased for the Property, or work performed or to be  
20 performed at the Property.

21 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 16:**

22           There are no responsive materials in Brian Mineau's and Legion Investments, LLC's  
23 possession, custody, or control.

24 **REQUEST NO. 17:**

25           Produce copies of checks written to pay, or other evidence of payment for, invoices for  
26 materials purchased for the Property, or work performed or to be performed at the Property.

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1 **RESPONSE TO REQUEST NO. 17:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
3 custody, or control have been produced.

4 **REQUEST NO. 18:**

5 Produce any all [sic] documents, including copies of checks and bank statements, showing  
6 payments from any investor for the purchase or improvement of the Property, including but not  
7 limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

8 **RESPONSE TO REQUEST NO. 18:**

9 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
10 custody, or control have been produced.

11 **REQUEST NO. 19:**

12 Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC,  
13 regarding the status of the Property, materials to be used on the Property, or work performed or to be  
14 performed on the Property.

15 **RESPONSE TO REQUEST NO. 19:**

16 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
17 custody, or control have been produced.

18 **REQUEST NO. 20:**

19 Produce copies of all business or professional licenses ever held by Brian Mineau.

20 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 20:**

21 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to  
22 the discovery of admissible evidence in this matter, as copies of Brian Mineau's business or  
23 professional licenses have no bearing on this litigation. Documents are being withheld on the basis  
24 of this objection.

25 Without waiving this objection, Brian Mineau's professional license relating to real estate has  
26 been produced.

27 **REQUEST NO. 21:**

28 Produce copies of all utility bills for the Property.

1 **RESPONSE TO REQUEST NO. 21:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
3 custody, or control have been produced.

4 **REQUEST NO. 22:**

5 Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the  
6 Property, or any investment in or improvement to the Property.

7 **RESPONSE TO REQUEST NO. 22:**

8 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
9 custody, or control have been produced.

10 **REQUEST NO. 23:**

11 Produce all photographs of the property.

12 **RESPONSE TO REQUEST NO. 23:**

13 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
14 custody, or control have been produced.

15 **REQUEST NO. 24:**

16 Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM  
17 403," and any correspondence referring to that document.

18 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 24:**

19 There are no responsive materials in Brian Mineau's and Legion Investments, LLC's  
20 possession, custody, or control.

21 **REQUEST NO. 25:**

22 Produce any document supporting your contention that Jay Kvam cut power to the Property.

23 **RESPONSE TO REQUEST NO. 25:**

24 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
25 custody, or control have been produced.

26 **REQUEST NO. 26:**

27 Produce any document supporting your contention in paragraph 14 of the Counterclaim that  
28 Kvam demanded to be "bought out" of the agreement.

1 **RESPONSE TO REQUEST NO. 26:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
3 custody, or control have been produced.

4 **REQUEST NO. 27:**

5 Produce any document supporting your contention in paragraph 15 of the Counterclaim that  
6 Kvam undertook efforts to interfere with Mineau's business investments or harm Mineau's business  
7 relationships.

8 **RESPONSE TO REQUEST NO. 27:**

9 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
10 custody, or control have been produced.

11 **REQUEST NO. 28:**

12 Produce all documents supporting your contentions in paragraph 16 of the Counterclaim that  
13 Kvam wrongfully and fraudulently accessed Atlas' bank accounts and engaged in unauthorized and  
14 fraudulent online banking transactions.

15 **RESPONSE TO REQUEST NO. 28:**

16 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
17 custody, or control have been produced.

18 **REQUEST NO. 29:**

19 Produce any documents supporting your contention in paragraph 18 of the Counterclaim that  
20 Mr. Kvam caused process servers to harass, threaten, or intimidate Mr. Mineau's family.

21 **RESPONSE TO REQUEST NO. 29:**

22 Brian Mineau and Legion Investments, LLC have no responsive documents in their  
23 possession, custody, or control.

24 **REQUEST NO. 30:**

25 Produce any and all documents supporting your contention in paragraph 39 of the  
26 Counterclaim that Mineau and Legion enjoyed prospective economic relationships with various third  
27 parties involving the marketing and sale of the House.

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1 **RESPONSE TO REQUEST NO. 30:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
3 custody, or control have been produced.

4 **REQUEST NO. 31:**

5 Produce all documents supporting your contentions in paragraph 41 of the Counterclaim that  
6 Kvam intended to harm Mineau and Legion by preventing and/or interfering with those relationships.

7 **RESPONSE TO REQUEST NO. 31:**

8 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
9 custody, or control have been produced.

10 **REQUEST NO. 32:**

11 Produce all documents supporting your contentions in paragraph 43 of the Counterclaim that  
12 Mineau's and Legion's prospective business relationships have been damaged.

13 **RESPONSE TO REQUEST NO. 32:**

14 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,  
15 custody, or control have been produced.

16 **REQUEST NO. 33:**

17 Produce any and all documents requesting a capital call or payment from any of the Investors  
18 for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

19 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 33:**

20 There are no responsive materials in Brian Mineau's and Legion Investments, LLC's  
21 possession, custody, or control.

22 DATED this 21 day of February, 2019.

23 GUNDERSON LAW FIRM

24  
25 By: 

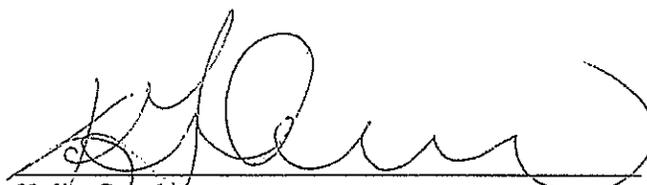
Austin K. Sweet, Esq., NSB No. 11725  
Mark H. Gunderson, Esq., NSB No. 2134  
3895 Warren Way, Reno, Nevada 89509  
Telephone: 775.829.1222  
*Attorneys for Brian Mineau and Legion  
Investments*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 21 day of February, 2019, I deposited for mailing in Reno, Nevada a true and correct copy of the **BRIAN MINEAU AND LEGION INVESTMENTS' SUPPLEMENTAL RESPONSES TO PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**, to the following:

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

  
\_\_\_\_\_  
Kelly Gunderson

**EXHIBIT 6**  
**MAY 2017 BALANCE SHEET**  
(Plaintiff's First Motion to Compel)

**EXHIBIT 6**  
**MAY 2017 BALANCE SHEET**  
(Plaintiff's First Motion to Compel)

### Balance Statement

Name:  
 Time Period: 2017  
 Financial Statements In U.S. Dollars

**Income**

Starting Balance	\$0.00
Loans	
Capital Contribution	
Rents Received	
Refinance of asset	
Net Sales	\$0.00

**Expenses**

Advertising	
Amortization	
Bad Debts	
Bank Charges	
Charitable Contributions	
Commissions	
Contract Labor	\$20,000.00
Depreciation	
Dues and Subscriptions	
Loan from Shareholders	
Insurance	
Interest	
Legal and Professional Fees	
Licenses and Fees	
Miscellaneous	
Office Expense	
Postage	
Mortgages	
Repairs and Maintenance	
Supplies	
Telephone	
Travel	
Utilities	
Taxes	
Wages	
<b>Total Expenses</b>	<b>\$20,000.00</b>

May 28 \$20,000 cash payment to TnT (cash given to MS to wire since I was out of town)

**Net Operating Income** -\$20,000.00

**Other Income**

Gain (Loss) on Sale of Assets	
Other Income	
<b>Total Other Income</b>	<b>\$0.00</b>
<b>Net Income (Loss)</b>	<b>-\$20,000.00</b>

**EXHIBIT 7**  
**ATTORNEY'S FEES**  
(Plaintiff's First Motion to Compel)

**EXHIBIT 7**  
**ATTORNEY'S FEES**  
(Plaintiff's First Motion to Compel)

Date	Received From/Paid To	Explanation	Fees
Feb 22/2019	Lawyer: MLM 1.70 Hrs X 285.00	Draft motion to compel	484.50
Feb 23/2019	Lawyer: MLM 0.30 Hrs X 285.00	work on motion to compel	85.50
Feb 26/2019	Lawyer: MLM 0.40 Hrs X 285.00	Review reply; work on Chase subpoena; work on motion to compel	114.00
Feb 26/2019	Lawyer: MLM 0.30 Hrs X 285.00	continue work on motion to compel	85.50
Mar 1/2019	Lawyer: MLM 0.30 Hrs X 285.00	Work on motion to compel	85.50
Mar 6/2019	Lawyer: MLM 1.00 Hrs X 285.00	Review order; work on exhibits to motion to compel and declaration; review Legion accounting	285.00
Mar 6/2019	Lawyer: Parl 4.00 Hrs X 185.00	Contract attorney: review draft motion to compel; compile exhibits; legal research; draft declaration	740.00
Mar 11/2019	Lawyer: MLM 0.50 Hrs X 285.00	Work on motion to compel	142.50
Mar 11/2019	Lawyer: Parl 2.50 Hrs X 185.00	Contract attorney: continue work on draft motion to compel	462.50
			2485.00

1 **CODE: 1520**  
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  
10 JAY KVAM,

11 Plaintiff,

Case No. CV18-00764

12 v.

Dept. No. 3

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

16 Defendants.

17 **DECLARATION OF MICHAEL L. MATUSKA, ESQ.**  
18 **IN SUPPORT OF PLAINTIFF'S FIRST MOTION TO COMPEL**

19 I, MICHAEL L. MATUSKA, am the attorney of record for the Plaintiff, JAY KVAM, in  
20 the present case, and do hereby declare as follows:

21 1. To date, Mineau has not provided a privilege log or similar identifying information  
22 to support his decision to withhold documents.

23 2. Kvam's counsel sent a meet and confer letter to Mineau's counsel on January 15,  
24 2019, and subsequently on February 7, 2019, spent 1 ½ hours in a meet and confer session in Mr.  
25 Sweet's office.

26 3. The meet and confer session concluded with the agreement that, at least for now,  
27 Kvam would limit his requests to the time frame beginning January 1, 2017 (roughly to coincide  
28 with the Terms of Agreement), and Mineau would provide additional information in two (2)  
weeks.

1           4.       I am an attorney at law licensed to practice in the State of Nevada. I was a partner  
2 at the law firm of Brooke Shaw Zumpft until November 1, 2011, at which time I commenced  
3 practice through my current office, Matuska Law Offices, Ltd. At all times during this litigation,  
4 I have been counsel of record for Jay Kvam.

5           5.       I am licensed to practice in California and Nevada and in the following United  
6 States District Courts: District of Nevada, Northern District of California, Central District of  
7 California, and Eastern District of California. In addition, I am licensed to practice in the United  
8 States Court of Appeals, Ninth Circuit, and the United States Supreme Court.

9           6.       Exhibit 7 to this Declaration is a true and correct listing of the entire ledger for  
10 amounts billed to Jay Kvam for work related to the present Motion to Compel.

11           7.       The fees reflected in said Exhibit 7 were actually incurred in that all of the time was  
12 actually billed and Mr. Kvam has either paid the fees and/or has been billed for said fees.

13           8.       The fees reflected in said Exhibit 7 were necessarily incurred in that all of the time  
14 listed was time that was actually billed and reflects work actually performed that, in my  
15 professional opinion, was necessary to protect my clients' interests herein.

16           9.       The fees reflected in said Exhibit 7 were and are reasonable in that the fees listed  
17 are the actual and negotiated rates charged to my clients in this matter and are reasonable and  
18 customary rates charged in northern Nevada.

19           10.      The time records are derived from the fully documented and detailed time records  
20 maintained in the regular course of business and practice of Matuska Law Offices.

21           11.      The time records may have been redacted to remove attorney notations,  
22 memorializations, privileged communications, and work product information. We are unwilling at  
23 this time to produce full copies of the unredacted time records in our possession because such  
24 information is privileged and could well prove useful to Defendants in the event of a trial or  
25 appeal in this matter; however, such records will be provided and made available to this honorable  
26 Court upon request for its *in camera* review.

27           12.      In some instances, Matuska Law Offices have written down time or granted  
28 courtesy write-offs when deemed appropriate by me.

