

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 04:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84443

District Court Case No. CV18-00764

JOINT APPENDIX

VOLUME 12 PART 1

Pages 1496 - 1590

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JAY KVAM

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

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

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

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

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

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

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

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

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

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

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

CODE: 3880
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Attorneys for Plaintiff

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

JAY KVAM,

Plaintiff,

Case No. CV18-00764

v.

Dept. No. 6

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

Defendants.

RESPONSE TO OBJECTION TO RECOMMENDATION FOR ORDER

Comes now Plaintiff, JAY KVAM ("Kvam"), by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq. and pursuant to NRCP 16.3 hereby responds to the Objection to Recommendation for Order filed by Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC (collectively "Mineau") as follows.

1. Background

Kvam filed Plaintiffs' Second Motion to Compel on November 26, 2019, which included a request for attorney's fees pursuant to NRCP 37 in the amount of \$4,037. The Discovery Commissioner entered his Recommendation for Order on January 10, 2020 ("Recommendation") which recommended granting Kvam's Motion with two (2) small qualifications and awarding \$2,500 in attorney's fees. Mineau filed his Objection to Recommendation for Order on January 13, 2020.

1 **2. The Recommendation for Order - Overview**

2 As typical of this Discovery Commissioner, the Recommendation is extremely thorough
3 and detailed. In some respects, the Recommendation is too detailed. For instance, as explained in
4 Kvam's Motion and the Declaration of Michael L. Matuska submitted therewith, Mineau's only
5 objection to the Requests for Admission and Requests for Production at issue was proportionality.
6 Mineau's attorney explained during the telephonic meet and confer that the objection was really
7 about relevance. Mineau never raised an objection regarding undue burden, nor could there be, as
8 Mineau would incur only a slight burden in responding to requests for admission that merely ask
9 him to confirm his status as the manager of the various limited liability companies at issue, the
10 dates certain deeds were recorded, and the authenticity of certain deeds.

11 Likewise, Mineau did not object to the discovery requests on the basis that they called for
12 production of financial information that is subject to a heightened concern under *Cain v. Price*,
13 134 Nev. 193, 198, 415 P.3d 25, 30 (2018) and *Hetter v. Dist. Court*, 110 Nev. 513, 520, 874 .2d
14 762, 766 (1994). Nevertheless, the Discovery Commissioner addressed that objection as well, at
15 least in footnote 4, which explains that the requests at issue do not involve such concerns.¹

16 The Discovery Commissioner's discussion regarding Requests for Production 40, 44, 47,
17 50 and 53 is qualified and confusing to Kvam and his undersigned attorney of record. The
18 Discovery Commissioner seems to think that Mineau should admit to certain dates or produce the
19 corresponding documents, but not both. In fact, there is no legal basis for a ruling that admissions
20 relieve a party from producing related documents. Documents are needed as admissible evidence;
21 admissions are, strictly speaking, not evidence. Moreover, this is a fraud case. Kvam is entitled to
22 obtain documents to verify Mineau's written discovery responses.

23 The Discovery Commissioner recommended that Mineau should not be ordered to produce
24 documents in Response to Request No. 59. If Mineau felt that any of the documents requested

25
26 ¹ Ironically, *Cain v. Price* and *Hetter v. Dist. Court* explain that a plaintiff is entitled to discovery of financial
27 information in order to evaluate the amount of punitive damages. Nevertheless, the Discovery Commissioner
28 previously recommended denying Kvam's requests for financial information, even though this case is scheduled for a
jury trial on fraud, breach fiduciary duty, RICO, etc., and even though Mineau did not keep separate accounting
records for this Project and his tax returns are likely the only source of information on some of the issues involved.
This discrepancy will need to be addressed prior to trial.

were outside of the timelines set forth in the Complaint, his attorney could have addressed that in objections and at the meet and confer. He did not. Moreover, Mineau's failure to obtain invoices from TNT and other documents necessary to verify the amount of work performed is a major issue in this case. It is relevant to know if Mineau received any invoices from TNT on any project. That would be relevant evidence to demonstrate that Mineau could have (and should have) obtained invoices for 7747 S. May Street.

3. Mineau's Objection to Recommendation for Order

Mineau's Objection adds nothing new. The theories espoused therein are basically a crude summary of the arguments that he made in his Motion for Summary Judgment wherein he first admits that he owes a fiduciary duty to Kvam, but then argues that the terms of agreement do not impose any duties upon him, and the fault lies with a non-party, TNT. Mineau's argument is refuted in Kvam's Opposition to Motion for Summary Judgment. Moreover, Mineau's potential defenses are irrelevant to this discovery dispute. The Discovery Commissioner explained that "Plaintiff is permitted reasonable discovery that will support or refute his stated claims" (Recommendation at fn. 5). There should be no dispute that the requested discovery is relevant and proportional to the claims stated in Kvam's Second Amended Complaint, regardless of what defenses Mineau might assert at the time of trial.

WHEREFORE, Kvam respectfully submits that the Recommendation for Order should be adopted as the Order of the Court except to the extent it excuses full compliance with the Request for Production of Documents, and that Kvam should be entitled to the full award of attorney's fees as requested in the amount of \$4,037.²

AFFIRMATION

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

//

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² To the extent this Response requests relief other than adopting the Recommendation in full, this Response could be considered a timely Partial Objection under NRS 16.3.

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Dated this 21st day of January, 2020.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By:

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 21st day of January, 2020, I served a true and correct copy of the preceding document entitled **RESPONSE TO OBJECTION TO RECOMMENDATION FOR 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

1 **CODE 3795**

2 GUNDERSON LAW FIRM

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12 *Attorneys for Brian Mineau and Legion Investments*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 JAY KVAM,

Case No. CV18-00764

17 Plaintiff / Counterdefendant,

Dept. No. 6

18 vs.

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

22 Defendants / Counterclaimants.
23 _____ /

24 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

25 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
26 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.,
27 and Mark H. Gunderson, Esq., file this Reply in support of their *Motion for Summary Judgment*
28 ("Motion") as to all causes of action filed by Plaintiff / Counterdefendant JAY KVAM ("Kvam").
This Reply is made and based upon NRCP 56, the attached exhibits, the following memorandum of
points and authorities, the pleadings on file in this case, and any oral argument this court wishes to
entertain.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action arises out of a failed investment project to purchase a cheap property in Chicago,
4 renovate it, and “flip” it for a quick profit. The core of Kvam’s claims in this action seem to arise
5 from his belief that this investment carried no risk and, therefore, the mere fact that the project failed
6 establishes that Legion or Mineau must have engaged in some manner of fraud or actionable
7 misconduct.

8 In his Opposition, Kvam has presented evidence that, despite being paid \$69,000.00, TNT did
9 not complete the renovation as required by the Contractor Agreement. This is not disputed. Kvam
10 has also presented evidence that the representations which TNT made to both Mineau and Kvam
11 concerning the course and status of the project appear to have been inaccurate. This is also not
12 disputed. Kvam fails, however, to present any admissible evidence establishing specific facts to
13 support his belief that Legion or Mineau personally guaranteed Kvam’s investment or are otherwise
14 somehow legally responsible for the losses all parties suffered in this investment when TNT breached
15 the Contractor Agreement.

16 Legion and Mineau are entitled to judgment as a matter of law. The Motion should be granted.

17 **II. STATEMENT CONCERNING UNDISPUTED MATERIAL FACTS**

18 While Kvam’s Opposition offers Kvam’s own recitation of the facts, Kvam does not dispute
19 any of the material facts presented by Legion and Mineau and upon which the Motion is based. Kvam
20 does offer a limited rebuttal to six (6) portions of Legion’s and Mineau’s Statement of Undisputed
21 Material Facts. Opposition pp. 12-15. Each rebuttal will be addressed in turn.

22 1. Kvam objects to the relevance of the parties’ lengthy meeting with TNT’s Field
23 Operations VP, Derek Cole, on May 5, 2017. Opposition p. 12. Kvam does not dispute that this
24 meeting occurred, that his notes from that meeting are accurately reflected in Exhibit 13 to the
25 Motion, or that the Motion’s discussion concerning this meeting is factually accurate. Id. Thus,
26 regardless of his relevance argument, there is no genuine dispute concerning these facts which might
27 preclude summary judgment.

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1 Contrary to Kvam's assertions, the parties' meeting with Mr. Cole is extremely relevant to
2 this dispute. In his Opposition, Kvam portrays himself as a passive investor who relied solely upon
3 Mineau to manage the project, oversee the contractor, and report back to him. However, the
4 undisputed evidence establishes that Kvam was in direct communication with TNT and directly
5 participated in conversations with TNT and Mr. Cole concerning the status of the project. This
6 evidence also establishes that Mr. Cole represented to Kvam directly that the project would be "done
7 in early June," [Motion Ex. 13 at KVAM0423], confirming that Mineau made no misrepresentations
8 to Kvam concerning what Mr. Cole had told him. These undisputed facts are therefore relevant and
9 should be considered.

10 2. Kvam addresses, at length, the originating source of the \$20,000.00 progress payment
11 wired from Criterion NV LLC to TNT on May 26, 2017 for the project.¹ Opposition pp. 13-14.
12 Although Kvam points out Mineau's acknowledgment that his prior testimony in this regard was
13 mistaken, Kvam does not actually dispute any of the facts set forth in the Motion. Id. Thus, there is
14 no genuine dispute concerning these facts which might preclude summary judgment.

15 Kvam nonetheless argues that this evidence should be stricken because Legion and Mineau
16 did not disclose Bradley Tammen as a person with knowledge in this dispute. Opposition p. 14. This
17 argument is entirely disingenuous, however, because Kvam himself disclosed Bradley Tammen as a
18 person with knowledge. See Joint Case Conference Report, filed August 6, 2018, at p. 4. These
19 undisputed facts are relevant and should not be stricken.

20 3. Kvam argues that the City of Chicago inspection reports attached to the Motion at
21 Exhibit 23 actually support Kvam's case, not Legion and Mineau's. Opposition pp. 14-15. Kvam
22 nonetheless acknowledges that these reports are genuine and does not dispute any of the facts set
23 forth in the Motion in this regard. Id. Thus, there is no genuine dispute concerning these facts which
24 might preclude summary judgment.

25 4. Kvam argues that the series of statements attributed to Derek Cole in the Motion are
26 all inadmissible hearsay. "Hearsay" means an out-of-court statement offered to prove the truth of the

27 ¹ The relevance of this dispute is also minimal. It is indisputable that Legion and Mineau caused
28 Criterion NV LLC to wire \$20,000.00 to TNT as a progress payment for the Property. Whether
Mineau used cash from his safe, borrowed the money from Mr. Tammen, or procured the funds
through any other source is irrelevant to the ultimate issues in this case.

1 matter asserted. NRS 51.035. Legion and Mineau do not offer these statements for the truth of the
2 matter asserted; rather, they offer these statements to establish that Mineau accurately relayed to
3 Kvam the information he had received from Mr. Cole and Mr. Hartwell.

4 As discussed more thoroughly below, Kvam's claims rely heavily on the argument that
5 Mineau repeatedly misrepresented the status of the project. However, the undisputed evidence
6 establishes that Mineau did not make any affirmative representations about the status of the project;
7 rather, Mineau simply relayed to Kvam the information he had received from Derek Cole and Todd
8 Hartwell: "I spoke with him this morning" and "he told me" [Opposition Ex. 1 ¶ 18]; he "has
9 promised" [*id.* ¶ 19]; "[Todd] has assured me" [*id.* ¶ 20]; I "spoke with Derek" and "he said" [*id.* ¶
10 21]; "I spoke to Derek" and "he said" [*id.* ¶ 22]; "he said" [*id.* ¶ 23]; and "he said" [*id.* ¶ 24]. Mineau
11 has offered evidence concerning his conversations with Mr. Cole and Mr. Hartwell to establish that
12 Mineau accurately relayed to Kvam what Mr. Cole and Mr. Hartwell had told him. These statements
13 therefore do not constitute inadmissible hearsay.

14 5. Kvam argues that the demand letters attached to the Motion as Exhibits 25, 26, and 27
15 are "not admissible as evidence for any purpose" under NRS 48.105 and must be disregarded.
16 Opposition p. 15. This is incorrect. NRS 48.105 provides that evidence of offers to compromise is
17 not admissible to prove liability but may be offered for other purposes. As explained in the Motion,
18 these letters are offered to show that Legion and Mineau attempted to assign the Property to Kvam,
19 as required by the Terms of Agreement, but that Kvam refused, and that Kvam instructed Legion and
20 Mineau to sell the Property. Regardless, there is no genuine dispute concerning these facts which
21 might preclude summary judgment.

22 6. Last, Kvam argues that the fact that Legion and Mineau deposited the proceeds of the
23 sale with the Clerk of the Court is misleading. Opposition p. 15. These facts are contained in the
24 record and are not subject to genuine dispute. Most importantly, however, is the fact that the full
25 proceeds of the sale are accounted for. As discussed below, Kvam cannot have suffered any damages
26 as a result of the alleged "concealment" of this sale because he instructed Legion to sell the Property
27 and the proceeds from that sale are fully accounted for and have been deposited with the court.

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1 Kvam's Opposition does not raise any genuine dispute of material fact concerning this
2 litigation. This dispute is therefore ripe for summary adjudication.

3 **III. ARGUMENT**

4 As stated in the Motion, Kvam bore the burden of presenting in his Opposition, by admissible
5 existence, specific facts to establish each essential element of his claims that show a genuine issue
6 for trial. Cuzze v. University and Community College System of Nevada, 123 Nev. 598, 602, 172
7 P.3d 131, 134 (2007). Kvam failed to meet that burden and the Motion should be granted.

8 **A. *The Court Should Enter Declaratory Judgment On Kvam's First Cause Of Action***
9 ***(Declaration of Joint Venture).***

10 The parties agree that the Court should enter a judicial declaration that the parties formed a
11 partnership pursuant to NRS 87.4322. Opposition p. 18. However, Kvam asks this Court to reject
12 the other relief requested in the Motion concerning Kvam's First Cause of Action without offering
13 any evidence or argument to the contrary.

14 As explained in the Motion, the evidence establishes that Legion / Mineau hold a 33% interest
15 in the partnership. Kvam offers no evidence or argument to the contrary, including what percentage
16 interest he claims Legion / Mineau hold, the legal basis for his position, or what genuine issue remains
17 for trial in this regard.²

18 Kvam also argues that "[t]he jury can decide whether Kvam's investment of \$93,784.31 is a
19 loan or a capital contribution" [Opposition p. 19], but Kvam again fails to offer any evidence or
20 argument to establish a genuine issue for trial in this regard. Kvam does not offer any admissible
21 evidence in his Opposition that any of the parties ever considered, discussed, or agreed that Kvam's
22 investment would be a loan or what the terms of such a loan would be. On the contrary, as Kvam
23 cited in bold, underlined, and italicized font, "***(c) A person who receives a share of the profits of a***
24 ***business is presumed to be a partner in the business,***" unless certain exceptions apply. Opposition
25 p. 17. One such exception is that the profits were received in payment of a debt (NRS
26 87.4322(3)(c)(1)), but Kvam expressly asserts that no such exception applies to this agreement. Id.

27 ² The relevance of this dispute is also minimal. Since the project failed, all interest in the partnership
28 should be assigned to Kvam. The actual percentage interest that is being assigned to Kvam is
therefore immaterial to the issues raised in the Motion.

1 Kvam goes on to expressly argue that the Property was purchased with “joint venture funding.”
2 Opposition p. 17. There is simply no legal or factual basis upon which a jury could decide that
3 Kvam’s investment of \$93,784.31 was actually a loan.

4 Kvam argues that “although the Terms of Agreement purport to assign any rights to Kvam in
5 the event of default, the Court should reject any suggestion by Mineau that such rights are exclusive
6 of any rights asserted in this lawsuit.” Opposition p. 19. Again, however, Kvam offers no evidence
7 or argument to the contrary that might establish a genuine issue for trial. It is undisputed that the
8 parties agreed that, if the project failed, all interest in the partnership and any remedies due would be
9 transferred and assigned to Kvam. SAC ¶ 8(e); Motion at Ex. 2. There is simply no legal or factual
10 basis upon which to find that this plainly expressed remedy was non-exclusive.

11 There is no genuine dispute of material fact concerning Kvam’s First Cause of Action and
12 judgment should be entered as set forth in the Motion.

13 ***B. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam’s***
14 ***Second Cause Of Action (Rescission or Reformation of Agreement).***

15 In his Second Cause of Action, Kvam seeks to rescind the Terms of Agreement due to mutual
16 mistake or, alternatively, to reform the Terms of Agreement to clarify the status of the partnership
17 and the role of the partners. SAC ¶¶ 25-28. Despite amending his complaint twice, Kvam never
18 asserted fraud, material breach, or unilateral mistake as an alleged basis for rescission and should not
19 be allowed to assert such a claim on the eve of trial.

20 Kvam’s only argument in support of rescission is that, “[T]o the extent Mineau now claims
21 that he was not in charge of the Project, that is either part of the fraud, or a mistake (whether mutual
22 or unilateral) that warrants rescission.” Opposition p. 20. However, Kvam fails to offer any
23 admissible evidence whatsoever to establish that Kvam believed that Mineau had agreed to be “in
24 charge of the project” or that the parties ever agreed upon any terms other than those set forth in the
25 Terms of Agreement. It is indisputable that the Terms of Agreement do not provide that Mineau
26 would be “in charge of the project” and, although Kvam testifies that the Terms of Agreement “does
27 not in fact encapsulate all of the discussions between the parties” [Opposition at Ex. 1 ¶ 8], *Kvam*
28 *has not offered any admissible evidence to establish that the parties actually agreed to any terms*

1 *other than those contained in the Terms of Agreement.* Further, the undisputed evidence shows that
2 Kvam actively participated in the project, including providing input on floorplans, actively
3 communicating with the contractor, and establishing utilities at the Property. Motion Exs. 10, 11, 13,
4 15, 16, 21, & 22. Kvam has therefore failed to establish any of the elements necessary to proceed to
5 trial on his claim for rescission.

6 Kvam goes on to argue that, under his alternative claim for reformation, “[t]he court can
7 supply any essential missing terms, including that Mineau was to complete the project in a timely
8 manner.” Opposition p. 20. Again, Kvam has not presented any admissible evidence whatsoever to
9 establish any terms which the parties allegedly agreed to beyond those set forth in the Terms of
10 Agreement, including that the parties affirmatively agreed that “Mineau was to complete the project
11 in a timely manner” or that Mineau, in any other way, somehow guaranteed a quick and/or profitable
12 outcome from this investment.

13 Kvam has failed to meet his burden of presenting, by admissible existence, specific facts to
14 establish the essential element of his Second Cause of Action for rescission or reformation.

15 ***C. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam’s***
16 ***Third Cause Of Action (Breach of Contract - Loan).***

17 Kvam bears the burden of establishing that Legion and Mineau breached a loan contract. In
18 his effort to meet this burden, Kvam summarily states that “[t]he Terms of Agreement contain both a
19 profit-sharing agreement ... and a loan agreement.” Opposition p. 21. Kvam apparently bases this
20 statement solely on the clause in the Terms of Agreement which allows the “Initial funder” to receive
21 interest at rate of 7%. *Id.* Kvam makes no effort to establish any of the other necessary elements of
22 a loan agreement, including *who was allegedly obligated to repay the loan.*

23 Further, as explained above, Kvam has argued that he agreed to receive a share of the profits
24 of the project, and that such profits were not to be received in payment of a debt. Opposition p. 17.
25 Kvam also argued that the Property was purchased not with a loan or borrowed funds, but with “joint
26 venture funding.” *Id.* This is consistent with terms of a joint venture, not a loan.

27 There is simply no legal or factual basis upon which to conclude that the Terms of Agreement
28 was actually a loan and that Legion and Mineau contractually agreed to repay such a loan. Kvam has

1 failed to meet his burden of presenting, by admissible existence, specific facts to establish each
2 essential element of his claim that Legion or Mineau breached a loan agreement. Summary judgment
3 should therefore be entered against Kvam on his Third Cause of Action.

4 ***D. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam's***
5 ***Fourth Cause Of Action (Breach of Contract and Tortious Breach of Implied***
6 ***Covenant of Good Faith and Fair Dealing – Joint Venture Agreement).***

7 In his Opposition, Kvam distills his broadly-pled Fourth Cause of Action down to a claim of
8 tortious breach of the covenant of good faith and fair dealing. Opposition pp. 21-22. Kvam identifies
9 the five (5) elements of his claim, then proceeds to argue that he can satisfy four of them. Kvam's
10 inability to prove *every* element of his claim mandates entry of summary judgment on this claim.

11 Kvam identifies the fourth element of a claim for tortious breach of the covenant of good faith
12 and fair dealing as: "Defendant breached the duty of good faith by engaging in misconduct."
13 Opposition p. 22. However, Nevada law actually requires proof of "grievous and perfidious
14 misconduct." Great Amer. Ins. Co. v. Gen. Builders, Inc., 113 Nev. 346, 355, 934 P.2d 257, 263
15 (1997); see also State, Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 989, 103 P.3d 8, 19 (2004).
16 Kvam offers no argument or admissible evidence to establish that Mineau engaged in "grievous and
17 perfidious misconduct." In fact, Kvam only argues that Mineau "acted in a manner that was unfaithful
18 to the contract" by failing to properly supervise the project. Opposition p. 23. Such allegations fall
19 well short of "grievous and perfidious misconduct" as a matter of law.

20 Kvam concludes his argument with the summary statement that "Mineau no longer disputes
21 the fact that some of the Project funds were diverted to his other projects." Opposition p. 23. Legion
22 and Mineau absolutely and adamantly dispute this allegation and Kvam offers no citation or evidence
23 to support this comment. Kvam cannot survive summary judgment based upon such bald statements.

24 Kvam has failed to meet his burden of presenting, by admissible existence, specific facts to
25 establish each essential element of his Fourth Cause of Action.

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1 ***E. Judgment May Be Entered As A Matter Of Law On Kvam's Fifth Cause Of Action***
2 ***(Accounting).***

3 Kvam summarily asserts that Legion and Mineau failed to provide an accounting. However,
4 as explained in the Motion, there is no genuine dispute as to the accounting. Motion p. 12.
5 Nonetheless, Legion and Mineau prepared spreadsheets and delivered them to Kvam to provide the
6 requested accounting. Motion at Exs. 31 & 32. Kvam does not explain what information is missing,
7 what funds are unaccounted for, or what additional accounting he believes is necessary.

8 The only argument Kvam proffers in support of his claim is that Legion and Mineau's expert
9 acknowledged that additional documents might be needed if there were profits to be divided.
10 Opposition pp. 23-24. However, since there are no profits to divide, the relevant accounting is simple:
11 Kvam is owed \$26,337.91 (subject to any offset this Court may order for attorneys' fees and costs).

12 Kvam has failed to meet his burden of presenting, by admissible existence, specific facts to
13 establish any need to proceed to trial on his claim for an accounting.

14 ***F. Judgment May Be Entered As A Matter Of Law On Kvam's Sixth and Seventh***
15 ***Causes Of Action.***

16 Kvam does not appear to dispute the relief sought by Legion and Mineau concerning Kvam's
17 Sixth or Seventh Causes of Action. Opposition pp. 24-25. The Motion should be granted with respect
18 to Kvam's Sixth and Seventh Causes of Action.

19 ***G. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam's***
20 ***Eighth Cause Of Action (Fraud, Fraudulent Inducement and Fraudulent***
21 ***Concealment).***

22 Kvam asserts that his Eighth Cause of Action incorporates claims for fraudulent or intentional
23 misrepresentation, false promise, concealment, fraud by nondisclosure (silence), negligent
24 misrepresentation, and constructive fraud. Opposition pp. 25-28. While Kvam's Eighth Cause of
25 Action is very broadly pled, it absolutely does not contain any allegations of negligent
26 misrepresentation. SAC ¶¶ 48-55. Kvam must not be allowed to bring a new claim for negligent
27 misrepresentation on the eve of trial. Regardless, Kvam has grossly failed to meet the burden of proof
28 necessary to survive summary adjudication on any aspect of his Eighth Cause of Action.

1 Kvam first alleges that Mineau misrepresented his intention and ability to fund his share of
2 the costs. Opposition p. 28. However, Kvam cites absolutely no admissible evidence to establish
3 that Mineau ever made a representation about his intention or ability to fund "his share of the costs"
4 or that any such representation was false when made. Indeed, it is undisputed that Mineau did in fact
5 fund his share of the costs. See Motion at Exs. 1 ¶ 25, 19, 31 & 32.

6 Kvam next alleges that Mineau "misrepresented that the Project funds would be placed in a
7 separate account." Opposition p. 28. However, Kvam again cites absolutely no admissible evidence
8 to establish that Mineau ever made a representation that "the Project funds would be placed in a
9 separate account," that any such representation was false when made, or that Kvam has suffered any
10 damages as a result of this alleged misrepresentation.

11 Kvam alleges that Mineau "misrepresented (or concealed) his management of the Project, or
12 lack thereof." Opposition p. 28. Again, Kvam cites absolutely no admissible evidence to establish
13 that Mineau ever made a representation about his "management of the Project" or that any such
14 representation was false when made. Again, Kvam seems to believe that the simple fact that the
15 project failed is sufficient evidence to prove that Mineau committed fraud. Fortunately, Kvam cannot
16 proceed to trial without evidence to support his accusations and such evidence does not exist.

17 Kvam alleges that Mineau "continuously misrepresented the status of the Project and
18 inspections." Opposition p. 28. Kvam again cites absolutely no admissible evidence to establish that
19 Mineau ever made affirmative representations about the status of the project or inspections. Indeed,
20 the undisputed evidence establishes that Mineau was expressly relaying to Kvam the information he
21 received from TNT. See Opposition Exs. 19 & 25-31. Kvam cites no admissible evidence or
22 argument to prove that Mineau falsely relayed the information from TNT, that Mineau adopted TNT's
23 statements as his own, that Mineau purported to independently affirm the veracity of TNT's
24 representations, or that Mineau knew that TNT's statements were false when he relayed them. Kvam
25 simply cannot impute TNT's allegedly fraudulent misrepresentations upon Mineau.

26 Kvam alleges that Mineau "concealed that the bid had increased from \$70,000 to \$80,000"
27 and "never showed Kvam the Construction Agreement." Opposition p. 28. Kvam cites absolutely
28 no evidence and makes absolutely no argument that Mineau owed a duty to disclose this information

1 to Kvam (indeed, Kvam repeatedly argues that Mineau was solely responsible for such details), that
2 Mineau intended to induce Kvam to act or refrain from acting in a manner different than he would
3 have done had he known this information, that Kvam would have acted differently had he known this
4 information, or that the alleged concealment of this information caused Kvam to suffer any damages.
5 Absent admissible evidence establishing each of the elements of Kvam's claim for concealment,
6 summary judgment must be entered against him.

7 Kvam alleges that Mineau "misrepresented that additional payments were due, when in fact,
8 the first payment of \$20,000 should have covered all of the permits and demolition work." Again,
9 Kvam cites absolutely no admissible evidence to establish that Mineau ever made affirmative
10 representations that additional payments were due. Indeed, the undisputed evidence establishes that
11 Mineau was simply relaying to Kvam the information he received from TNT regarding the second
12 \$20,000.00 draw [Opposition Ex. 19] and Kvam has not presented any evidence that Mineau made
13 any representations about the \$9,000.00 draw. Kvam also offers no evidence that he justifiably relied
14 upon the alleged misrepresentation, which is critical because the evidence establishes that Kvam was
15 in direct communication with TNT before sending these draws. Motion Exs. 11, 13, 15, & 16.

16 Kvam alleges that Mineau "concealed that he brought in another investor, Bradley Tammen,
17 until after the fact." Opposition p. 28. Again, Kvam cites absolutely no evidence and makes
18 absolutely no argument that Mineau intended to induce Kvam to act or refrain from acting in a manner
19 different than he would have done had he known this information, that Kvam would have acted
20 differently had he known this information, or that the alleged concealment of this information caused
21 Kvam to suffer any damages. Indeed, this alleged concealment only occurred after Kvam had
22 invested all of his funds in the project and therefore could not possibly have caused him any damages.

23 Finally, Kvam alleges that "[t]o this date, Mineau continues to conceal what actually
24 happened with his money." Opposition p. 28. This argument is simply nonsensical. It is undisputed
25 that Kvam wired \$44,784.31 to title to acquire the Property and wired \$49,000.00 to TNT to fund the
26 renovation. Motion Exs. 3, 4, 8, 12, and 17. To the extent that Kvam is alleging that Mineau is
27 concealing what *TNT* actually did with the project funds, Kvam cites absolutely no evidence and
28 makes absolutely no argument that Mineau has any knowledge of this information.

1 Kvam's Eighth Cause of Action has never been based in evidence or fact, and the Opposition's
2 summary recitation of baseless accusations of fraud fall well short of establishing a genuine issue for
3 trial. Kvam has failed to meet his burden of presenting, by admissible existence, specific facts to
4 establish each essential element of his Eighth Cause of Action.

5 ***H. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam's***
6 ***Ninth Cause Of Action (Conversion).***

7 In his Opposition, Kvam states the basis of his conversion claim is the alleged "diverting
8 project funds and holding the proceeds of sale." Opposition p. 30. Acknowledging that Mineau never
9 actually possessed or controlled the project funds, Kvam argues that "Mineau participated in the
10 conversion ... by allowing Project funds to be commingled with other funds." Id. Such accusations
11 again fall well short of establishing a genuine issue for trial.

12 To prevail on his claim for conversion, Kvam must establish that Legion and/or Mineau
13 committed a "distinct act of dominion wrongfully exerted over [Kvam's] personal property in denial
14 of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title
15 or rights." M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910, 193 P.3d
16 536, 542 (2008). "Conversion generally is limited to those severe, major, and important interferences
17 with the right to control personal property that justify requiring the actor to pay the property's full
18 value." Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328-29, 130 P.3d 1280, 1287 (2006).

19 Kvam has not presented any admissible evidence to establish any of the elements of
20 conversion. Kvam has not presented evidence that Legion or Mineau exerted a distinct act of
21 dominion over Kvam's personal property: rather, Kvam merely alleges that Mineau ***allowed*** TNT to
22 commingle the project funds with TNT's other funds. This accusation is itself unsupported by any
23 admissible evidence (such as evidence that Mineau had some ability to control TNT's banking
24 practices), and this allegation nonetheless falls well short of a "distinct act of dominion." Kvam has
25 also not presented any argument or admissible evidence to establish that, by ***allowing*** TNT to
26 commingle the project funds, Mineau acted in denial of or inconsistent with Kvam's title or rights in
27 the money Kvam paid to TNT. Kvam's claim is unsupported by the evidence or applicable law.

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1 Kvam further claims that Legion and Mineau committed conversion by holding the proceeds
2 of the sale. Opposition p. 30. Of course, it is indisputable that the proceeds of sale are being held by
3 the Clerk of the Court pursuant to the *Stipulation to Deposit Funds; Order* entered in this action on
4 December 12, 2018. It is therefore indisputable that these funds have not been converted as a matter
5 of fact and law.

6 Finally, Kvam asks this Court to defer a ruling on this aspect of the Motion because the
7 remaining outstanding discovery might establish that \$29,000.00 of the funds paid by Kvam were
8 diverted away from the project to Mineau's other projects. Opposition pp. 30-31. Legion and Mineau
9 adamantly dispute this allegation, as set forth in their *Objection to Recommendation for Order* filed
10 January 13, 2020. Regardless, even assuming *arguendo* that Kvam discovers some evidence to
11 suggest that TNT diverted project funds to Mineau's other projects, Kvam would still be unable to
12 establish that *Mineau* was somehow responsible for *TNT's* actions. Because Kvam is wholly unable
13 to establish at least one necessary element of his conversion claim, whether or not Kvam can establish
14 a different element of his conversion claim does not justify delaying a ruling on the Motion.

15 Kvam has failed to meet his burden of presenting, by admissible existence, specific facts to
16 establish the essential elements of his conversion claim.

17 ***I. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam's***
18 ***Tenth Cause Of Action (RICO).***

19 Kvam bears the burden of establishing that Legion and Mineau violated Nevada's RICO act.
20 In his effort to meet this burden, Kvam summarily lists five (5) of the statutorily enumerated predicate
21 racketeering acts, followed by a statement of various factual allegations upon which he apparently
22 bases his RICO claim. Kvam has again failed to establish that a genuine issue for trial exists.

23 Kvam first asserts that "Mineau obtained a signature from Kvam and obtained money under
24 false pretenses, and subject to multiple misrepresentations, including the representation that the
25 money would be placed in a separate account." Opposition p. 33. Kvam cites no admissible evidence
26 and offers no elaboration or explanation whatsoever supporting these generic allegations, and Kvam
27 cannot survive summary judgment at this juncture by simply making bald accusations. Importantly,
28 the single specific fact contained in this allegation (that Mineau misrepresented that the money would

1 be placed in a separate account), is not supported by any evidence whatsoever. On the contrary, the
2 only testimony offered by Kvam concerning a separate account is that, on February 17, 2017, Mineau
3 notified Kvam that the *previous* contractor (not TNT), had told Mineau that “he was getting the wiring
4 info for a separate account so he could keep May street funds separate from other [] projects.”
5 Opposition Ex. 1 ¶ 9 & Ex. 12. This statement was made after Kvam signed the Terms of Agreement,
6 and Kvam has not offered any admissible evidence that the parties ever agreed that the money would
7 be placed in a separate account or that Kvam considered such a requirement material to the
8 transaction. Kvam has therefore failed to establish that Legion or Mineau violated any predicate
9 racketeering acts by obtaining Kvam’s signature or money under false pretenses.

10 Kvam next summarily states that “the conversion is described above.” Opposition p. 33. For
11 the reasons explained above, Kvam has not met his burden of establishing that Legion or Mineau
12 committed conversion. Regardless, Kvam’s conversion claim arises out of the same set of facts as
13 his “false pretenses” claim and therefore cannot constitute two separate crimes as required to prove a
14 RICO claim under NRS 207.390.

15 Finally, Kvam argues that Mineau offered false evidence concerning the source of the funds
16 wired to TNT from Criterion NV LLC. Opposition pp. 33-34. The simple fact that Mineau realized
17 that his prior testimony was mistaken and voluntarily corrected it does not constitute a crime relating
18 to racketeering activity under NRS 207.390. Furthermore, such testimony came well after this
19 litigation commenced, and even after Kvam’s RICO claim had been pled, and therefore cannot, as a
20 matter of fact or law, constitute the basis upon which Kvam’s RICO claim may proceed to trial.

21 Kvam has failed to meet his burden of presenting, by admissible existence, specific facts to
22 establish the essential elements of his absurd RICO claim.

23 ***J. Legion and Mineau Are Entitled To Judgment As A Matter Of Law On Kvam’s***
24 ***Eleventh Cause Of Action (Derivative Claim).***

25 Kvam concedes that the partnership does not hold any independent claim for relief against
26 Legion or Mineau other than the claims discussed above. For the same reasons that Kvam’s personal
27 claims cannot survive summary judgment, Kvam’s derivative claims must likewise be denied. The
28 Motion should be granted.

1 **IV. KVAM'S ALLEGED CROSS MOTION SHOULD BE STRICKEN**

2 Kvam's Opposition allegedly includes a *Cross Motion for Partial Summary Judgment*. The
3 alleged Cross Motion is only addressed on the first page of the Opposition, where Kvam states that
4 the Cross Motion is filed concerning Kvam's First Cause of Action "on the basis that Mineau
5 conceded this issue in his Motion for Summary Judgment." Opposition p. 1. This is not grounds for
6 a cross-motion, it is grounds for a non-opposition. Indeed, merely two days before the Opposition
7 and Cross Motion were filed, this Court specifically cautioned counsel against including cross
8 motions in oppositions rather than as separately-filed motions.

9 Although the purpose of filing his Cross Motion (rather than simply conceding the issue in
10 his Opposition) is unclear, Legion and Mineau adamantly object to any effort Kvam may make to file
11 a sur-reply to their Motion under the guise of filing a reply in support of his Cross Motion.

12 **V. CONCLUSION**

13 Kvam can no longer rest upon the allegations set forth in his *Second Amended Verified*
14 *Complaint*. There is no genuine dispute of fact and Legion and Mineau are entitled to judgment as a
15 matter of law as set forth in the Motion.

16 The Motion should be granted.

17 **CERTIFICATION OF COUNSEL CONCERNING LENGTH OF MOTION**

18 Pursuant to § VI(C) of this Court's *Supplemental Uniform Pretrial Order*, entered June 12,
19 2019, the undersigned counsel certifies that this pleading exceeds the 10-page limit by no more than
20 five pages. Counsel certifies that good cause exists to exceed the standard page limit due to the
21 quantity of causes of action pled by the Plaintiff Jay Kvam in his *Second Amended Verified Complaint*
22 and the length of Kvam's Opposition. Counsel certifies that this Reply is as brief and concise as is
23 reasonably practical while still completely addressing the issues raised in Kvam's 35-page
24 Opposition. Good cause therefore exists to exceed the standard page limits by no more than five
25 pages.

26 ///

27 ///

28 ///

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, 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 23 day of January, 2020.

GUNDERSON LAW FIRM

By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

Mark H. Gunderson, Esq.

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3895 Warren Way

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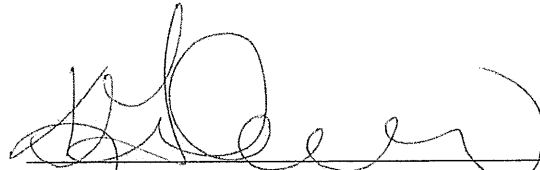
Telephone: 775.829.1222

Attorneys for Brian Mineau and Legion Investments

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 23 day of January, 2020, I electronically filed a true and correct copy of the
4 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, with the Clerk of the
5 Court by using the electronic filing system which will send a notice of electronic filing to the
6 following:

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

13 
14 Kelly Gunderson

1 **CODE: 2175**

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4 2310 South Carson Street, Suite 6
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6 Carson City, NV 89701
7 (775) 350-7220

8 Attorneys for Plaintiff

9
10 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13 JAY KVAM,

14 Plaintiff,

Case No. CV18-00764

15 v.

Dept. No. 6

16 BRIAN MINEAU; LEGION INVESTMENTS,
17 LLC; 7747 S. May Street, an Unincorporated
18 Joint Venture; and DOES I-X, inclusive,
19 Defendants.
20

21 **PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER AFFIRMING**
22 **DISCOVERY COMMISSIONER'S RECOMMENDATION, ENTERED MAY 16, 2019;**
23 **FOR DISCOVERY SANCTIONS; AND**
24 **FOR OTHER RELIEF**
25

26 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
27 Offices, Ltd., Michael L. Matuska, Esq., pursuant to WDCR 12(8) and 12(9), DCR 13(7), NRCP
28 11, NRCP 26, NRCP 34, and NRCP 37, and hereby moves this Court (1) to reconsider its Order
Affirming Master's Recommendation entered May 16, 2019, and for an Order compelling
production of certain documents that Defendants withheld in their responses to Plaintiff's First
Requests for Production of Documents, specifically, Request Nos. 6, 7, and 8; and (2) for an Order
to show cause why Defendant, BRIAN MINEAU ("Mineau"), should not be held in contempt of
Court, on the grounds that Defendant, after the close of discovery, gave a new sworn statement in
Paragraph 25 of his Declaration that was filed on January 6, 2020 that his own crucial prior sworn
testimony regarding the payment of \$20,000 toward improvement of the real property at 7747 S.

1 May Street, Chicago, Illinois (the "Property" or the "Project"), was "mistaken"; that Defendants'
2 questionable new sworn version of crucial events is unsupported by any other evidence; and that
3 Plaintiff, the Discovery Commissioner, and this Court, were materially misled by Defendants'
4 prior admittedly false statements, such that the following relief is warranted:

5 1. Reconsideration of this Court's May 16, 2019 Order Affirming Master's
6 Recommendation;

7 2. An Order that Defendants produce the tax returns and related documents responsive
8 to Plaintiff's First Request for Production of Documents, Requests 6, 7, and 8;

9 3. Alternatively, an Order as a discovery sanction (A) directing that Mineau's failure
10 to fund the Project shall be taken as established for purposes of this action; (B) prohibiting Mineau
11 from offering any testimony or evidence at the time of trial to support his allegation that he
12 provided funding to the Project; or for further sanction, (C) striking his pleadings; (E) rendering
13 default judgment against Mineau; and (F) treating as contempt Mineau's false statements and
14 failure to obey any subsequently entered orders;

15 4. An Order for Mineau to show cause why he should not be held in contempt of
16 Court for filing the present, unsupported sworn statement, and/or prior false sworn statements;

17 5. Reconsideration of the prior denial of an award of the attorney's fees and costs
18 incurred by Plaintiff in connection with the false statements which Mineau has made under oath;
19 and

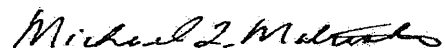
20 6. In the event Mineau is unable to substantiate his latest version of events as alleged
21 in Paragraph 25 of his Declaration, he should be referred for criminal perjury charges under NRS
22 199.120 and 199.145.

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

25 Dated this 24th day of January 2020.

MATUSKA LAW OFFICES, LTD.

26
27 By:



MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. FACTUAL BACKGROUND

A. Defendants' Material False Statements Under Oath

Plaintiff was induced to enter into the Terms of Agreement – the contract at issue in this case – in part through Mineau's representations that he would fund one of the \$20,000 renovation draws. Plaintiff never received confirmation that Mineau paid his required funding, and therefore, sought discovery early in this case as to the alleged \$20,000 renovation draw.

Plaintiff served his First Set of Interrogatories on August 29, 2018, in which he asked (Interrogatory #6): "Identify all persons who contributed capital or funds for the purchase and improvement of the Property . . ." After identifying the \$93,000 provided by Plaintiff for the project, Mineau and Legion responded,

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

(See "Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories," attached hereto as **Ex. "1"**). Defendants' Responses to the Interrogatories were verified by Brian Mineau, individually and as Manager of Legion Investments, on personal knowledge. Criterion NV LLC is not a party to the Terms of Agreement, and Kvam interpreted this response as an admission that Mineau did not provide his required funding.

Based on that response, Kvam filed his Motion for Leave to File Amended Complaint, the stated purpose of which was to "add claims of fraud and breach of contract against Brian Mineau due to his failure to fund 7747 S. May Street, an unincorporated Joint Venture, as required by the Joint Venture Agreement, and to make other changes to the complaint to reflect the recent sale of the House on November 16, 2018." (Motion for Leave at 1:15-16).

On January 14, 2019, Mineau and Legion served their "Opposition to Motion for Leave to File Amended Complaint," in which they attached a "Declaration of Brian Mineau" under penalty of perjury. This declaration tried to explain that the above identified payment from Criterion NV LLC was actually made on Mineau's behalf and contained the following statement:

1 5. In 2017, Michael Spinola and I caused Criterion NV LLC to
2 contribute \$20,000 to the project at 7747 S. May Street, Chicago, Illinois
3 (“Property”) on behalf of Legion.

4 (See Declaration attached hereto as **Ex. “2”**).

5 In another Declaration made under penalty of perjury, attached to his February 25, 2019
6 “Reply in Support of Motion for Protective Order,” Mineau testified:

7 9. In late May 2017, TNT’s owner Derek Cole called me and requested
8 a \$20,000.00 construction draw for the project at the Property. I was travelling at
9 the time and was unable to promptly make direct payment; however, I had
10 sufficient cash on hand in my personal safe at home to make this payment. At my
11 request, Michael Spinola agreed to arrange to pick up the cash and have it wired to
12 TNT.

13 10. Mr. Spinola met my wife at our house, where my wife handed Mr.
14 Spinola the cash from our safe, and Mr. Spinola took it to his bank to have it wired
15 to TNT. The deposit and wire were made through Criterion NV LLC’s account.

16 (See Declaration attached hereto as **Ex. “3”**). Mineau cleverly described the transaction between
17 he and Criterion as a cash transaction, thus, there is no documentary support for this transaction.
18 Kvam’s Motion for Leave to Filed Amended Complaint was granted on January 29, 2019.

19 Kvam also served his First Request for Production of Documents on August 29, 2018
20 which contained the following requests:

21 **REQUEST NO. 6:**

22 Produce all tax returns for Legion Investments, LLC, since its creation on July 2,
23 2014.

24 **REQUEST NO. 7:**

25 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July
26 2, 2014.

27 **REQUEST NO. 8:**

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

Mineau objected to these requests (**Ex. “5”**). Following an extensive effort to meet and confer,
Kvam limited the time frame of the requests to 2017 and 2018; however, Mineau persisted with

1 his objections and Kvam filed his First Motion to Compel on March 15, 2019. The Discovery
2 Commissioner entered his Recommendation for Order on April 9, 2019 in which he recommended
3 granting in part and denying in part Kvam's Motion to Compel, with no award of attorney's fees.
4 With regard to Request No. 6, the Discovery Commissioner provided a lengthy discussion of the
5 limited protection afforded under *Hetter v. Dist. Court*, 110 Nev. 513, 520, 874 P.2d 762, 766
6 (1994) and *Cain v. Price*, 134 Nev. Adv. Op. 26 at 7, 415 P.3d 25, 30 (2018) and recommended as
7 follows:

8 For all of these reasons, the Court finds that Plaintiff has not yet
9 demonstrated that he is entitled to Defendant Legion's tax returns in this case. In
10 addition, Defendants represent that Defendant Legion's tax return for 2017
11 contains no reference or information pertaining to the Property, and that its 2018
12 tax return has not been filed. Therefore, Defendants have no documents to
13 produce in response to Category No. 6. However, the Court will require
14 Defendants to serve Plaintiff with an amended response to Category No. 6, under
oath, in which Defendant Legion (a) clarifies that no information set forth on its
2017 tax return reflects, directly or indirectly, any business activities involving
the Property; and (b) confirms that its 2018 tax return has not yet been completed
and filed. (Report and Recommendation at 11:1-9) (emphasis added).

15 The Recommendation was similar for Requests 7 and 8, and the Order Affirming Master's
16 Recommendation was entered on May 16, 2019. Subsequent events have necessitated
17 reconsideration and rehearing of the Recommendation and Order.

18 The discovery deadline in this case expired on November 3, 2019. On January 6, 2020,
19 Defendants filed their pending Motion for Summary Judgment. In support of the Motion,
20 Defendants attached yet another "Declaration of Brian Mineau," under oath and based on his own
21 personal knowledge. Paragraph 25 of that Declaration provided in pertinent part, as follows:

22 25. On or about May 26, 2017, Mr. Cole called me and requested the
23 next \$20,000.00 progress payment for the project. I was travelling at the time and
24 was unable to promptly make direct payment; however, at my request, Spinola
25 agreed to arrange to have the funds wired to TNT on my behalf. I have previously
26 testified in this action that Spinola retrieved these funds from my personal safe.
27 However, upon further reflection and consideration in preparing this Declaration
28 and preparing for trial, I believe my previous testimony was mistaken. I now recall
that I borrowed the \$20,000 from Bradley Tammen In exchange for the short-
term loan of \$20,000, I agreed to repay Mr. Tammen a flat amount of \$28,000
(which has since been repaid in full).

1 (See Declaration attached hereto as Ex. "4"). (Emphasis added). To recap, these four statements
2 made under penalty of perjury and based on Mr. Mineau's personal knowledge, progressed from:
3 a payment made by Criterion NV LLC; to "Michael Spinola and I caused Criterion NV LLC to
4 contribute \$20,000 to the project at 7747 S. May Street, Chicago, Illinois ("Property") on behalf of
5 Legion"; to "my wife handed Mr. Spinola the cash from our safe"; to "I borrowed \$20,000 from
6 Bradley Tammen." Mineau has never identified Bradley Tammen as a person with knowledge
7 under NRCP 16.1.

8 Mineau's latest version of events is vague and unsupported by evidence. He does not
9 identify when he borrowed money from Bradley Tammen or when it was repaid. He did not
10 provide a promissory note, checks or any proof that these events occurred. Moreover, based on
11 information from Bradley Tammen, the loan (if it actually occurred) was not repaid, at least not as
12 of November 15, 2017. "I gave Brian \$20,000 and was supposed to have that back in July +
13 profit." (See "slack" messages between Plaintiff and Bradley Tammen, attached hereto as Ex.
14 "6"). Defendants did not list Bradley Tammen as a witness to testify on their behalf. They have
15 produced nothing documenting the testimony of a loan from Mr. Tammen, or more importantly,
16 repayment of that loan.

17 Lacking any documentation of such a loan, or any way to confirm repayment, the only
18 source of information on the issue is Mineau and Legion's 2017 and 2018 tax returns. Kvam's
19 expert witness, Benjamin Charles Steele, explained as follows:

20 I have reviewed Brian Mineau's January 6, 2020 declaration that was provided as
21 Exhibit "1" to the Motion for Summary Judgment, wherein he testifies at Par. 25
22 that he borrowed \$20,000 from Bradley Tammen to fund his share of the
23 construction draws, and repaid \$28,000. He did not identify the date of the
24 repayment, and the records provided do not include evidence of this loan or the
25 repayment. Lacking documentation for this loan and repayment, the only other
26 evidence would be Legion Investments, LLC's tax return or Mr. Mineau tax
27 return. The tax returns are necessary to determine how Mr. Mineau reported the
28 transaction with Mr. Tammen related to the investment contribution and expenses
paid toward the May Street Property. The returns should report the loan of
\$20,000 from Mr. Bradley Tammen and the repayment of the loan in the amount
of \$28,000.

(See Declaration of Benjamin Charles Steele, Ex. "40" to Opposition to Motion for Summary

Judgment).

Further, Kvam has compiled an extensive record in this case since the Discovery Commissioner's initial Recommendation on April 9, 2019 which demonstrates that he is entitled to the requested discovery. The most complete compilations of the record are included with his Second Motion to Compel filed on November 26, 2019 and Opposition to Motion for Summary Judgment filed on January 16, 2020.

II. LEGAL AUTHORITIES AND ARGUMENT

A. Reconsideration is Appropriate

The Discovery Commissioner's comment that Plaintiff has "not yet demonstrated that he is entitled to Defendant Legion's tax returns . . ." suggests that the Recommendation could change as more information becomes available. To the extent Kvam needs to request reconsideration or rehearing, such relief is available under WDCR 12. WDCR 12 incorporates DCR 13(7) and provides that "A party seeking reconsideration of a ruling of the court, other than an order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of entry of the order or judgment, unless the time is shortened or enlarged by order." Time should be enlarged in this case due to Mineau's new Declaration, that was offered after the close of discovery, and the additional record submitted in Kvam's Second Motion to Compel and Opposition to Motion for Summary Judgment. It was improper for Mineau to contradict his prior declarations and discovery responses in a declaration that was submitted after the close of discovery. This is especially true when the new version of facts is vague and not supported by any documentary evidence. The court should therefore reconsider its Order Affirming Master's Recommendation that was entered on May 16, 2019, at least for Request Nos. 6, 7 and 8.

B. Mineau and Legion's Tax Returns are Subject to Discovery Under NRCP 26

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

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

(1) **Scope.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery

1 regarding any nonprivileged matter that is relevant to any party's claims or
2 defenses and proportional to the needs of the case, considering the importance of
3 the issues at stake in the action, the amount in controversy, the parties' relative
4 access to relevant information, the parties' resources, the importance of the
5 discovery in resolving the issues, and whether the burden or expense of the
6 proposed discovery outweighs its likely benefit. Information within this scope of
7 discovery need not be admissible in evidence to be discoverable.

8 Kvam's discovery requests are directly relevant to the allegations in his Kvam's Second
9 Amended Complaint, including:

10 34. As parties to the joint venture Agreement, MINEAU and LEGION
11 owed multiple contractual, legal and fiduciary duties to KVAM and 7747, which
12 included the duty to provide funding, the duty to maintain books and records, the
13 duty to account to KVAM and 7747, the duty of loyalty, the duty of care, and the
14 duty to fulfill the purpose of the joint venture and the terms of Agreement in good
15 faith in a timely manner.

16 * * * *

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

22 At this point in time, Mineau and Legion's 2017 and 2018 tax returns appear to be the only
23 way to confirm whether Mineau obtained a \$20,000 loan from Bradley Tammen and repaid the
24 loan with \$8,000 interest. Mineau raised the issue, and Kvam is entitled to discovery on that issue.

25 C. Mineau and Legion's Tax Returns are subject to Discovery Under *Cain v.*
26 *Price and Hetter v. District Court*

27 Mineau's Motion for Summary Judgment is now pending before the court. Unless that
28 Motion is granted, Mineau is facing trial on multiple causes of action that could result in an award
of punitive damages, including breach fiduciary duty, fraud, tortious breach of the covenant of
good faith and fair dealing, conversion and RICO. Although tax returns are not to be had for the
mere asking, *Cain v. Price*, 134 Nev. Adv. Op. 26 at 7, 415 P.3d 25, 30, discovery should
encompass financial information to assess the appropriate amount of punitive damages. In *Cain*
v. Price, the Nevada Supreme Court reversed the lower court's order denying a motion to compel
tax returns. The Nevada Supreme Court ruled that "While that evidence might not amount to

1 'clear and convincing evidence' that Price and Shackelford committed 'oppression, fraud, or
2 malice,' NRS 42.005(1), such alleged misuse of funds contrary to the [joint venture agreement]
3 constitutes 'some factual basis' for those claims such that discovery was property." *Cain v. Price*
4 relied on the earlier case of *Hetter v. Dist. Court*, 110 Nev. 513, 520, 874 P.2d 762, 766.

5 The case for production of the requested records in the instant case is even more
6 compelling than in *Cain v. Price* and *Hetter v. Eighth Judicial District Court* in which the
7 requested discovery was solely for the case on punitive damages. In this case, the financial
8 information and tax information is relevant both to Kvam's case-in-chief and his case on punitive
9 damages and was placed at issue in Mineau's latest declaration. The absence of any evidence of a
10 loan from Bradley Tammen and repayment thereon is potential evidence, also, and would confirm
11 Kvam's allegation that Mineau did not provide funding.

12 D. Rule 37 Sanctions Are Appropriate

13 NRCP 37 provides a variety of discovery sanctions, many of which are appropriate in this
14 case, including:

15 (b) **Sanctions for Failure to Comply With a Court Order.**

16 (1) **For Not Obeying a Discovery Order.** If a party or a party's
17 officer, director, or managing agent — or a witness designated under Rule
18 30(b)(6) or 31(a)(4) — fails to obey an order to provide or permit discovery,
including an order under Rule 35 or 37(a), the court may issue further just orders
that may include the following:

19 (A) directing that the matters embraced in the order or other
designated facts be taken as established for purposes of the action, as the
20 prevailing party claims;

21 (B) prohibiting the disobedient party from supporting or opposing
designated claims or defenses, or from introducing designated matters in
evidence;

22 (C) striking pleadings in whole or in part;

23 (D) staying further proceedings until the order is obeyed;

24 (E) dismissing the action or proceeding in whole or in part;

(F) rendering a default judgment against the disobedient party; or

25 (G) treating as contempt of court the failure to obey any order except
an order to submit to a physical or mental examination.

26 Sanctions (A), (B), (C), (F) and (G) are appropriate in this case, and the court should enter
27 an order (A) directing that Mineau's failure to fund the Project shall be taken as established for
28 purposes of this action; (B) prohibiting Mineau from offering any testimony or evidence at the

1 time of trial to support his allegation that he provided funding to the Project; and as further
2 sanctions, (C) striking Mineau's Answer; (F) rendering default judgment against Mineau; and (G)
3 treating as contempt Mineau's false statements and failure to obey any subsequently entered
4 orders.

5 NRCP 37 also provides in pertinent part as follows:

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

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

9 (A) If the motion is granted or if the disclosure or requested discovery
10 is provided after the motion was filed, the court shall, after affording an
11 opportunity to be heard, require the party or deponent whose conduct
12 necessitated the motion or the party or attorney advising such conduct or
13 both of them to pay to the moving party the reasonable expenses
14 incurred in making the motion, including attorney's fees, unless the
15 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
action, or that the opposing party's nondisclosure, response or objection
was substantially justified, or that other circumstances make an award of
expenses unjust.

16 The court should also reconsider its prior order and the Discovery Commissioner's
17 Recommendation to the extent that attorney's fees were not awarded to Kvam in connection with
18 his First Motion to Compel.

19 E. Rule 11 Sanctions Are Appropriate

20 NRCP 11 provides in pertinent part as follows:

21 **(b) Representations to the Court.** By presenting to the court a pleading,
22 written motion, or other paper — whether by signing, filing, submitting, or later
23 advocating it — an attorney or unrepresented party certifies that to the best of the
person's knowledge, information, and belief, formed after an inquiry reasonable
under the circumstances:

24 (1) it is not being presented for any improper purpose, such as to harass,
25 cause unnecessary delay, or needlessly increase the cost of litigation;

26 (2) the claims, defenses, and other legal contentions are warranted by
existing law or by a nonfrivolous argument for extending, modifying, or reversing
existing law or for establishing new law;

27 (3) the factual contentions have evidentiary support or, if specifically so
28 identified, will likely have evidentiary support after a reasonable opportunity for
further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

The fault for Mineau's changing discovery responses and declaration rests not just with Mineau, but with his attorney, as well. By submitting those discovery responses to Kvam and his counsel, and by submitting the declarations to the court, Mineau's counsel represented that the statements regarding the disputed \$20,000 payment "have evidentiary support." In fact, there is no evidentiary support for any of Mineau's contentions on that issue. Given the lack of evidence, Mineau's counsel should not have submitted any of the declarations, and at the very least, should not have submitted the most recent declaration, after the discovery cut-off, in support of Mineau's Motion for Summary Judgment. NRCP 11 authorizes the court to issue monetary sanctions against the attorney and the party, upon an order to show cause. In this case, the sanction should award more than just the discovery sanctions mentioned above. Upon request from the court, Kvam's counsel can provide an itemized list of time spent on this issue. However, that would be difficult. The dispute over whether Mineau provided funding for the Project has been raised in almost every brief filed with the court. It is more likely that attorney's fees would have to be apportioned as a percentage of the total time spent on this case.

F. Further Penalties

If Mineau and Legion's tax returns do not support their claim of a \$20,000 loan from Bradley Tammen and a corresponding repayment of \$28,000, Mineau should be referred for perjury charges pursuant to NRS 199.120 and 199.145.

NRS 199.120 Definition; penalties. A person, having taken a lawful oath or made affirmation in a judicial proceeding or in any other matter where, by law, an oath or affirmation is required and no other penalty is prescribed, who:

1. Willfully makes an unqualified statement of that which the person does not know to be true;

2. Swears or affirms willfully and falsely in a matter material to the issue or point in question;

3. Suborns any other person to make such an unqualified statement or to swear or affirm in such a manner;

4. Executes an affidavit pursuant to NRS 15.010 which contains a false statement, or suborns any other person to do so; or

5. Executes an affidavit or other instrument which contains a false statement before a person authorized to administer oaths or suborns any other person to do

1 so,
2 is guilty of perjury or subornation of perjury, as the case may be, which is a
category D felony and shall be punished as provided in NRS 193.130.

3 **NRS 199.145 Statement made in declaration under penalty of perjury.**

4 A person who, in a declaration made under penalty of perjury:

5 1. Makes a willful and false statement in a matter material to the issue or
point in question; or

6 2. Willfully makes an unqualified statement of that which the person does
not know to be true,

7 È or who suborns another to make in such a declaration a statement of the kind
described in subsection 1 or 2, is guilty of perjury or subornation of perjury, as the
8 case may be, which is a category D felony and shall be punished as provided
in NRS 193.130.

9
10 Mineau's unsupported and admittedly untrue declarations meet the definition of perjury.

11 **III. CONCLUSION**

12 On January 6, 2020, after the close of discovery, Mineau and his counsel submitted a
13 Declaration under penalty of perjury that contradicted his prior declarations and verified
14 interrogatory responses, and which is not supported by any evidence in the record. That
15 declaration, or at least Paragraph 25 contained therein, should not be admitted as evidence in
16 support of his Motion for Summary Judgment, and Mineau should not be allowed to testify to the
17 facts set forth in Paragraph 25, at least not without providing evidentiary support. Lacking any
18 other evidence, the only way to confirm the veracity of Mineau's statements is to review Mineau's
19 and Legion's tax returns for 2017 and 2018 to see if there is any indication of a \$20,000 loan from
20 Bradley Tammen and repayment thereof, with interest, in the amount of \$28,000. These same tax
21 returns are also discoverable as part of the case on punitive damages. *Cain v. Price*, 134 Nev.
22 Adv. Op. 26 at 7, 415 P.3d 25, 30.

23 Wherefore, the Discovery Commissioner's Recommendation on April 9, 2019 and this
24 court's Order Affirming Master's Recommendation on May 16, 2019 should be reconsidered.
25 Additionally, this court should enter an order directing (A) that Mineau's failure to fund the
26 Project shall be taken as established for purposes of this action; (B) prohibiting Mineau from
27 offering any testimony or evidence at the time of trial to support his allegation that he provided
28 funding to the Project; and as further sanctions, (C) striking his Answering; (F) rendering default

1 judgment against Mineau; and (G) treating as contempt Mineau's false statements and failure to
2 obey any subsequently entered orders. Mineau and his attorney should also be subject to
3 monetary sanctions under NRCP 11 and 37 for submitting verified discovery responses and
4 declarations that were admittedly incorrect and which lacked any evidentiary support.

5 If Mineau cannot substantiate the facts alleged in Paragraph 25 of his Declaration, he
6 should also be referred for criminal perjury charges.

7 **AFFIRMATION**

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

10 Dated this 24th day of January, 2020.

11 MATUSKA LAW OFFICES, LTD.

12 *Michael L. Matuska*

13 By:

14 MICHAEL L. MATUSKA, SBN 5711
15 Attorneys for Plaintiff, JAY KVAM,
16 individually and derivatively on behalf of the
17 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 January, 2020, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER AFFIRMING DISCOVERY COMMISSIONER'S RECOMMENDATION, ENTERED MAY 16, 2019, AND FOR DISCOVERY SANCTIONS** 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

Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories	7
2	Declaration of Brian Mineau, Ex. 1 to Opposition to Motion for Leave to File Amended Complaint, filed January 14, 2019	1
3	Declaration of Brian Mineau, Ex. 1 to Reply in Support of Motion for Protective Order, filed February 25, 2019	2
4	Declaration of Brian Mineau, Ex.1 to Motion for Summary Judgment, filed January 6, 2020, excerpts	4
5	Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Requests for Production of Documents	11
6	Slack messages dated November 25, 2017 between Jay Kvam and Bradley Tammen	1

Exhibit 1

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

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

Exhibit 1

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

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

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

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

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

20 Defendants / Counterclaimants.
21 _____/

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

24 **PROPOUNDING PARTY:** Jay Kvam

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

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

///

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1 **INTERROGATORY NO. 1:**

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

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

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

9 **INTERROGATORY NO. 2:**

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

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

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

15 **INTERROGATORY NO. 3:**

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

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

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

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

25 **INTERROGATORY NO. 4:**

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

27 ///

28 ///

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

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

4 March 23, 2017 \$20,000.00

5 April 14, 2017 \$20,000.00

6 May 18, 2017 \$9,000.00

7 May 26, 2017 \$20,000.00

8 **INTERROGATORY NO. 5:**

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

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

11 None.

12 **INTERROGATORY NO. 6:**

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

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

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

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

23 Criterion NV LLC
24 7560 Michaela Dr.
25 Reno, NV 89511

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

27 **INTERROGATORY NO. 7:**

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

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

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

31 ///

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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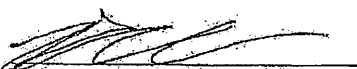
VERIFICATION

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.

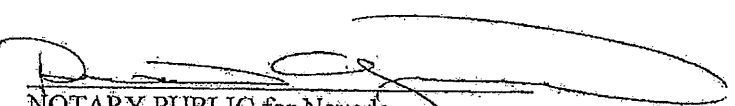
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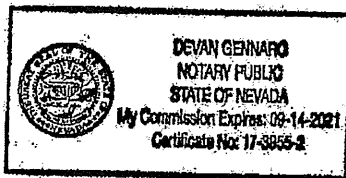
DATED this 1st day of October, 2018.


Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE

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


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



1 CERTIFICATE OF SERVICE

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

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

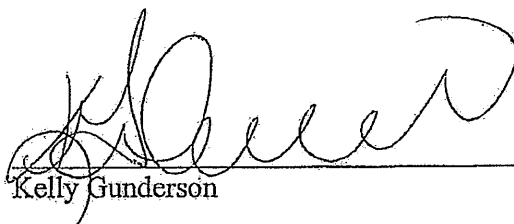
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Exhibit 2

**DECLARATION OF BRIAN MINEAU, EX. 1 TO OPPOSITION TO
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT,
FILED JANUARY 14, 2019**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

Exhibit 2

**DECLARATION OF BRIAN MINEAU, EX. 1 TO OPPOSITION TO
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT,
FILED JANUARY 14, 2019**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

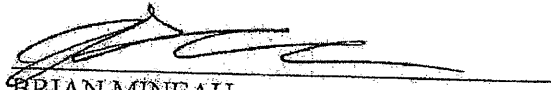
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DECLARATION OF BRIAN MINEAU

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 14th day of January, 2019.


BRIAN MINEAU

FILED
Electronically
CV18-00764
2020-01-24 04:26:59 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7704237 : csulezic

Exhibit 3

**DECLARATION OF BRIAN MINEAU, EX. 1 TO REPLY IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER, FILED FEBRUARY 25, 2019**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

Exhibit 3

**DECLARATION OF BRIAN MINEAU, EX. 1 TO REPLY IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER, FILED FEBRUARY 25, 2019**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

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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. Jay Kvam ("Kvam") never delivered any funds whatsoever to me or Legion, nor does Kvam allege to have done so.
5. To my knowledge, Kvam never delivered any funds relating to the project at 7747 S. May Street, Chicago, Illinois ("Property") to Criterion NV LLC, nor does Kvam allege to have done so.
6. All of Kvam's funds related to the Property were paid directly into escrow to purchase the Property or directly to the contractor tasked with renovating the Property, TNT Complete Facility Care Inc. ("TNT").
7. At no point during the course of this project did either I or Legion ever have possession of, access to, or control over any of Kvam's funds.
8. To my knowledge, at no point during the course of this project did Criterion NV LLC ever have possession of, access to, or control over any of Kvam's funds.
9. In late May 2017, TNT's owner Derek Cole called me and requested a \$20,000.00 construction draw for the project at the Property. I was travelling at the time and was unable to promptly make direct payment; however, I had sufficient cash on hand in my personal safe at home to make this payment. At my request, Michael Spinola agreed to arrange to pick up the cash and have it wired to TNT.
10. Mr. Spinola met my wife at our house, where my wife handed Mr. Spinola the cash from our safe, and Mr. Spinola took it to his bank to have it wired to TNT. The deposit and wire were made through Criterion NV LLC's account.
11. This transaction was not documented because I did not anticipate that this transaction would later be a subject of litigation.

III

1 12. Jay Kvam also funded construction draws for the project by wiring money directly to
2 the contractor, TNT. I have never questioned the source of Mr. Kvam's funds because the source of
3 Mr. Kvam's funds are his own business.

4 13. I was born in 1988 and was 11 years old on October 27, 1999.

5 14. The foregoing is true and correct and based upon my own personal knowledge.

6 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
7 true and correct.

8 Executed at Reno, Nevada, this 25th day of February, 2019.


BRIAN MINEAU

FILED
Electronically
CV18-00764
2020-01-24 04:26:59 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7704237 : csulezic

Exhibit 4

**DECLARATION OF BRIAN MINEAU, EX.1 TO MOTION FOR
SUMMARY JUDGMENT, FILED JANUARY 6, 2020, EXCERPTS**
(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

Exhibit 4

**DECLARATION OF BRIAN MINEAU, EX.1 TO MOTION FOR
SUMMARY JUDGMENT, FILED JANUARY 6, 2020, EXCERPTS**
(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

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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. This Declaration is made in support of the *Motion for Summary Judgment* ("Motion").

5. In late 2016 / early 2017, Jay Kvam ("Kvam"), Michael J. Spinola ("Spinola"), and I formulated a plan to purchase the real property located at 7747 S. May Street, Chicago, Illinois ("Property"), renovate it, and sell it for a profit.

7. On February 13, 2017, the parties entered into a document entitled *Terms of Agreement between Legion Investments LLC (its Members) And Jay Kvam (Initial Funding Member)* RE: 7747 S. May Street, Chicago Illinois ("Terms of Agreement"). A true and correct copy of the Terms of Agreement is attached to the Motion as Exhibit "2."

9. The Wire Transfer Confirmation attached to the Motion as Exhibit "4" was produced in this litigation. Upon information and belief, this document is a true and correct copy of purports to be.

11. On March 16, 2017, Legion's property manager in Chicago, Colleen Burke, texted to have the other contractor I told you about going to May Street. I'm really liking this guy. He very fair and hard worker. I would like to set up a conference call with him this weekend." A

1 19. Kvam took notes during our meetings in the form of *Minutes Special Meeting Atlas*
2 *Investors Southside, LLC, Friday, May 5, 2017*. These minutes were produced by Kvam in this
3 litigation and are attached to the Motion as Exhibit "13." Upon information and belief, this document
4 is a true and correct copy of what it purports to be.

5 20. A true and correct copy of a text chain between me, Kvam, and Spinola, containing
6 pictures of the Property which I had received from Mr. Cole, is attached to the Motion as Exhibit
7 "14." Upon sending me those pictures, Mr. Cole informed me that the roof at the Property was
8 completed.

9 21. The text chain attached to the Motion as Exhibit "15" was produced by Kvam in this
10 litigation. Upon information and belief, this document is a true and correct copy of what it purports
11 to be.

12 22. The "Slack" thread attached to the Motion as Exhibit "16" was produced by Kvam in
13 this litigation. Upon information and belief, this document is a true and correct copy of what it
14 purports to be.

15 23. The Wire Transfer Receipt attached to the Motion as Exhibit "17" was produced by
16 Kvam in this litigation. Upon information and belief, this document is a true and correct copy of
17 what it purports to be.

18 24. On May 21, 2017, Mr. Cole informed me that TNT would be "installing floors this
19 week and should be finishing very soon." I forwarded this information on to Kvam via Slack. The
20 "Slack" thread attached to the Motion as Exhibit "18" was produced by Kvam in this litigation and
21 appears to be a true and correct copy of what it purports to be.

22 25. On or about May 26, 2017, Mr. Cole called me and requested the next \$20,000.00
23 progress payment for the project. I was travelling at the time and was unable to promptly make direct
24 payment; however, at my request, Spinola agreed to arrange to have the funds wired to TNT on my
25 behalf. I have previously testified in this action that Spinola retrieved these funds from my personal
26 safe. However, upon further reflection and consideration in preparing this Declaration and preparing
27 for trial, I believe my previous testimony was mistaken. I now recall that I borrowed the \$20,000
28 from Bradley Tammen, with whom I had done a variety of other business transactions. In exchange

1 for the short-term loan of \$20,000, I agreed to repay Mr. Tammen a flat amount of \$28,000 (which
2 has since been repaid in full). Mr. Tammen was not entitled to share in the profits of the May Street
3 Property project, nor was Mr. Tammen at risk to share in the losses if the project failed. Mr. Tammen
4 arranged this loan with Mr. Spinola while I was out of town and the funds were transferred through
5 an account controlled by Spinola which was owned by an entity called Criterion NV LLC. Id. Thus,
6 on May 26, 2017, Criterion NV LLC, acting on my behalf, wired \$20,000 directly to TNT with the
7 reference "May Street." A true and correct copy of this Outgoing Domestic Wire Transfer Request
8 is attached to the Motion as Exhibit "19."

9 26. The text messages attached to the Motion as Exhibit "20" were produced by Kvam in
10 this litigation. Upon information and belief, this document is a true and correct copy of what it
11 purports to be.

12 27. The text messages attached to the Motion as Exhibit "21" were produced by Kvam in
13 this litigation and this document is a true and correct copy of what it purports to be.

14 28. The text messages attached to the Motion as Exhibit "22" were produced by Kvam in
15 this litigation and this document is a true and correct copy of what it purports to be.

16 29. Unfortunately, after June 20, 2017, TNT started becoming increasingly unresponsive
17 and TNT failed to complete the project. Over the course of next several months, I constantly
18 contacted Mr. Cole and Mr. Hartwell in an effort to compel TNT to finish the project and I regularly
19 updated Kvam with the information I learned. TNT would drop in and out of communication, but
20 would always respond eventually by offering excuses for the delays and promises that the project
21 would be completed within a matter of days or weeks. For example, in mid-July 2017, Mr. Cole
22 apparently went missing and neither Mr. Hartwell nor Mr. Cole's wife would tell me where he was.
23 Mr. Hartwell nonetheless confirmed that TNT was working to replace Mr. Cole and that TNT would
24 finish the project as soon as possible. In late August 2017, TNT explained that the reason Mr. Cole
25 had suddenly gone absent was because he had suffered a heart attack, but that he had recovered and
26 was returning to work. In late September 2017, Mr. Cole informed me that the Property needed a
27 few more inspections but was nearly complete. In mid-October 2017, Mr. Cole informed me that
28 TNT was "doing the final touches" and would then be ready for occupancy inspections. In early

1 38. On November 16, 2018, escrow closed on the Property. A true and correct copy of
2 the Citywide Title Corporation ALTA Settlement Statement – Cash is attached to the Motion as
3 Exhibit “30.” Legion’s share of prorated property taxes, closing costs, and the commission owed to
4 the real estate brokers equaled \$16,526.23. The net proceeds from the closing were therefore
5 \$24,473.77.

6 39. On December 19, 2018, Legion’s attorney in Chicago notified me that an additional
7 \$1,864.14 had been received from the sale of the Property as a result of a refund on a tax bill and a
8 water bill. Kvam declined our requested stipulation to add these funds to the proceeds deposited with
9 the Clerk of Court, so I continue to hold these funds pending a resolution of this dispute. With this
10 refund, the total net proceeds from the sale of the Property are \$26,337.91.

11 40. I contributed \$7,090.31 in ongoing holding costs while Legion owned the Property,
12 such as utility bills and insurance premiums. A true and correct summary of the annual cash flows
13 relating to the Property for 2017 is attached to the Motion as Exhibit “31.” A true and correct
14 summary of the annual cash flows relating to the Property for 2018 is attached to the Motion as
15 Exhibit “32.”

16 41. The project has failed because TNT breached the Contractor Agreement.

17 42. I never concealed any facts from Kvam or made any misrepresentations to him
18 whatsoever. All statements I made to Kvam, either personally or on behalf of Legion, were made in
19 good faith and were true to the best of my knowledge.

20 43. I never, either personally or on behalf of Legion, diverted any project funds nor kept
21 the proceeds of the sale from Kvam.

22 44. The foregoing is true and correct and based upon my own personal knowledge.

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

25 Executed at Reno, Nevada, this 6th day of January, 2020.

26
27
28 
BRIAN MINEAU

Exhibit 5

**BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO
PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

Exhibit 5

**BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO
PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

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

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

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

20 Defendants / Counterclaimants.
21 _____ /

22 **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO**
23 **PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

24 **PROPOUNDING PARTY:** Jay Kvam

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

26 Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and
27 LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K.
28 Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 34 of the Nevada Rules of Civil
Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s Request for Production
to Mineau and Legion ("Requests") as follows:

///

///

///

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.

28 ///

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.

27 ///

28 ///

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

15
16
17 By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

Mark H. Gunderson, Esq.

Nevada State Bar No. 2134

3895 Warren Way

Reno, Nevada 89509

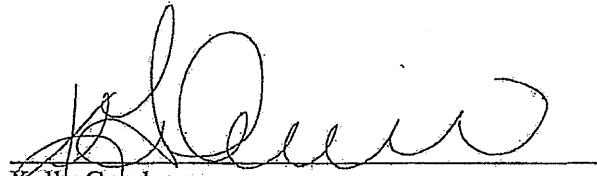
Telephone: 775.829.1222

*Attorneys for Brian Mineau and Legion
Investments*

1 **CERTIFICATE OF SERVICE**

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

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

13 
14 Kelly Gunderson

FILED
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Jacqueline Bryant
Clerk of the Court

Transaction # 7704237 : csulezic

Exhibit 6

**SLACK MESSAGES DATED NOVEMBER 25, 2017
BETWEEN JAY KVAM AND BRADLEY TAMMEN**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

Exhibit 6

**SLACK MESSAGES DATED NOVEMBER 25, 2017
BETWEEN JAY KVAM AND BRADLEY TAMMEN**

(Plaintiff's Motion for Reconsideration of Order Affirming Discovery
Commissioner's Recommendation, Entered May 16, 2019 and for Discovery
Sanctions)

3370

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

JAY KVAM,

Plaintiff,

vs.

Case No. CV18-00764

BRIAN MINEAU; LEGION INVESTMENTS,
LLC; 7747 S. MAY STREET,

Defendants.

Dept. No. 6
(SETTLEMENT CONFERENCE
TO BE HELD IN DEPT. 10)

ORDER SCHEDULING SETTLEMENT CONFERENCE

The parties have set a settlement conference for **Monday, February 24, 2020, at 9:00 a.m. in Department Ten before the Honorable Elliott A. Sattler.** This conference will run from 9:00 a.m. to 5:00 p.m., if needed.

Clients or client representatives with complete authority to negotiate and consummate a settlement must attend in their human form, unless excused by order of the Court. The Defendant must bring a representative who has final settlement authority to commit the organization to pay, in the representative's own discretion, a settlement amount up to the Plaintiff's prayer, or up to the Plaintiff's last demand, whichever is lower. The Plaintiff, and or his or her representative must have final authority, in the representative's own discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount down to the Defendant's last offer. If board approval is required to authorize settlement, the attendance of at least one sitting member of the board (preferably the chairperson) is absolutely required. Any insurance company that is a party or is

1 contractually required to defend or to pay damages, if any, assessed within its policy limits in this
2 case must have a fully authorized settlement representative present. Such representative must have
3 final settlement authority to commit the company to pay, in the representative's own discretion, an
4 amount within the policy limits or up to the Plaintiff's last demand, whichever is lower. The
5 purpose of this requirement is to have in attendance a representative who has both the authority to
6 exercise his or her own discretion, and the realistic freedom to exercise such discretion without
7 negative consequences, in order to settle the case during the settlement conference without
8 consulting someone else who is not present. In the event counsel for any party is aware of any
9 circumstance which might cause doubt on a client's compliance with this paragraph s/he shall
10 immediately discuss the circumstance with opposing counsel to resolve it well before the settlement
11 conference, and, if such discussion does not resolve it, request a telephone conference with the Court
12 and counsel.

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Counsel appearing for the settlement conference without their client representatives or
insurance company representatives, authorized as described above, will cause the settlement
conference to be canceled or rescheduled. The non-complying party, attorney or both, may be
assessed the costs and expenses incurred by other parties and the Court as a result of such
cancellation, as well as any additional sanctions deemed appropriate by the court, including but not
limited to contempt proceedings. Counsel are responsible for timely advising any involved non-
party insurance company of the requirements of this order.

The parties, through their counsel, shall give a brief (5-10 minute) presentation outlining the
factual and legal highlights of their case at the settlement conference. Then separate, confidential
caucuses will be held with each party and/or the party's representative(s).

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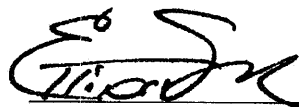
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1 including selected pages from deposition transcripts or responses to other discovery
2 requests.

- 3 3. An analysis of the key issues involved in the litigation.
- 4
- 5 4. A discussion of the strongest points in your case, both legal and factual, and a frank
6 discussion of the weakest points as well. The Court expects you to present a candid
7 evaluation of the merits of your case.
- 8
- 9 5. A further discussion of the strongest and weakest points in your opponents' case, but only
10 if they are more than simply the converse of the weakest and strongest points in your
11 case.
- 12 6. An estimate of the cost (including attorney's fees and costs) of taking this case through
13 trial.
- 14
- 15 7. A history of settlement discussions, if any, which details the demands and offers which
16 have been made, and the reasons they have been rejected.
- 17 8. The settlement proposal, with a specific dollar amount, that you would honestly be
18 willing to make in order to conclude this matter and stop the expense of litigation. Failure
19 to provide this information may be grounds to vacate the settlement conference.
- 20

21 Counsel for Defendant is to provide, to the Court, the name of the insurance adjustor or
22 representative who will attend the settlement conference within five (5) days of his receipt of this
23 Order, if applicable.

24 DATED this 30th day of January, 2020.

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27 ELLIOTT A. SATTLER
28 District Judge

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1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 asweet@gundersonlaw.com

6 Mark H. Gunderson, Esq.

7 Nevada State Bar No. 2134

8 mgunderson@gundersonlaw.com

9 3895 Warren Way

10 Reno, Nevada 89509

11 Telephone: 775.829.1222

12 *Attorneys for Brian Mineau and Legion Investments*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 JAY KVAM,

Case No. CV18-00764

17 Plaintiff / Counterdefendant,

Dept. No. 6

18 vs.

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

22 Defendants / Counterclaimants.
23 _____/

24 **LEGION AND MINEAUS' NRCP 16.1 PRETRIAL DISCLOSURES**

25 Pursuant to NRCP 16.1(a)(3), Defendants / Counterclaimants BRIAN MINEAU ("Mineau")
26 and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K.
27 Sweet, Esq., and Mark H. Gunderson, Esq., make their pretrial disclosures as follows:

28 **WITNESSES**

Pursuant to NRCP 16.1(a)(3)(A)(i), Legion and Mineau designate the following witnesses
whom they expect to present at trial:

1. Brian Mineau

2. Jay Kvam

Legion and Mineau designate the following witnesses whom they plan to subpoena for trial:

1. Michelle Salazar
2. Michael Spinola

Legion and Mineau designate the following witnesses whom they may call if the need arises:

1. Michelle Salazar
2. Michael Spinola

Legion and Mineau also designate all witnesses that are identified by Plaintiff in his Pretrial Disclosures. Legion and Mineau reserve the right to supplement this disclosure.

DEPOSITION TESTIMONY

Pursuant to NRCP 16.1(a)(3)(a)(ii), Legion and Mineau designate the following witnesses whose testimony is expected to be presented by means of a deposition:

None.

DOCUMENTS

Pursuant to NRCP 16.1(a)(3)(a)(iii), Legion and Mineau designate the following documents they expect to offer at trial:

1. LEG0002 - LEG0015
2. LEG0017
3. LEG0118
4. LEG0140
5. LEG0131 - LEG0134
6. LEG0136 - LEG0138
7. LEG000308 - LEG000320
8. LEG000366 - LEG000378
9. LEG000391
10. LEG000393 - LEG000397
11. KVAM0001
12. KVAM0002
13. KVAM0003 - KVAM0004
14. KVAM0005 - KVAM0006

- | | | |
|----|-----|---------------------|
| 1 | 15. | KVAM0007 – KVAM0009 |
| 2 | 16. | KVAM0051 |
| 3 | 17. | KVAM0052 – KVAM0058 |
| 4 | 18. | KVAM0059 |
| 5 | 19. | KVAM0060 – KVAM0069 |
| 6 | 20. | KVAM0070 – KVAM0091 |
| 7 | 21. | KVAM0093 – KVAM0099 |
| 8 | 22. | KVAM0100 |
| 9 | 23. | KVAM0101 |
| 10 | 24. | KVAM0102 |
| 11 | 25. | KVAM0103 |
| 12 | 26. | KVAM104 – KVAM0105 |
| 13 | 27. | KVAM0106 – KVAM0124 |
| 14 | 28. | KVAM0125 – KVAM0131 |
| 15 | 29. | KVAM0132 |
| 16 | 30. | KVAM0133 |
| 17 | 31. | KVAM0134 |
| 18 | 32. | KVAM0139 |
| 19 | 33. | KVAM0140 |
| 20 | 34. | KVAM0141 – KVAM0144 |
| 21 | 35. | KVAM0186 |
| 22 | 36. | KVAM0187 - KVAM0189 |
| 23 | 37. | KVAM0190 – KVAM0193 |
| 24 | 38. | KVAM0194 - KVAM0198 |
| 25 | 39. | KVAM0200 |
| 26 | 40. | KVAM0205 - KVAM0208 |
| 27 | 41. | KVAM0209 - KVAM0211 |
| 28 | 42. | KVAM0213 - KVAM0221 |

- 1 43. KVAM0222
- 2 44. KVAM0223 - KVAM0224
- 3 45. KVAM0227
- 4 46. KVAM0228
- 5 47. KVAM0232
- 6 48. KVAM0235
- 7 49. KVAM0238 - KVAM0242
- 8 50. KVAM0360 - KVAM0361
- 9 51. KVAM0362
- 10 52. KVAM0381 - KVAM0383
- 11 53. KVAM0384
- 12 54. KVAM0396 - KVAM0398
- 13 55. KVAM0403
- 14 56. KVAM0411 - KVAM0423
- 15 57. 730323.38 – 730323.39

16 Pursuant to NRCP 16.1(a)(3)(C), Legion and Mineau designate the following documents they
17 may offer if the need arises:

- 18 1. LEG0018
- 19 2. LEG0020
- 20 3. LEG0021 - LEG0022
- 21 4. LEG0023 - LEG0035
- 22 5. LEG0036
- 23 6. LEG0037 - LEG0042
- 24 7. LEG0089 - LEG0104
- 25 8. LEG0105 - LEG0106
- 26 9. LEG0110
- 27 10. LEG0111
- 28 11. LEG0113 - LEG0114

- 1 12. LEG0141 - LEG0144
- 2 13. LEG0145 - LEG0147
- 3 14. LEG0149
- 4 15. LEG0150 - LEG0151
- 5 16. LEG0152 - LEG0155
- 6 17. LEG0156 - LEG0159
- 7 18. LEG0160
- 8 19. LEG0161 - LEG0164
- 9 20. LEG0165 - LEG0166
- 10 21. LEG0183 - LEG0195
- 11 22. LEG0196 - LEG0208
- 12 23. LEG000278 - LEG000307
- 13 24. LEG000321 - LEG000365
- 14 25. LEG000379 - LEG000381
- 15 26. LEG000413 - LEG000415
- 16 27. LEG000442 - LEG000443
- 17 28. KVAM0041 - KVAM0043
- 18 29. KVAM0044 - KVAM0047
- 19 30. KVAM0048 - KVAM0050
- 20 31. KVAM0092
- 21 32. KVAM0145 - KVAM0163
- 22 33. KVAM0164 - KVAM0165
- 23 34. KVAM0170
- 24 35. KVAM0171 - KVAM0172
- 25 36. KVAM0173 - KVAM0174
- 26 37. KVAM0175 - KVAM0177
- 27 38. KVAM0178
- 28 39. KVAM0179 - KVAM0180

- 1 40. KVAM0181
2 41. KVAM0183 - KVAM0185
3 42. KVAM0199
4 43. KVAM0201 - KVAM0202
5 44. KVAM0203 - KVAM0204
6 45. KVAM0212
7 46. KVAM0222
8 47. KVAM0229 - KVAM0231
9 48. KVAM0233 - KVAM0234
10 49. KVAM0236 - KVAM0237
11 50. KVAM0243 - KVAM0259
12 51. KVAM0386 - KVAM0391
13 52. KVAM00404 - KVAM0410
14 53. KVAM0427 - KVAM0432
15 54. 719630.67 – 719630.69
16 55. 730323.92 – 730323.104
17 56. SB1013248-F1 Wires 1855 (1.1.17 to 2.27.19).xlsx
18 57. All pleadings and transcripts in the present lawsuit.
19 58. All written discovery responses (responses to interrogatories, responses to requests for
20 admission, and responses to requests for production) in the present lawsuit.
21 59. All documents identified by Plaintiff in his pretrial disclosures.

22 **AFFIRMATION**

23 The undersigned does hereby affirm that the preceding document, **LEGION AND**
24 **MINEAUS' NRCP 16.1 PRETRIAL DISCLOSURES**, filed in the Second Judicial District Court

25 ///

26 ///

27 ///

28 ///

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

2 DATED this 31 day of January, 2020.

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 31 day of January, 2020, I electronically filed a true and correct copy of the **LEGION AND MINEAUS' NRCP 16.1 PRETRIAL DISCLOSURES**, 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
Attorney for Jay Kvam



Cindy Stockwell

CODE: 3695

Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
mlm@matuskalawoffices.com
(775) 350-7220

Attorneys for Plaintiff, JAY KVAM

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

JAY KVAM,

Plaintiff,

Case No. CV18-00764

v.

Dept. No. 6

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

Defendants.

PLAINTIFF'S PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)

Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law Offices, Ltd.,
Michael L. Matuska, Esq., hereby provides the following disclosures pursuant to NRCP
16.1(a)(3). The disclosures contained herein are based upon information presently available to
Plaintiff, and Plaintiff reserves the right to supplement these disclosures based on new information
acquired through discovery or by Court Order.

I. TRIAL WITNESSES

1. Jay Kvam, Plaintiff
2. Brian Mineau, Defendant
3. Colleen Burke (via deposition)
4. Michelle Salazar (via deposition)
5. Benjamin Charles Steele, CPA, Plaintiff's Expert

II. DOCUMENTS EXPECTED TO BE OFFERED BY PLAINTIFF

BATES NOS.	DOCUMENT DESCRIPTION
719630.96 - 719630.100	Special Warranty Deed dated April 13, 2016
KVAM0362	Email with Project Costs Breakdown
719630.41 - 719630.44	Purchase and Sale Agreement dated January 3, 2017
KVAM0044	Text dated December 29, 2016
KVAM0164 - KVAM0165 and KVAM0360 - KVAM0361	Emails dated January 1, 2017 to January 2, 2017 and unsigned Scope of Work from Triple "R" Construction
719630.1 - 719630.6	Title Point Property Title Search dated January 19, 2017
719630.36	Receipts and Disbursements Ledger dated Feb 14, 2017
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KVAM0002	\$784.31 Wire dated February 13, 2017
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KVAM0403	Terms of Agreement dated February 14, 2017
KVAM0048	Text dated February 17, 2017
719630.67 - 719630.71	Warranty Deed dated January 30, 2017 (Recorded March 15, 2017)
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LEG000391	Text dated March 16, 2017
KVAM0092	Text dated March 17, 2017
LEG000413 - LEG000415	Emails dated March 20, 2017
KVAM0185	Email dated March 20, 2017
KVAM0454 - KVAM0455	DocuSign Certificate
LEG0002 - LEG0015	Contractor Agreement dated March 22, 2017
KVAM0186, KVAM0380	Email dated March 23, 2017 with wire transfer information
KVAM0051	Text dated March 23, 2017
KVAM0003 - KVAM0004	\$20,000 Wire dated March 23, 2017
KVAM0053	Text dated April 13, 2017
KVAM0056	Text dated April 14, 2017
KVAM0005 - KVAM0006	\$20,000 Wire dated April 14, 2017
LEG000441	Email dated May 1, 2017
KVAM0222 and KVAM0107 - KVAM0123	"Slack" chain dated May 9, 2017 to May 18, 2017, and photographs
KVAM0007 - KVAM0009	\$9,000 Wire dated May 18, 2017
KVAM0223	"Slack" chain dated May 21, 2017 to May 31, 2017
KVAM0228	"Slack" chain dated June 5, 2017 to June 7, 2017

KVAM0207 - KVAM0208	Emails dated June 26, 2017
KVAM0238	"Slack" chain dated August 12, 2017 to August 13, 2017
KVAM0239	"Slack" chain dated August 16, 2017 to August 25, 2017
KVAM0134	Text dated September 25, 2017
KVAM0140	Text dated October 12, 2017
KVAM0143	Text dated November 5, 2017
KVAM0213 - KVAM0221	Email chain November 19, 2017 – January 23, 2018
730323.260	Escrow Agreement dated May 22, 2018 signed by Brian Mineau
730323.156	Illinois Secretary of State info re: Legion Investments, LLC
730323.155	Illinois Secretary of State info re: Legion Investments, LLC
KVAM0530 - KVAM0533	Nevada Secretary of State info re: Brian Mineau
	Nevada Secretary of State info re: Legion Investments, LLC
730323.240 - 730323.246	Redfin Info re: 7747 S May Street
730323.167 - 730323.179	Real Estate Contract – Mutual Happiness LLC dated July 3, 2018
730323.162 - 730323.166	Real Estate Contract – Thousand Oaks Management dated October 24, 2018
730323.258 - 730323.259	Escrow Agreement dated October 25, 2018
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730323.28	Chase Bank Check No. 70382818 to Legion, amount \$1,864.17, dated December 18, 2018
730323.53	Wire Transfer Auth to Legion dated November 16, 2018
730323.23	Electronic withdrawal slip for \$24,473.77, dated November 19, 2018
730323.6	Cook County estimate of Cost Redemption dated November 16, 2018
730323.43 - 730323.45	Settlement Statement dated November 16, 2018
730323.23	Electronic Withdrawal slip dated November 30, 2018
LEG000257	Criterion resolution dated December 5, 2018
730323.28	Check for \$1,864.14 to Legion dated December 18, 2018
KVAM0387 - KVAM0391	Building Permit Application Status
KVAM0485 - KVAM0487	Inspection #12270203 report of August 7, 2019
KVAM0488 - KVAM0493	Inspection #12274840 report of August 7, 2019
KVAM0478 - KVAM0484	Inspection #12288430 report of August 7, 2019
SB 1022150-F1 158 – 159 SB 1022150-F1 166 – 169 SB 1022150-F1 174 – 175	Chase Account Statements for TNT Strategic Facility Inc. Account No. ending 1220

SB 1013248-F1 81 SB 1013248-F1 85 SB 1013248-F1 89 SB 1013248-F1 92 SB 1013248-F1 95 – 96 SB 1013248-F1 99 SB 1013248-F1 104 SB 1013248-F1 107 – 108 SB 1013248-F1 120 SB 1013248-F1 123 SB 1013248-F1 127 SB 1013248-F1 131 SB 1013248-F1 137 SB 1013248-F1 140	Chase Account Statements for TNT Complete Facility Care, Inc. Account No. ending 1855
	Plaintiff's Expert Witness Disclosure and Reports of Benjamin Charles Steele, CPA and Amended Report
KVAM0153	Text Messages with Bradley Tammen
KVAM0206 - KVAM0208	Emails with Brian Mineau dated June 26, 2017 to July 27, 2017
KVAM0253 - KVAM0256	"Slack" chain dated November 15, 2017
	Declaration of Brian Mineau dated July 26, 2018, attached to Defendants' Opposition to Motion for Dissolution
	Defendants' Responses to Plaintiff's First Set of Interrogatories
	Declaration of Brian Mineau dated January 14, 2019, attached to Defendants' Opposition to Motion for Leave to File Amended Complaint
	Declaration of Brian Mineau dated February 25, 2019, attached to Defendants' Reply in Support of Motion for Protective Order
	Declaration of Brian Mineau dated January 6, 2020, attached to Defendants' Motion for Summary Judgment
	Transcript of the Deposition of Colleen Burke, pp. 1 - 28, and 41 - 45

III. DOCUMENTS WHICH MAY BE OFFERED BY PLAINTIFF IF THE NEED ARISES

BATES NOS.	DOCUMENT DESCRIPTION
730323.180 - 730323.191	Operating Agreement of Legion Investments, LLC
730323.209	Resolution of Legion Investments, LLC
719630.11	Chase electronic withdrawal slip for \$37,971.77
LEG000442	Invoice from Colleen Burke dated May 8, 2017
LEG0188	Balance Statement

LEG0121	Criterion Outgoing Wire Transfer Request for \$20,000
KVAM0203 - KVAM0204	Emails dated May 26, 2017 to July 12, 2017
730323.10	Email dated October 31, 2018
LEG0207	2018 Balance Statement
719630.6	Receipts and Disbursements Ledger dated Mar 28, 2019
730323.17	Receipts and Disbursements Ledger dated Mar 28, 2019
	Transcript of the Deposition of Michelle Salazar
KVAM0093 - KVAM0133	Texts and Photos from Kvam Deposition Exhibit #16

Plaintiff hereby reserves the right to use any and all documents identified by any Defendant and reserves the right to supplement his list of documents as additional documents are identified.

IV. VIDEO DEPOSITION RUN TIMES

Colleen Burke video deposition run times are 00:00 to 31:27, and from 47:53 to end of video.

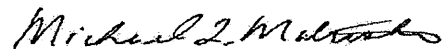
AFFIRMATION

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 31st day of January, 2020.

MATUSKA LAW OFFICES, LTD.

By:



MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff

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, 2020, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)** 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

CODE: 3695

Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
mlm@matuskalawoffices.com
(775) 350-7220

Attorneys for Plaintiff, JAY KVAM

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

JAY KVAM,

Plaintiff,

Case No. CV18-00764

v.

Dept. No. 6

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

Defendants.

PLAINTIFF'S AMENDED PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)

Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law Offices, Ltd.,
Michael L. Matuska, Esq., hereby provides the following disclosures pursuant to NRCP
16.1(a)(3). The disclosures contained herein are based upon information presently available to
Plaintiff, and Plaintiff reserves the right to supplement these disclosures based on new information
acquired through discovery or by Court Order.

I. TRIAL WITNESSES

1. Jay Kvam, Plaintiff
2. Brian Mineau, Defendant
3. Colleen Burke (via deposition)
4. Michelle Salazar (via deposition)
5. Benjamin Charles Steele, CPA, Plaintiff's Expert

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KVAM0045-KVAM0046	Text messages December 30, 2016- January 1, 2017
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KVAM0222 and KVAM0107 - KVAM0123	"Slack" chain dated May 9, 2017 to May 18, 2017, and photographs

¹ Amendments shown in bold.

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KVAM0007 - KVAM0009	\$9,000 Wire dated May 18, 2017
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SB 1022150-F1 158 – 159 SB 1022150-F1 166 – 169 SB 1022150-F1 174 – 175	Chase Account Statements for TNT Strategic Facility Inc. Account No. ending 1220
SB 1013248-F1 81 SB 1013248-F1 85 SB 1013248-F1 89 SB 1013248-F1 92 SB 1013248-F1 95 – 96 SB 1013248-F1 99 SB 1013248-F1 104 SB 1013248-F1 107 – 108 SB 1013248-F1 120 SB 1013248-F1 123 SB 1013248-F1 127 SB 1013248-F1 131 SB 1013248-F1 137 SB 1013248-F1 140	Chase Account Statements for TNT Complete Facility Care, Inc. Account No. ending 1855
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III. DOCUMENTS WHICH MAY BE OFFERED BY PLAINTIFF IF THE NEED ARISES

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730323.209	Resolution of Legion Investments, LLC

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LEG0188	Balance Statement
LEG0121	Criterion Outgoing Wire Transfer Request for \$20,000
KVAM0203 - KVAM0204	Emails dated May 26, 2017 to July 12, 2017
KVAM0229	Slack message dated July 12, 2017
730323.10	Email dated October 31, 2018
LEG0207	2018 Balance Statement
719630.6	Receipts and Disbursements Ledger dated Mar 28, 2019
730323.17	Receipts and Disbursements Ledger dated Mar 28, 2019
KVAM0470-KVAM0473	City of Chicago summary inspection reports
Opposition to Motion for Protective Order Ex. 10	Michael Spinola Grand Jury Indictment and Plea Agreement
LEG0263-0273	Lease Agreement – Legion Investments, LLC and Michael Spinola
	Transcript of the Deposition of Michelle Salazar
KVAM0093 - KVAM0133	Texts and Photos from Kvam Deposition Exhibit #16
TBD	Documents to be produced pursuant to January 10, 2020 Recommendation for Order
Plaintiff's First Set of Requests for Admissions, Exs. 1-11	Real property documents
Defendants' Response to Plaintiff's First Set of Requests for Admissions	

Plaintiff hereby reserves the right to use any and all documents identified by any Defendant and reserves the right to supplement his list of documents as additional documents are identified.

IV. VIDEO DEPOSITION RUN TIMES

Colleen Burke video deposition run times are 00:00 to 31:27, and from 47:53 to end of video.

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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 3rd day of February, 2020.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By:

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 3rd day of January, 2020, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S AMENDED PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)** 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 2645**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 asweet@gundersonlaw.com

6 Mark H. Gunderson, Esq.

7 Nevada State Bar No. 2134

8 mgunderson@gundersonlaw.com

9 3895 Warren Way

10 Reno, Nevada 89509

11 Telephone: 775.829.1222

12 *Attorneys for Brian Mineau and Legion Investments*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 JAY KVAM,

Case No. CV18-00764

17 Plaintiff / Counterdefendant,

Dept. No. 6

18 vs.

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

22 Defendants / Counterclaimants.
23 _____ /

24 **OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER**
25 **AFFIRMING DISCOVERY COMMISSIONER'S RECOMMENDATION,**
26 **ENTERED MAY 16, 2019; FOR DISCOVERY SANCTIONS; AND FOR OTHER RELIEF**

27 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
28 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.,
and Mark H. Gunderson, Esq., submit this Opposition to the *Motion For Reconsideration Of Order*
Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; For Discovery
Sanctions; And For Other Relief ("Motion") filed by Plaintiff / Counterdefendant JAY KVAM
("Kvam"). This Opposition is made and based upon WDCR 12, DCR 13, the Nevada Rules of Civil
Procedure, the pleadings on file in this case, and the following memorandum of points and authorities.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Kvam seeks reconsideration of an order based upon the fact that Mineau recently corrected
4 certain testimony contained in a previous declaration. However, as explained below, the testimony
5 at issue is incidental to this dispute and has nothing to do with the order Kvam now seeks to have
6 reconsidered. When analyzed in the proper context of this dispute, Kvam's Motion must be denied.

7 As this Court is now well aware, this dispute concerns the parties' joint efforts to acquire the
8 property located at 7747 S. May Street, Chicago, Illinois ("Property"), renovate it, and sell it for a
9 profit. Pursuant to their agreement, the parties purchased the Property and hired a contractor to
10 perform the renovation. The contractor agreed to complete the renovation for a flat fee of \$80,000.00.
11 Unfortunately, the contractor breached his contract, did not complete the renovation, and the project
12 failed to turn a profit. Kvam now blames Legion and Mineau for the project's failure.

13 One of the bases of Kvam's claims in this action is that each of the three partners (Kvam,
14 Michael Spinola, and Legion / Mineau) was supposed to fund a payment to the contractor for the
15 renovation,¹ but that Legion / Mineau failed to do so. See Second Amended Verified Complaint ¶¶
16 8(b) & 15. However, as Mineau has repeatedly testified, he made Legion's renovation draw by
17 causing Criterion NV LLC to wire \$20,000.00 to the contractor. It is undisputed that this payment
18 was made and that the project did not fail due to lack of funding.

19 Although Kvam has never presented any evidence or argument rebutting the fact that this
20 payment was made on Legion's behalf, he nonetheless has repeatedly demanded independent proof
21 of Criterion NV LLC's arrangement with Legion and further details establishing the underlying
22 source of the funds used to make this payment. However, as Legion and Mineau have repeatedly
23 stated, this issue is irrelevant. Kvam claims that Legion / Mineau failed to make their renovation
24 draw, but the evidence establishes that Legion caused \$20,000.00 to be wired to the contractor for a
25 renovation draw on Legion's behalf. It is completely irrelevant whether Legion wired the funds

26 _____
27 ¹ This alleged arrangement was not reduced to writing and is disputed by Legion and Mineau.
28 However, as discussed in the briefing on Defendants' *Motion for Summary Judgment*, whether or not
Legion / Mineau were *contractually obligated* to fund a renovation draw is not material because
Legion / Mineau *did* fund a renovation draw.

1 directly from its own account, used cash from Mineau's personal safe, borrowed the money, or
2 procured the funds through any other source.

3 Despite the irrelevance of this issue, Mineau executed a *Declaration of Brian Mineau*, dated
4 February 25, 2019, ("2/25/19 Declaration") wherein he explained that \$20,000.00 had come from his
5 personal safe at home and that, because Mineau was out of town when the contractor requested
6 payment, Mr. Spinola retrieved the cash from Mineau's house and wired it to the contractor through
7 Mr. Spinola's bank. Motion at Ex. 3. When subsequently preparing the *Motion for Summary*
8 *Judgment* and for trial, Mineau realized that his previous testimony was mistaken. See Motion at Ex.
9 4 ¶ 25. Although Mr. Spinola did agree to arrange the payment while Mineau was out of town, the
10 funds did not come from Mineau's personal safe, but were borrowed from Bradley Tammen. Id.
11 Mineau unilaterally acknowledged and voluntarily corrected this mistake in the *Declaration of Brian*
12 *Mineau* dated January 6, 2020 ("1/6/20 Declaration"). Id.

13 Kvam now seeks to use Mineau's corrected testimony as the basis to reconsider a completely
14 unrelated motion and obtain completely unrelated discovery. Kvam seeks reconsideration of this
15 Court's May 16, 2019 *Order Affirming Master's Recommendation* ("Order"), but the Order did not
16 rely upon the 2/25/19 Declaration, nor was the 2/25/19 Declaration submitted in any of the briefing
17 upon which the Order relied. Therefore, the fact that Mineau has corrected the mistaken testimony
18 (which is irrelevant anyway) is no basis whatsoever for reconsidering the Order.

19 The Motion has no basis in fact or law and must therefore be denied.

20 **II. RELEVANT PROCEDURAL POSTURE**

21 On January 29, 2019, Legion and Mineau filed a *Motion for Protective Order* concerning a
22 *Subpoena Duces Tecum* issued by Kvam to the Custodian of Records for Mutual of Omaha Bank.
23 Kvam's subpoena sought all Criterion NV LLC's bank statements and Wire Transfer Requests from
24 January 1, 2017 through the present. See *Motion for Protective Order*, filed in this action on January
25 29, 2019, at Ex. 3. Through their *Motion for Protective Order*, Legion and Mineau sought to reduce
26 the scope of that subpoena to only banking records relating to TNT or the Property. Id. Kvam filed
27 an *Opposition to Defendants' Motion for Protective Order* on February 12, 2019, arguing that these
28 records were necessary to determine the underlying source of the \$20,000.00 which Criterion NV

1 LLC wired to the contractor.

2 On February 25, 2019, Legion and Mineau filed their *Reply in Support of Motion for*
3 *Protective Order*. In that reply, Legion and Mineau reiterated their position that the underlying source
4 of the funds was irrelevant: “the question is whether the \$20,000.00 payment was made, not where
5 the funds came from or the background details concerning Legion and Mineau’s other business
6 relationships or transactions.” See Reply in Support of Motion for Protective Order p. 3. Nonetheless,
7 in “an effort to end Kvam’s ongoing efforts to obfuscate the issues in this regard,” Mineau executed
8 the 2/25/19 Declaration, explaining that the \$20,000.00 had come from his personal safe at home and
9 that, because Mineau was out of town when the contractor requested payment, Mr. Spinola retrieved
10 the cash from Mineau’s house and wired it to the contractor. Id. at Ex. 1.

11 On March 6, 2019, the Court entered an *Order* denying the *Motion for Protective Order* on
12 the basis that Legion and Mineau lacked standing to object to the subpoena.

13 On March 15, 2019, Kvam filed *Plaintiff’s First Motion to Compel*, seeking to compel
14 production of, among other things, Legion’s and Mineau’s tax returns. Kvam argued that these
15 documents were relevant to Kvam’s claim for punitive damages and because Kvam was entitled to
16 see how and whether Legion reported this investment on its tax returns. See Plaintiff’s First Motion
17 to Compel pp. 9-10. After briefing, the Discovery Commissioner recommended denying Kvam’s
18 requests because Kvam had not provided sufficient evidence to support his claim for punitive
19 damages and had not established that Legion’s entire tax returns were relevant to Kvam’s claims.
20 See April 9, 2019 Recommendation for Order pp. 4-11. Neither the briefing on *Plaintiff’s First*
21 *Motion to Compel* nor the *Recommendation for Order* referred to or relied upon the 2/25/19
22 Declaration in any way.

23 On April 16, 2019, Kvam filed *Plaintiff’s Objection to Report of Commissioner*. On May 16,
24 2019, this Court entered its Order. Again, neither the briefing on *Plaintiff’s Objection to Report of*
25 *Commissioner* nor the Order referred to or relied upon the 2/25/19 Declaration in any way.

26 Kvam chose not to depose Mineau in this action. Discovery is now closed.

27 ///

28 ///

1 **III. ARGUMENT**

2 Kvam seeks a wide range of relief in his Motion, from reconsideration of this Court's Order
3 to contempt and even perjury charges. Kvam's Motion has no basis in fact or law and must be denied.

4 **A. Reconsideration Of The Order Is Not Appropriate.**

5 Kvam argues that the Order should be reconsidered based upon Mineau's correction of his
6 previous testimony. However, Kvam has completely failed to draw a connection between the
7 mistaken testimony in the 2/25/19 Declaration and the Order. The 2/25/19 Declaration was not
8 submitted in opposition to *Plaintiff's First Motion to Compel* and was not referenced or relied upon
9 in any of the briefing on that motion, the *Recommendation for Order*, or the Order itself. Thus, the
10 fact that Mineau has since corrected this testimony does not change any of the analysis contained in
11 this Court's Order in any way.

12 Kvam argues that "Mineau's latest version of events is vague and unsupported by evidence"
13 because Mineau "did not provide a promissory note, checks or any proof that these events occurred."
14 Motion p. 6. "Lacking any documentation of such a loan, or any way to confirm repayment, the only
15 source of information on the issue is Mineau and Legion's 2017 and 2018 tax returns." *Id.* However,
16 further documentation is completely unnecessary because all this information is irrelevant: again, the
17 question is whether the \$20,000.00 payment was made, not where the funds came from, the
18 background details concerning Legion and Mineau's other business relationships or transactions, or
19 how Legion and Mineau reported those transactions on their tax returns.

20 Regardless, as this Court has already found, Kvam is not entitled to *all* of Legion's and
21 Mineau's tax information based solely on the argument that a portion of them might actually be
22 relevant. This Court has also already found that discovery of tax returns is only available upon a
23 showing that the information is not otherwise obtainable. Order p. 3. To the extent this Court
24 considers documentation of this loan and its repayment relevant, such information could certainly be
25 obtained through sources other than Legion's and Mineau's tax returns. Indeed, Kvam identified
26 Bradley Tammen as a person with knowledge in this case and Kvam has produced substantial
27 correspondence between himself and Mr. Tammen concerning this loan (see e.g. Motion at Ex. 6), so
28 Kvam should be able to obtain this information by simply asking Mr. Tammen. Legion's and

1 Mineau's tax returns remain irrelevant to this dispute.

2 Mineau's mistaken testimony in the 2/25/19 Declaration had no bearing on the Order
3 whatsoever. Thus, the fact that Mineau unilaterally discovered his mistake and voluntarily corrected
4 it does not warrant reconsidering the Order. The Motion should be denied.

5 **B. Kvam Is Still Not Entitled To Legion's And Mineau's Tax Returns Under *Cain*.**

6 Kvam next argues that, unless Legion's and Mineau's *Motion for Summary Judgment* is
7 granted, trial will proceed on multiple causes of action that could result in an award of punitive
8 damages. Motion pp. 8-9. Thus, Kvam claims he is entitled to discovery encompassing Legion's
9 and Mineau's financial information to assess the appropriate amount of punitive damages as set forth
10 in *Cain v. Price* and *Hetter v. Dist. Court*. Id.

11 The arguments Kvam presents in his Motion are identical to the arguments presented in
12 *Plaintiff's First Motion to Compel* and *Plaintiff's Objection to Report of Commissioner*. Kvam does
13 not offer any new evidence, argument, or explanation as to why this Court should reconsider its Order
14 simply because the *Motion for Summary Judgment* might be denied. In its Order, this Court
15 confirmed the Discovery Commissioner's conclusion that "Kvam had not 'met the threshold factual
16 showing needed to allow discovery of tax returns in connection with a claim for punitive damages,'
17 and that even if he had, he would still be required to show that the information was not otherwise
18 obtainable." Order p. 3. In his Motion, Kvam has made no effort to meet the threshold factual
19 showing to allow discovery of Legion's or Mineau's tax returns *or* to show that the information was
20 not otherwise obtainable. Even if this Court determines that reconsideration is appropriate at this
21 time, the Court must reach the same conclusion because Kvam has still failed to meet the burden
22 necessary to obtain Legion's or Mineau's tax returns under *Cain v. Price* or *Hetter v. Dist. Court*.

23 The Court's Order should not be reconsidered on these grounds. The Motion should be
24 denied.

25 **C. Sanctions Are Not Appropriate.**

26 Kvam concludes his Motion by requesting various sanctions as a result of Mineau unilaterally
27 discovering and voluntarily correcting his prior mistaken testimony. Sanctions are factually and
28 legally unwarranted in this regard.

1 Kvam first seeks sanctions under NRCP 37(b). NRCP 37(b) addresses sanctions which may
2 be entered if a party fails to obey an order to provide or permit discovery. "Generally, NRCP 37
3 authorizes discovery sanctions only if there has been willful noncompliance with a discovery order
4 of the court." Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).
5 "Fundamental notions of due process require that the discovery sanctions for discovery abuses be just
6 and that the sanctions relate to the claims which were at issue in the discovery order which is
7 violated." Id. Kvam offers no explanation whatsoever as to how NRCP 37(b) applies to this situation.
8 Kvam does not explain what "order to provide or permit discovery" was disobeyed, how such an
9 order was disobeyed, or why sanctions would be appropriate. Indeed, the 2/25/19 Declaration was
10 submitted in support of Legion and Mineau's *Motion for Protective Order*, which was ultimately
11 denied on the basis the Legion and Mineau lacked standing. NRCP 37(b) simply does not apply to
12 this issue.

13 Kvam next seeks sanctions under NRCP 11 based upon the argument that Mineau's 2/25/19
14 Declaration did not "have evidentiary support." Motion pp. 10-11. Mineau's 2/25/19 Declaration is
15 itself admissible evidence, so additional evidentiary support is unnecessary. Regardless, Kvam's
16 argument would necessitate Rule 11 sanctions in any situation where a party mistakenly gave
17 inaccurate testimony and later unilaterally discovered and voluntarily corrected that mistake. Such a
18 result is an absurd expansion of Rule 11 and would actually discourage parties from identifying and
19 correcting such mistakes, which of course greatly contravenes sound public policy. Furthermore, a
20 motion for sanctions under NRCP 11 must be made separately from any other motion and must be
21 served under Rule 5 before filing so the opposing party has the opportunity to cure the challenged
22 conduct. NRCP 11(c)(2). Kvam did neither in this case, so his request for Rule 11 sanctions is
23 procedurally defective and must be denied. Further, this Court may award Legion and Mineau their
24 reasonable expenses in opposing this improper request. Id.

25 Kvam goes on to request that Mineau "be referred for perjury charges pursuant to NRS
26 199.120 and 199.145. Motion pp. 11-12. This request is simply absurd. Kvam presents no argument
27 or evidence whatsoever that Mineau's inaccurate testimony was willful, and Mineau has already
28 testified that his testimony was mistaken. Further, as explained repeatedly above and throughout the

1 course of this dispute, this testimony is not material to the issue or point in question because the
2 underlying source of the funds used to make the \$20,000.00 payment is completely irrelevant.
3 Mineau's mistaken testimony therefore falls well short of meeting any part of the definition of
4 perjury.

5 Regardless of the legal and procedural defects in Kvam's Motion, sanctions are fundamentally
6 inappropriate in this regard. As explained repeatedly above and throughout the course of this dispute,
7 the underlying source of the funds used to make the \$20,000.00 payment is completely irrelevant.
8 The relevant question is whether the \$20,000.00 payment was made: it is completely irrelevant
9 whether Legion wired the funds directly from its own account, used cash from Mineau's safe,
10 borrowed the money, or procured the funds through any other source. Furthermore, Kvam has not
11 established how he has been harmed or unfairly prejudiced by the fact that Mineau corrected this
12 testimony after the close of discovery. Kvam never deposed Mineau nor sought further discovery
13 concerning the underlying source of these funds. Kvam identified Bradley Tammen as a person with
14 knowledge in his initial disclosures and produced substantial communications between Mr. Tammen
15 and Kvam concerning this transaction. See Joint Case Conference Report, filed August 6, 2018, at §
16 IV(A)(9); see also, e.g. Motion at Ex. 6. Whether Mineau got these funds from his personal safe or
17 borrowed them from Mr. Tammen is simply not a material issue in this dispute, and Mineau's
18 corrected testimony in this regard does not warrant sanctions of any kind.

19 Finally, included in the various forms of sanctions Kvam seeks in his Motion is terminating
20 sanctions, including striking Mineau's answer and rendering default judgment against Mineau.
21 "Dismissal for failure to obey a discovery order should be used only in extreme situations; if less
22 drastic sanctions are available, they should be utilized." Nevada Power Co. v. Fluor Illinois, 108
23 Nev. 638, 645, 837 P.2d 1354, 1359 (1992). The Court must consider and analyze several pertinent
24 factors before entering terminating sanctions, including "the degree of willfulness of the offending
25 party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the
26 severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any
27 evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions,
28 such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted

1 by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly
2 operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the
3 parties and future litigants from similar abuses.” Young, 106 Nev. at 92–93, 787 P.2d at 779–80.
4 Kvam makes no effort to address any of these factors, and none of them justify the entry of
5 terminating sanctions in this regard.

6 **IV. CONCLUSION**

7 The Order did not rely upon or reference the 2/25/19 Declaration in any way, so the fact that
8 an immaterial portion of that declaration was mistaken and has been corrected cannot justify
9 reconsidering the Order. The underlying source of the funds used to make the \$20,000.00 payment
10 to the contractor is completely irrelevant. Mineau’s mistaken testimony in this regard is equally
11 irrelevant. The fact that Mineau unilaterally discovered and voluntarily corrected his mistaken
12 testimony does not warrant reconsideration of the completely unrelated Order, nor does it warrant
13 discovery sanctions of any kind.

14 Kvam’s Motion has no basis in fact or law and must be denied.

15 **AFFIRMATION**

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

19 DATED this 7 day of February, 2020.

20 GUNDERSON LAW FIRM

21
22
23 By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

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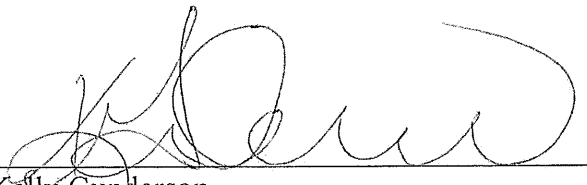
Telephone: 775.829.1222

*Attorneys for Brian Mineau and Legion
Investments*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the _____ day of February, 2020, I electronically filed a true and correct copy of
4 the **OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER AFFIRMING**
5 **DISCOVERY COMMISSIONER'S RECOMMENDATION, ENTERED MAY 16, 2019; FOR**
6 **DISCOVERY SANCTIONS; AND FOR OTHER RELIEF**, with the Clerk of the Court by using
7 the electronic filing system which will send a notice of electronic filing to the following:

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

14 
15 Kelly Gunderson
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9
10 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 JAY KVAM,

13 Plaintiff,

Case No. CV18-00764

14 v.

Dept. No. 6

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

18 Defendants.

19 **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF**
20 **ORDER AFFIRMING DISCOVERY COMMISSIONER'S RECOMMENDATION,**
21 **ENTERED MAY 16, 2019; FOR DISCOVERY SANCTIONS; AND**
22 **FOR OTHER RELIEF**

23 COMES NOW Plaintiff, JAY KVAM ("Kvam" or "Plaintiff"), by and through his counsel
24 of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby replies to Defendants
25 Brian Mineau and Legion Investments, LLC's (collectively, "Mineau") Opposition to Motion for
26 Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May
27 16, 2019; for Discovery Sanctions; and for Other Relief" ("Opposition"), and replies in support of
28 Plaintiff's Motion, as follows.

1 **1. The Alleged Loan From Bradley Tammen is relevant to Mineau's**
2 **Motion for Summary Judgment**

3 Mineau's Opposition repeats his position that so long as a \$20,000.00 renovation draw was
4 paid by someone, any further inquiry is "irrelevant." Unfortunately, Mineau has apparently

1 claimed credit for the \$20,000 renovation draw that was paid by Criterion NV LLC to TNT on
2 May 26, 2017, without evidence that it was used on the subject property at 7747 S. May Street,
3 Chicago, Illinois (the “Project”) rather than Mineau’s other projects, or that the payment should be
4 counted toward Mineau’s capital contribution as part of the partnership accounting required by
5 NRS 87.4333 and 87.4357.

6 Mineau also placed this alleged payment at issue in his Motion for Summary judgment that
7 was filed on January 6, 2020, after the close of discovery. Mineau claimed as follows:

8 25. On or about May 26, 2017, Mr. Cole called me and requested the next
9 \$20,000.00 progress payment for the project. I was travelling at the time and was
10 unable to promptly make direct payment; however, at my request, Spinola agreed
11 to arrange to have the funds wired to TNT on my behalf. I have previously testified
12 in this action that Spinola retrieved these funds from my personal safe. However,
13 upon further reflection and consideration in preparing this Declaration and
14 preparing for trial, I believe my previous testimony was mistaken. I now recall that
15 I borrowed the \$20,000 from Bradley Tammen In exchange for the short-term
16 loan of \$20,000, I agreed to repay Mr. Tammen a flat amount of \$28,000 (which
17 has since been repaid in full).

18 (See Mineau Declaration, Ex. “1” to Motion for Summary Judgment).

19 If the loan from Bradley Tammen and repayment thereof is not relevant, then Mineau
20 should have not raised the issue in support of his Motion for Summary Judgment. Moreover,
21 Mineau provided no evidence of the loan or the repayment thereof. Rather, Kvam supplied
22 evidence, in the way of emails and slack messages from Bradley Tammen, that the loan has not
23 been repaid (See Kvam’s Motion for Reconsideration, Ex. “6”). Mineau failed to rebut the
24 evidence submitted with Kvam’s Motion for Reconsideration and failed to provide any evidence
25 of the loan or the repayment thereof. Mineau’s omission is tantamount to an admission that the
26 loan was not repaid as claimed.

27 **2. Mineau’s Claim of a Loan and Repayment Thereof is Relevant to the**
28 **Pleadings**

Mineau’s argument that any further information about such a loan and repayment would be
irrelevant is based on Mineau’s theory of the case. However, the most basic standard for

1 discovery is that it may seek “any nonprivileged matter that is relevant to any party’s claims or
2 defenses” (NRCP 26(b)(1) (emphasis added). The question of whether Mineau paid any
3 money toward the Project has been the subject of discovery, argued in almost every brief filed to
4 date, and is a prominent issue in Kvam’s Complaint.

5
6 First, the source of the \$20,000.00 – whether paid from cash in Mineau’s safe, or whether
7 it had to be borrowed – is relevant to Kvam’s claim that Mineau represented to Kvam, as an
8 inducement to contract, that he could make a renovation draw payment. Kvam would not have
9 entered into a contract with Mineau and Legion but for Mineau’s misrepresentation that he had
10 sufficient funds to make such a payment on his own behalf. Mineau’s latest sworn testimony in
11 his January 6, 2020 Declaration that was provided with his Motion for Summary Judgment, that he
12 repaid \$28,000.00 to Bradley Tammen, not only contradicts his earlier sworn testimony, but
13 appears to be false, based upon messages between Mr. Tammen and Kvam. (See Motion for
14 Reconsideration, Ex. “6”).

15 Mineau intentionally created the confusion as to the source of the payment, and has fought
16 extensively throughout discovery to withhold documentation of the source; allegedly now
17 revealing the true source of the payment only after the close of discovery. Kvam’s First Set of
18 Interrogatories, Interrogatory #6, asked Mineau to “Identify all persons who contributed capital or
19 funds for the purchase and improvement of the Property . . .” Mineau responded under oath,

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

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

24 (See Motion for Reconsideration, **Ex. 1**). This sworn response, that a non-party made Mineau’s
25 payment, ultimately led to Kvam’s Motion for Leave to File Amended Complaint that resulted in
26 the Court allowing Kvam to amend his Complaint to add fraud and breach of contract as follows:

27 36. MINEAU and LEGION breached their legal, contractual, and
28 fiduciary duties to KVAM and 7747 by inter alia: failing to provide funding;
failing to properly manage and complete the renovation; comingling joint venture
funds with LEGION’s accounts; failing to account to KVAM and 7747;
concealing facts and making multiple misrepresentations to KVAM as set forth

1 above regarding the timing of completion, the status of the project and the sale
2 thereof.

3 * * * *

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

7 51. MINEAU and LEGION misrepresented and concealed the true
8 facts in order to induce KVAM to execute the Agreement and invest in the
9 project.

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

15 53. The fraud and concealment perpetrated by MINEAU and LEGION
16 continued throughout their performance of the Agreement and after this lawsuit
17 was filed, and included concealment about the status of the project, problems with
18 the project, diversion of project funds to other projects under way by MINEAU,
19 LEGION and their colleagues and cohorts, some of whom may claim a financial
20 interest the project, the listing and sale of the House, and the close of escrow and
21 receipt of funds.

22 (See First Amended Complaint and Second Amended Complaint, emphasis added).

23 As if to clarify the issues, Minea then presented very specific, but still “mistaken” sworn
24 testimony, in a new Declaration:

25 9. In late May 2017, TNT’s owner Derek Cole called me and requested
26 a \$20,000.00 construction draw for the project at the Property. I was travelling at
27 the time and was unable to promptly make direct payment; however, I had
28 sufficient cash on hand in my personal safe at home to make this payment. At my
request, Michael Spinola agreed to arrange to pick up the cash and have it wired to
TNT.

10 10. Mr. Spinola met my wife at our house, where my wife handed Mr.
11 Spinola the cash from our safe, and Mr. Spinola took it to his bank to have it wired
12 to TNT. The deposit and wire were made through Criterion NV LLC’s account.

13 (Mineau’s Declaration attached to his February 25, 2019 “Reply in Support of Motion for
14 Protective Order;” See Kvam’s Motion, Ex. “3”). He now admits this testimony was false, but
15 still has not provided any evidence to support his latest rendition of the facts.

16 ///

17 ///

3. **Kvam, The Discovery Commissioner, and the Court Relied On Mineau's False Statements Under Oath, and Kvam's Requested Relief Relates Directly To Mineau's False Testimony**

The Discovery Commissioner ultimately relied on Defendant's representations that the 2017 tax returns did not contain "pertinent information," and that they had not at that time filed their 2018 returns (but would supplement their discovery responses once the 2018 returns were filed). However, after accepting repeatedly Defendants' representations, and their promise to supplement responses once their 2018 tax returns were filed, to date, Defendants have not supplemented their Responses to include 2018 tax information. That broken promise alone warrants reconsideration of the Discovery Commissioner's Recommendation.

Additionally, the Discovery Commissioner's decision that the Court should trust Defendants' representations regarding the contents of their returns, in lieu of producing the returns themselves, was qualified and warrants reconsideration in light of Mineau's new testimony. In making his Recommendation, the Discovery Commissioner noted:

For all of these reasons, the Court finds that Plaintiff has not yet demonstrated that he is entitled to Defendant Legion's tax returns in this case. (Report and Recommendation at 11:1-2) (emphasis added).

Plaintiff might very well be entitled to see portions of Defendant Legion's tax returns that mention or otherwise pertain to the Property (e.g., expenses, profits, losses, etc.), but Category No. 6 is not limited that way. Although the Court could impose that limitation now, Defendants represent that Defendant Legion's tax return for 2017 contains no references or information pertaining to the Property, and that its 2018 tax return has not yet been filed. Thus, Defendants effectively represent that they presently have no responsive e documents to produce. (Report and Recommendation, page 6, lines 12-18).

The Discovery Commissioner cited these representations of Defendants several additional times, in ruling on close questions of whether the requested documents should be produced. (See, e.g., Report and Recommendation, page 9, lines 3-5; page 11, lines 2-5).

Kvam and this Court should no longer rely upon the changing sworn testimony of Brian Mineau regarding facts that can be established through Defendants' tax returns.

1 **4. Mineau's New Testimony is a Violation of the Discovery Rules**

2 Kvam is faced with preparing for trial with inconsistent sworn statements by Mineau, on
3 issues that would be documented only in the requested tax schedules. Whether either Defendant
4 (and which Defendant) took a loan in the amount of \$20,000.00 to pay for the renovation draw,
5 and repaid \$28,000, would be reflected in their tax returns. Given Mineau's latest sworn
6 testimony, the payment and alleged loan would be documented nowhere else. If Mineau can be
7 heard to testify at trial that he, or Legion, made the \$20,000.00 payment by repaying the alleged
8 loan, he should be compelled first to produce the only documentation of those transactions.

9 **5. Conclusion**

10 Based on the foregoing, Kvam's Motion should be granted as follows:

- 11 1. Reconsidering the Discovery Commissioner's April 9, 2010 Report and
12 Recommendation and this court's Order Affirming Master's Recommendation that was
13 entered on May 16, 2019. Reconsideration would result in an order directing Mineau
14 to respond to Kvam's Requests for Production 6, 7 and 8 and an award of monetary
15 sanctions against Mineau as requested in Kvam's First Motion Compel.
- 16 2. Ordering Mineau to appear and show cause why he should not be held in contempt of
17 court for providing false sworn testimony, which includes not only the prior
18 interrogatory responses and declarations which have been disavowed, but his latest
19 declaration he borrowed \$20,000 from Bradley Tammen and repaid \$28,000.
- 20 3. In the event Mineau cannot prove the \$20,000 loan and \$28,000 repayment thereof, he
21 should be referred for criminal perjury charges and this court should enter further
22 sanctions as follow: an order directing (A) that Mineau's failure to fund the Project
23 shall be taken as established for purposes of this action; (B) prohibiting Mineau from
24 offering any testimony or evidence at the time of trial to support his allegation that he
25 provided funding to the Project; and as further sanctions, (C) striking his Answering;
26 (F) rendering default judgment against Mineau; and (G) treating as contempt Mineau's
27 false statements and failure to obey any subsequently entered orders.
- 28 4. Mineau and his attorney should also be subject to monetary sanctions under NRCP 11

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and 37 for submitting verified discovery responses and declarations that were
admittedly incorrect and which lacked any evidentiary support.

AFFIRMATION

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

Dated this 9th day of February, 2020.

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 9th day February, 2020, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER AFFIRMING DISCOVERY COMMISSIONER'S RECOMMENDATION, ENTERED MAY 16, 2019; FOR DISCOVERY SANCTIONS; AND FOR OTHER RELIEF**

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/ MICHAEL M. MATUSKA
Michael M. Matuska

1 **CODE: 2245**
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

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

JAY KVAM,

Plaintiff,

v.

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. 6

PLAINTIFF'S FIRST MOTION IN LIMINE

COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby files this First Motion in Limine to preclude Defendants Brian Mineau and Legion Investments, LLC from introducing offers of compromise as evidence at trial.

POINTS AND AUTHORITIES

A motion *in limine* is "any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *Luce v. United States*, 469 U.S. 38, 40, 105 S.Ct. 460, 462, fn 2 (1984). The purpose of a motion *in limine* is to avoid the obviously futile attempt to "unring the bell" when highly prejudicial evidence is offered and then stricken at trial. See *McEwen v. Norman Oklahoma*, 926 F.2d 1539, 1548 (10th Cir. 1991). Although not expressly authorized by statute, the consideration of a motion *in limine* is recognized as part of the trial court's inherent power

1 to administer justice and to conduct proceedings efficiently and effectively. See,
2 generally, *Eberhard Mfg. Co. v. Baldwin*, 97 Nev. 271, 273, 628 P.2d 681, 682 (1981).

3 In sum, motions *in limine* serve to permit more careful consideration of evidentiary
4 issues than would take place in the heat of battle during trial and minimize sidebar
5 conferences and disruptions. By resolving critical evidentiary issues at the outset, they
6 enhance efficiency of the trial process and promote settlements. *People v. Morris*, 53
7 Cal.3d 152, 188, 279 Cal.Rptr. 720 739 (1991). The scope of a motion *in limine* includes
8 any evidence that could be objected to at the time of trial. *Clemens v. American*
9 *Warranty Corp.*, 193 Cal.App.2d 444, 451, 238 Cal.Rptr. 339 (1987).

11 The authority for the consideration of motions *in limine* arises out of NRCP
12 16(c)(3). See also *State Ex Rel. Dep't. of Hwys. v. Nevada Aggregate and Asphalt Co.*,
13 92 Nev. 370, 551 P.2d 1095 (1976).

15 All relevant evidence is admissible unless a party proves that the prejudicial effect
16 of the evidence outweighs its probative value. "Relevant evidence" means evidence
17 having any tendency to make the existence of any fact of consequence to the
18 determination of the action more or less probable than it would be without the evidence.
19 NRS 48.015. For the prejudicial effect of evidence to substantially outweigh its probative
20 value, "the evidence must unfairly prejudice an opponent, typically by appealing to the
21 emotion and sympathetic tendencies of a jury, rather than the jury's intellectual ability to
22 evaluate evidence." *Krause, Inc. v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001).

24 A pretrial hearing may be appropriate to determine admissibility. *Brant v. State*,
25 130 Nev. Adv. Op. 97 (2014).

27 This Motion in Limine is concerned with offers of compromise. Prior to filing this
28 lawsuit, Kvam issued a letter to Mineau on December 31, 2017 with a proposal on how

1 he should be reimbursed. Lacking a satisfactory response, Kvam engaged counsel who
2 contact Mineau by letter, and later, Mineau's attorney. Mineau included heavily redacted
3 versions of some of these letters with his January 6, 2020 Motion for Summary Judgment
4 (Exs. 26, 27) and identified them as trial exhibits on his pretrial disclosures. These letters
5 are not admissible for a variety of reasons, including the fact that letters from Kvam's
6 counsel do not have "any tendency to make the existence of any fact of consequence to
7 the determination of the action more or less probable than it would be without the
8 evidence." NRS 48.015. It is also a dubious practice for an attorney to attempt to use
9 such letters as evidence because it discourages communications and offers of settlement
10 which the various statutes and court rules encourage. NRS 48.105 is particularly on
11 point.
12

13
14 **NRS 48.105 Compromise; offers to compromise.**

15 1. Evidence of:

- 16 (a) Furnishing or offering or promising to furnish; or
17 (b) Accepting or offering or promising to accept,

18 È a valuable consideration in compromising or attempting to compromise
19 a claim which was disputed as to either validity or amount, is not
20 admissible to prove liability for or invalidity of the claim or its amount.
21 Evidence of conduct or statements made in compromise negotiations is
22 likewise not admissible.

23 2. This section does not require exclusion when the evidence is
24 offered for another purpose, such as proving bias or prejudice of a
25 witness, negating a contention of undue delay, or proving an effort to
26 obstruct a criminal investigation or prosecution.

27 Furthermore, the select, redacted versions of the letters submitted by Defendants
28 create an incomplete and misleading record. As such, the court should either exclude all
such letters from evidence or allow the entire chain of letters included herewith as Exs. 1-
10, which are redacted only for the settlement offers. These letters include the March 15,
2018 letter from Austin Sweet wherein he concedes that: "The project never had an
anticipated completion and still does not have an anticipated completion date" (Ex. 6) and
the April 5, 2018 letter wherein he asserts "No aspect of NRS Chapter 87 applies to this

1 case." (Ex. 9) Defendants reversed their position and conceded in the Motion for
2 Summary Judgment on January 6, 2020 that NRS Chapter 87 applies to this case.

3 **AFFIRMATION**

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

6 Respectfully submitted,

7 Dated this 14th day of February, 2020.

8 MATUSKA LAW OFFICES, LTD.

9 *Michael L. Matuska*

10 By:

11 MICHAEL L. MATUSKA, SBN 5711
12 Attorneys for Plaintiff, JAY KVAM
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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 14th day February, 2020, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S FIRST MOTION IN LIMINE** as follows:

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

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

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

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

☐ **BY FACSIMILE:**

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

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

/S/ SUZETTE TURLEY
SUZETTE TURLEY

Exhibit Index

PLAINTIFF'S FIRST MOTION IN LIMINE

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Jay Kvam's letter of December 31, 2017 to Brian Mineau	3
2	Michael Matuska's letter of February 16, 2018 to Brian Mineau	3
3	Austin Sweet's letter of March 8, 2018 to Michael Matuska	1
4	Michael Matuska's letter of March 9, 2018 to Austin Sweet	1
5	Michael Matuska's letter of March 14, 2018 to Austin Sweet	2
6	Austin Sweet's letter of March 15, 2018 to Michael Matuska with redaction	1
7	Michael Matuska's letter of March 26, 2018 to Austin Sweet	1
8	Michael Matuska's letter of April 18, 2018 to Austin Sweet with redaction	2
9	Austin Sweet's letter of April 5, 2018 to Michael Matuska with redaction	1
10	Michael Matuska's letter of September 19, 2018 to Austin Sweet	1
11	Michael Matuska's letter of November 28, 2018 to Austin Sweet	1

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Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 1

JAY KVAM'S LETTER OF DECEMBER 31, 2017 TO BRIAN MINEAU
(Plaintiff's First Motion in Limine)

Exhibit 1

JAY KVAM'S LETTER OF DECEMBER 31, 2017 TO BRIAN MINEAU
(Plaintiff's First Motion in Limine)

JAY KVAM
7565 MICHAELA DR
RENO NV 89511-1476
✉: kvam.jay@gmail.com
☎: +1 (775) 434-8230

BRIAN MINEAU
2171 SAN REMO DR
SPARKS NV 89434-2023

2017-12-31

PROPOSAL REGARDING 7747 SOUTH MAY STREET, CHICAGO, ILLINOIS 60620

Brian,

I appreciate your twice offering to sign the property, 7747 South May Street, Chicago, Illinois 60620, over to Brad and me as a suggested resolution to the issues with the rehabilitation project of that property. The suggestion, however, is unworkable due to a couple critical problems with it. I lead, instead, with a proposal that avoids the aforementioned problems and would make the situation completely right by me. Thereafter, I have briefly described the problems inherent with your suggestion, if only as background to my proposal and for your recognition.

proposal

I ought to be able to at least recover the funds that I invested in the project plus the 7% interest that was promised to me on the 3 contractor draws that I funded. If you were to refund my investments to-date plus accrued interest by Monday, January 15, 2018, a total due by that date of 96,540.65 \$, then I would be satisfied and willing to renounce any claim to the property as well as my interest in any profit from its future sale.

I believe that this proposal is reasonable as well as the swiftest and most judicious way for you and I to amicably conclude our business together—at least insofar as this project is concerned. Please reply to me with your answer by Friday, January 5, 2018.

I understand that you still believe that the project is nearly complete, and I respect that, yet if that's true, then you'll soon receive the proceeds from the sale of the property and you'd no longer have to reimburse me under my proposal. You'd also be able to retain what would have been my share of the profit.

If, however, the contractor has indeed been defrauding us all along, and the property is nowhere near finished, then allowing me to recover my investment now would honor your commitment and promise to me. And, you could then file a claim against his contractor's insurance or take him to court to recover the funds that you would have reimbursed to me in addition to any damages awarded. I would

encourage you to consider these actions.

the critical problems with your suggestion

If only for background, these are the considerations regarding your suggestion, which prompted me to send you my own proposal.

First, Brad and I were supposed to have merely been co-investors on the project, with you as the project lead and responsible person for selecting the project manager/general contractor as well as communicating with that person, directing the project, and verifying the work done. The prospect of Brad and I having to assume this role to complete the project was not part of the plan nor was it ever discussed even as a possible contingency.

Second, I, have invested a total of 93,921.31 \$ in the project between the acquisition cost, 44,841.31 \$, and the 3 contractor draws that I have funded, 49,080.00 \$ (See Exhibit A for a more detailed accounting.). The 3 draws were supposed to have been sufficient to rehabilitate the property and bring it to market in May, 2017. That, however, has not occurred. Moreover, I have good grounds to believe that the contractor has not done much at all to rehabilitate the property, and there is scant evidence to prove otherwise. Because of this, I deem the project a failure simply as a matter of business. Given the state and condition of the property, were Brad and I to acquire it, we would not only have to find a new, reliable contractor but also need to re-invest a substantial amount of additional funds to rehabilitate it. The consequence of that is that I would have lost the 49,080.00 \$ that I had already contributed to the contractor for work never done.

sincerely,

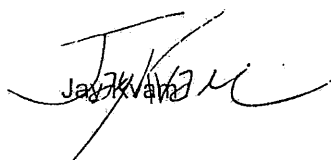

Jay Kwan

Exhibit A

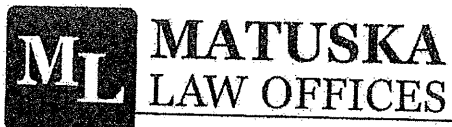
item	value	date
property purchase	\$44,781.31	2017-02-13
wire transfer fees, property purchase	\$60.00	2017-02-13
1st draw	\$20,000.00	2017-03-23
wire transfer fee, 1st draw	\$20.00	2017-03-23
2nd draw	\$20,000.00	2017-04-14
wire transfer fee, 2nd draw	\$30.00	2017-04-14
3rd draw	\$9,000.00	2017-05-18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

Exhibit 2

**MICHAEL MATUSKA'S LETTER OF FEBRUARY 16, 2018
TO BRIAN MINEAU**
(Plaintiff's First Motion in Limine)

Exhibit 2

**MICHAEL MATUSKA'S LETTER OF FEBRUARY 16, 2018
TO BRIAN MINEAU**
(Plaintiff's First Motion in Limine)



Michael L. Matuska, Attorney at Law

February 16, 2018

Brian Mineau
2171 San Remo Drive
Sparks, NV 89434-2023

Re: 7747 South May Street, Chicago, Illinois 60620

Dear Mr. Mineau:

This letter is written on behalf of Jay Kvam in regard to the above-referenced project. Based on the information provided to me and which has previously been provided to you, Mr. Kvam has invested approximately \$100,000 into this project. The terms of Mr. Kvam's investment are set forth in the Terms of Agreement between Legion Investments LLC and Jay Kvam. Unless you consider Mr. Kvam to be a member of Legion Investments, LLC, that agreement is best described as a combination loan agreement and joint venture agreement, with Mr. Kvam as a lender and joint venturer, and you as the project manager and managing member of Legion Investments, LLC.

The project has experienced multiple difficulties and delays and does not have a completion date. There does not seem to be any question of whether Mr. Kvam fulfilled his funding obligation to the joint venture. Please clarify whether Legion Investments, LLC has provided its share of the funding. At this point, Mr. Kvam requests to be reimbursed for his investment in the project, at which time he will forego any further demand for profits or claims of damages against you and Legion Investments, LLC regarding your management of the project. Please confirm your intention in this regard and ability to make payment no later than February 28, 2018. To the extent you do not have the ability to buy him out completely, please identify adequate security that we may use as collateral for a promissory note and buy-out agreement.

I will look forward to your positive response.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

MICHAEL L. MATUSKA, ESQ.

MLM/

cc: Client

(Encls.) Exhibit A accounting

Terms of Agreement between Legion Investments LLC and Jay Kvam

I:\Client Files\Real Estate\Kvam\Mineau\Corr\Sent\Mineau 02.16.18.docx

775-350-7220 Phone

775-350-7222 Fax

mlm@matuskalawoffices.com

Licensed in Nevada and California

2310 South Carson Street, #6

Carson City, NV 89701

www.matuskalawoffices.com

LEG011620

Exhibit A

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

Terms of Agreement between Legion Investments LLC (its Members)

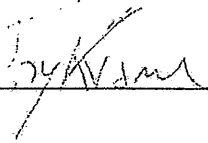
And Jay Kvam (Initial Funding Member of Same)

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



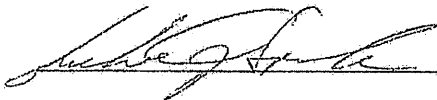
Date 2017-02-14

Brian Mineau

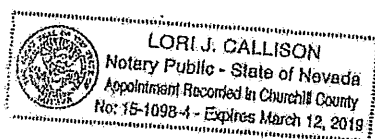


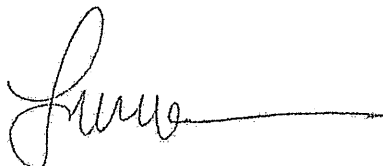
Date 2/13/2017

Michael J. Spinola



Date 2/13/17

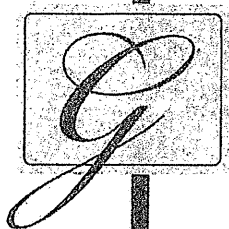




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Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 3
AUSTIN SWEET'S LETTER OF MARCH 8, 2018
TO MICHAEL MATUSKA
(Plaintiff's First Motion in Limine)

Exhibit 3
AUSTIN SWEET'S LETTER OF MARCH 8, 2018
TO MICHAEL MATUSKA
(Plaintiff's First Motion in Limine)



Gunderson
Law Firm

From the Desk of:
Austin K. Sweet, Esq.
asweet@gundersonlaw.com

March 8, 2018

*Via Email – mlm@matuskalawoffices.com
and U.S. Mail:*

Michael L. Matuska, Esq.
2310 South Carson Street, # 6
Carson City, NV 89701

Re: 7747 South May Street, Chicago, Illinois

Dear Mr. Matuska:

We have been retained by Brian Mineau, Michael Spinola, and Legion Investments, LLC ("Legion") to assist them in addressing the issues raised by Jay Kvam regarding the property located at 7747 South May Street, Chicago, Illinois ("Property"). Please direct all correspondence in this regard to our office.

We have reviewed your letter dated February 16, 2018. We disagree with the statements of fact and conclusions of law contained in your letter.

As you know, the terms of the parties' relationship regarding the Property is contained in the "Terms of Agreement" signed in February 2017 ("Agreement"). Mr. Mineau, Mr. Spinola, and Legion have complied with the terms of the Agreement and intend to continue doing so. The terms of the Agreement do not entitle Mr. Kvam to be "reimbursed" or bought out on demand.

Once the project is completed and the Property is sold, the proceeds will be disbursed in accordance with the Agreement.

Very truly yours,

GUNDERSON LAW FIRM

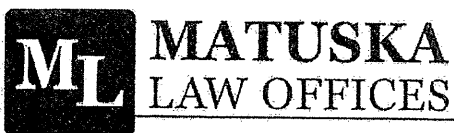
Austin K. Sweet, Esq.

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Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 4
**MICHAEL MATUSKA'S LETTER OF MARCH 9, 2018
TO AUSTIN SWEET**
(Plaintiff's First Motion in Limine)

Exhibit 4
**MICHAEL MATUSKA'S LETTER OF MARCH 9, 2018
TO AUSTIN SWEET**
(Plaintiff's First Motion in Limine)



Michael L. Matuska, Attorney at Law

March 9, 2018

Austin Sweet
3895 Warren Way
Reno, NV 89509

Re: 7747 South May Street, Chicago, Illinois 60620

Dear Mr. Sweet:

Thank you for letter of March 8, 2018. Unfortunately, that letter was not responsive to my earlier letter of February 16, 2018 that was addressed to your client, Brian Mineau. Lacking a project completion date, budget, and confirmation that the other parties have fulfilled the funding requirements, my client, Jay Kvam, has no choice but to proceed with his lawsuit to dissolve the joint venture and recover his losses. Please confirm that you will accept service of process on behalf of Mr. Mineau and Legion Investments, LLC. Please feel free to contact me in the meantime with any questions you may have.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

MICHAEL L. MATUSKA, ESQ.

MLM/lts
cc: Client

Exhibit 5
MICHAEL MATUSKA'S LETTER OF MARCH 14, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)

Exhibit 5
MICHAEL MATUSKA'S LETTER OF MARCH 14, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

March 14, 2018

Austin Sweet
3895 Warren Way
Reno, NV 89509

Re: 7747 South May Street, Chicago, Illinois 60620

Dear Mr. Sweet:

Jay Kvam's position should be apparent from my previous letters, but I simply wish to clarify that Mr. Kvam has disassociated from this joint venture effective February 28, 2018. Please remind your clients that they still have to fulfill their fiduciary and statutory duties to wind up the joint venture and provide disclosures and an accounting to Mr. Kvam, including the following:

1. Any and all agreements by, between and among Jay Kvam, Brian Mineau, Michael Spinola, and Legion Investments
2. Articles of Organization for Legion Investments
3. Operating Agreement for Legion Investments
4. All tax returns for Legion Investments for 2017 and for the previous 5 years
5. All schedule K-1s for Legion Investments for 2017 and for the previous 5 years
6. All schedule Es for Legion Investments for 2017 and for the previous 5 years
7. All minutes of meetings for Legion Investments
8. All resolutions of Legion Investments
9. Balance sheets for Legion Investments for 2017 and for the previous 5 years
10. Income and Expense Statements (or profit and loss statements) for Legion Investments for 2017 and for the previous 5 years
11. Statements for all Legion Investment accounts (i.e., bank statements) for the past 5 years
12. All escrow records for the property located at 7747 S. May Street, Chicago, Illinois, (the "Property") including, but not limited to, HUD escrow closing statement
13. All contracts for work performed on the Property
14. All invoices for materials purchased or work performed on the Property and copies of checks or other proof of payment
15. Copies of checks received or other proof of payment received from any of the investors on the Property, including Jay Kvam, Brian Mineau, Michael Spinola, and Legion Investments
16. Any and all reports provided by Brian Mineau or Legion Investments regarding the status of Property and work performed



Austin Sweet
March 14, 2018
Page 2 of 2

17. All business licenses and professional licenses held by Brian Mineau and/or Legion Investments
18. Photographs showing the status of the Property and all work performed.

Please make sure these documents are provided to me within ten (10) days of this letter.

Sincerely,

MATUSKA LAW OFFICES, LTD.

A handwritten signature in cursive script that reads "Michael L. Matuska".

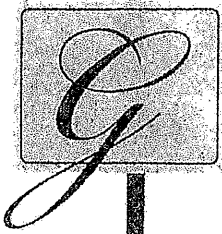
By: _____
MICHAEL L. MATUSKA, ESQ.

MLM/Its
cc: Client

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Electronically
CV18-00764
2020-02-14 01:43:22 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 6
**AUSTIN SWEET'S LETTER OF MARCH 15, 2018
TO MICHAEL MATUSKA WITH REDACTION**
(Plaintiff's First Motion in Limine)

Exhibit 6
**AUSTIN SWEET'S LETTER OF MARCH 15, 2018
TO MICHAEL MATUSKA WITH REDACTION**
(Plaintiff's First Motion in Limine)



Gunderson
Law Firm

From the Desk of:
Austin K. Sweet, Esq.
asweet@gundersonlaw.com

March 15, 2018

*Via Email – mlm@matuskalawoffices.com
and U.S. Mail:*

Michael L. Matuska, Esq.
2310 South Carson Street, # 6
Carson City, NV 89701

Re: 7747 South May Street, Chicago, Illinois

Dear Mr. Matuska:

We are in receipt of your letter dated March 9, 2018.

Our March 8, 2018 letter was indeed responsive to your earlier letter. As you noted, the project has experienced various unexpected delays and difficulties, as is common in real estate development. The project never had an anticipated completion date and still does not have an anticipated completion date. Your letter did not request an updated project budget, nor does the Agreement require one. My letter also confirmed that my clients have complied with the terms of the Agreement and intend to continue doing so.

Neither your February 16, 2018 letter nor your March 9, 2018 letter provides any explanation as to the basis for any belief that the Agreement has been breached, the legal theory upon which your client might sue Legion, or the relief your client would seek in such a suit. Simply put, your client is not legally entitled to be "reimbursed" or bought out under the terms of the Agreement and has no good faith basis for any claim against Brian Mineau, Michael Spinola, or Legion.

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CV18-00764
2020-02-14 01:43:22 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 7
MICHAEL MATUSKA'S LETTER OF MARCH 26, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)

Exhibit 7
MICHAEL MATUSKA'S LETTER OF MARCH 26, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)



MATUSKA LAW OFFICES

Michael L. Matuska, Attorney at Law

March 26, 2018

Austin Sweet
3895 Warren Way
Reno, NV 89509

Re: 7747 South May Street, Chicago, Illinois 60620

Dear Mr. Sweet:

This will be my final letter to you before filing the complaint against Brian Mineau and Legion Investments, LLC for breach of contract and other forms of relief, including dissolution and court supervised winding up. I am sure that as an experienced attorney, you reminded your client of his contractual, statutory, and fiduciary duties, which include:

1. Maintain books and records. NRS 87.4335(1)
2. Allow access to books and records. NRS 87.4335(2)
3. Provide without demand information on the business. NRS 87.4335(3)(a)
4. Provide on demand additional information on the business. NRS 87.4335(3)(b)
5. Duty of Loyalty. NRS 87.4336(2)
6. Duty to account and to hold any property as trustee. NRS 87.4336(2)(a)
7. Duty of care. NRS 87.4336(3)
8. Duty of good faith. NRS 87.4336(4)
9. Duty to wind up business. NRS 87.4351

These duties cannot be waived. NRS 87.4316. Mr. Mineau has not fulfilled these duties and has neglected prior requests for accounting and other information. As such, please be advised that Mr. Kvam has disassociated from this joint venture.

Mr. Kvam has authorized me to extend one final settlement offer to Mr. Mineau prior to proceeding with filing the complaint. The offer is for Mr. Mineau to provide a secured promissory to return all of Mr. Kvam's investment with a 7% rate of return from the date(s) of the advance(s). Mr. Mineau is encouraged to suggest a reasonable maturity date for the note. He has ten (10) days from the date of this letter to do so, and to designate the security and provide documentation proving clear title thereto. Absent an affirmative response, I will proceed to file the complaint. Please let me know whether you will accept service.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

MICHAEL L. MATUSKA, ESQ.

MLM/lts
cc: Client

I:\Client Files\Real Estate\Kvam\Mineau\Corr\Sent\Sweet 03.26.18.docx

775-350-7220 Phone
775-350-7222 Fax
mlm@matuskalawoffices.com

Licensed in Nevada and California

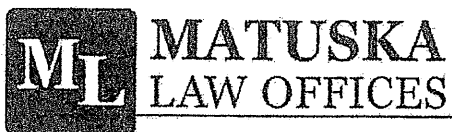
2310 South Carson Street, #6
Carson City, NV 89701
www.matuskalawoffices.com

1633
LEG0115

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CV18-00764
2020-02-14 01:43:22 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 8
MICHAEL MATUSKA'S LETTER OF APRIL 18, 2018
TO AUSTIN SWEET WITH REDACTION
(Plaintiff's First Motion in Limine)

Exhibit 8
MICHAEL MATUSKA'S LETTER OF APRIL 18, 2018
TO AUSTIN SWEET WITH REDACTION
(Plaintiff's First Motion in Limine)



Michael L. Matuska, Attorney at Law

April 18, 2018

Austin K. Sweet, Esq.
Gunderson Law Firm
3895 Warrant Way
Reno NV 89509

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

Dear Mr. Sweet:

Enclosed please find a Summons and a *copy* of the Complaint in the above-referenced matter. I have also enclosed an Acknowledgment of Receipt of Service and Waiver of Personal Service for Brian Mineau and Legion Investments, LLC ("Defendants").

If you agree to accept service on behalf of Defendants, please sign and date the Acknowledgment and return the *original* to our office at your earliest convenience. After we receive the *fully executed original* we will file it with the Court.

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

1 **CODE: 1005**

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.

**ACKNOWLEDGMENT OF RECEIPT OF
SERVICE AND WAIVER OF PERSONAL
SERVICE**

15 AUSTIN K. SWEET hereby acknowledges receipt of the Summons and Complaint in the
16 above-entitled matter. AUSTIN K. SWEET further states and represents that he is authorized to
17 accept receipt of the same on behalf of Defendants Brian Mineau and Legion Investments, LLC,
18 and waives the requirement of personal service of the Summons and Complaint on this Defendant.
19

20 Dated this ____ day of _____ 2018.

21 GUNDERSON LAW FIRM

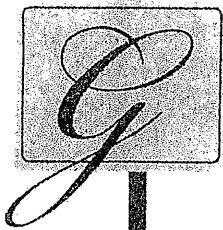
22 By:

23 Austin K. Sweet, Esq.
24 3895 Warren Way
25 Reno NV 89509
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27
28

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CV18-00764
2020-02-14 01:43:22 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 9
**AUSTIN SWEET'S LETTER OF APRIL 5, 2018
TO MICHAEL MATUSKA WITH REDACTION**
(Plaintiff's First Motion in Limine)

Exhibit 9
**AUSTIN SWEET'S LETTER OF APRIL 5, 2018
TO MICHAEL MATUSKA WITH REDACTION**
(Plaintiff's First Motion in Limine)



Gunderson
Law Firm

From the Desk of:
Austin K. Sweet, Esq.
asweet@gundersonlaw.com

April 5, 2018

*Via Email – mlm@matuskalawoffices.com
and U.S. Mail:*

Michael L. Matuska, Esq.
2310 South Carson Street, # 6
Carson City, NV 89701

Re: 7747 South May Street, Chicago, Illinois

Dear Mr. Matuska:

We are in receipt of your letter dated March 26, 2018. We disagree with your statements of fact and conclusions of law. No aspect of NRS Chapter 87 applies to this dispute.

FILED
Electronically
CV18-00764
2020-02-14 01:43:22 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7742278

Exhibit 10

**MICHAEL MATUSKA'S LETTER OF SEPTEMBER 19, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)**

Exhibit 10

**MICHAEL MATUSKA'S LETTER OF SEPTEMBER 19, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)**



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

September 19, 2018

Austin K. Sweet, Esq.
Gunderson Law Firm
3895 Warren Way
Reno NV 89509

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

Dear Mr. Sweet:

Thank you for your letter of September 18, 2018 and the offer contained therein. Although the offer now involves a second unidentified property located in Chicago, I do not see that changes Mr. Kvam's prior considerations. Mr. Mineau is encouraged to sell the May Street property, the other unidentified property, and any other property he needs to sell in order to satisfy Mr. Kvam's claims. Mr. Mineau can also borrow money or sell other assets. I see no benefit to first transferring those properties to Mr. Kvam in order to have him sell the properties.

I informed you on April 18, 2018 that the opportunity remains for Mr. Mineau to settle this case with a secured promissory note. That has not changed. This will give Mr. Mineau time to sell the Chicago properties. However, the promissory note will have to be secured by good and adequate security in Nevada, will bear interest at the rate of 7% from the date(s) of the advance(s) as per the Terms of Agreement and the previous offer, and will have to have a firm maturity date. Court costs and attorney fees will also have to be added to the principal amount. The total amount to date is approximately \$122,000. Mr. Mineau would be responsible for the lenders policy of title insurance, recording fees, and other costs incurred in connection with the deed of trust. This offer will expire on September 28, 2018.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

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

cc: Client

I:\Client Files\Litigation\Kvam\l. Mineau\Corr\Sent\Sweet 09.19.18.docx

Exhibit 11

**MICHAEL MATUSKA'S LETTER OF NOVEMBER 28, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)**

Exhibit 11

**MICHAEL MATUSKA'S LETTER OF NOVEMBER 28, 2018
TO AUSTIN SWEET
(Plaintiff's First Motion in Limine)**



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

November 28, 2018

Via Email and U.S. Mail

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

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

Dear Mr. Sweet:

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

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

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:

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

cc: Client

F:\Client Files\Litigation\Kvam\v. Mineau\Corr\Sent\Sweet 11.28.18.docx

CODE: 2630

Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
mlm@matuskalawoffices.com
(775) 350-7220

Attorneys for Plaintiff, JAY KVAM

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

JAY KVAM,

Plaintiff,

Case No. CV18-00764

v.

Dept. No. 6

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

Defendants.

PLAINTIFF'S OBJECTIONS TO "LEGION AND MINEAUS'

16.1 PRETRIAL DISCLOSURES"

Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law Offices, Ltd.,
Michael L. Matuska, Esq., pursuant to NRCP 16.1(a)(3)(B), hereby lodges the following
objections to "LEGION AND MINEAUS' 16.1 PRETRIAL DISCLOSURES."

DOC NO.	DOC. BATES NO.	PLAINTIFF'S OBJECTIONS
2	LEG0017	Hearsay, lack of foundation, relevance
3	LEG0118	Inadmissible offer to compromise, relevance
4	LEG0140	Hearsay, lack of foundation, relevance
6	LEG0136 - LEG0138	Hearsay, incomplete, lack of foundation

8	LEG000366 - LEG000378	Hearsay, incomplete, lack of foundation
9	LEG000391	Hearsay, lack of foundation, incomplete
10	LEG000393 - LEG000397	Hearsay, lack of foundation
18	KVAM0059	Relevance
19	KVAM0060 - KVAM0069	Hearsay, lack of foundation, relevance
20	KVAM0070 - KVAM0091	Hearsay, lack of foundation, multiple exhibits
27	KVAM0106 - KVAM0124	Hearsay, lack of foundation, multiple exhibits
28	KVAM0125 - KVAM0131	Hearsay, lack of foundation, multiple exhibits
29	KVAM0132	Hearsay
31	KVAM0134	Hearsay, lack of foundation, relevance
33	KVAM0140	Hearsay, lack of foundation
34	KVAM0141 - KVAM0144	Hearsay, lack of foundation, multiple exhibits
38	KVAM0194 - KVAM0198	Duplicate, multiple exhibits
39	KVAM0200	Hearsay, lack of foundation
40	KVAM0205 - KVAM0208	Relevance
41	KVAM0209 - KVAM0211	Hearsay, lack of foundation
42	KVAM0213 - KVAM0221	Hearsay, lack of foundation, multiple exhibits
43	KVAM0222	Hearsay, lack of foundation, relevance
44	KVAM0223 - KVAM0224	Hearsay, lack of foundation, multiple exhibits
45	KVAM0227	Hearsay, lack of foundation
46	KVAM0228	Hearsay, lack of foundation
47	KVAM0232	Hearsay, lack of foundation, relevance
48	KVAM0235	Hearsay, lack of foundation, relevance
49	KVAM0238 - KVAM0242	Hearsay, lack of foundation, relevance, multiple exhibits
52	KVAM0381 - KVAM0383	Hearsay, lack of foundation
53	KVAM0384	Hearsay, lack of foundation
54	KVAM0396 - KVAM0398	Relevance, inadmissible offer to compromise
56	KVAM0411 - KVAM0423	Hearsay, relevance
1	LEG0018	Relevance
2	LEG0020	Hearsay, relevance

3	LEG0021 - LEG0022	Hearsay, relevance
4	LEG0023 - LEG0035	Hearsay, lack of foundation, relevance
5	LEG0036	Hearsay, lack of foundation, relevance
6	LEG0037 - LEG0042	Hearsay, lack of foundation, relevance
7	LEG0089 - LEG0104	Hearsay, lack of foundation, relevance
8	LEG0105 - LEG0106	Hearsay, lack of foundation, relevance
9	LEG0110	Hearsay, lack of foundation, relevance
10	LEG0111	Relevance, inadmissible offer to compromise, incomplete
11	LEG0113 - LEG0114	Relevance, inadmissible offer to compromise, incomplete
15	LEG0150 - LEG0151	Hearsay, lack of foundation, relevance, multiple exhibits
16	LEG0152 - LEG0155	Hearsay, lack of foundation, relevance, multiple exhibits
17	LEG0156 - LEG0159	Hearsay, lack of foundation, relevance, multiple exhibits
18	LEG0160	Hearsay, lack of foundation, relevance
20	LEG0165 - LEG0166	Hearsay, relevance
21	LEG0183 - LEG0195	Hearsay, lack of foundation, relevance
22	LEG0196 - LEG0208	Hearsay, lack of foundation, relevance
23	LEG000278 - LEG000307	Hearsay, relevance
24	LEG000321 - LEG000365	Hearsay, relevance
25	LEG000379 - LEG000381	Hearsay, relevance
27	LEG000442 - LEG000443	Hearsay, lack of foundation
31	KVAM0092	Hearsay, lack of foundation
32	KVAM0145 - KVAM0163	Hearsay, lack of foundation
44	KVAM0203 - KVAM0204	Hearsay, lack of foundation
45	KVAM0212	Hearsay, lack of foundation
46	KVAM0222	Hearsay, lack of foundation, relevance, multiple exhibits
47	KVAM0411 - KVAM0423	Hearsay, lack of foundation, relevance
48	KVAM0233 - KVAM0234	Hearsay, lack of foundation, relevance
49	KVAM0236 - KVAM0237	Hearsay, lack of foundation, relevance
50	KVAM0243 - KVAM0259	Hearsay, lack of foundation, relevance
52	KVAM0404 - KVAM0410	Hearsay, lack of foundation, relevance

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53	KVAM0427 - KVAM0432	Hearsay, lack of foundation, relevance
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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 14th day of February, 2020.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By:

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 14th day of February, 2020, I served a true and correct copy of the preceding document entitled **"PLAINTIFF'S OBJECTIONS TO 'LEGION AND MINEAUS' 16.1 PRETRIAL DISCLOSURES"** 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 2630**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 asweet@gundersonlaw.com

6 Mark H. Gunderson, Esq.

7 Nevada State Bar No. 2134

8 mgunderson@gundersonlaw.com

9 3895 Warren Way

10 Reno, Nevada 89509

11 Telephone: 775.829.1222

12 *Attorneys for Brian Mineau and Legion Investments*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 JAY KVAM,

Case No. CV18-00764

17 Plaintiff / Counterdefendant,

Dept. No. 6

18 vs.

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

22 Defendants / Counterclaimants.
23 _____ /

24 **DEFENDANTS' OBJECTIONS TO PLAINTIFF'S**
25 **AMENDED PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1**

26 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
27 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.,
28 and Mark H. Gunderson, Esq., submit these Objections to Plaintiff / Counterdefendant JAY KVAM
("Kvam")'s Amended Pretrial Disclosures as required by NRCP 16.1(a)(3).

29 **I. OBJECTIONS TO LIST OF TRIAL WITNESSES**

30 Mineau and Legion object to Kvam's disclosure as inadequate under NRCP 16.1(a)(3)(iii).
31 Kvam failed to separately identify those witnesses whom he expects to present, those witnesses who
32 have been subpoenaed for trial, and those whom Kvam may call if the need arises. Kvam should be
33 prohibited from calling any witness at trial not properly disclosed in his NRCP 16.1(a)(3) pretrial

1 disclosures. NRCP 16.1(e)(3)(B).

2 4. Michelle Salazar (via deposition): Mineau and Legion object to the introduction of
3 Ms. Salazar's testimony via deposition. NRCP 32(a) sets for the circumstances pursuant to which all
4 or part of a deposition may be used at trial and those criteria are not met here.

5 5. Benjamin Charles Steele, CPA, Plaintiff's Expert: Mineau and Legion object to the
6 testimony of Mr. Steele. As explained more fully in Mineau and Legion's *Motion in Limine to*
7 *Exclude Expert Opinion*, this witness cannot present any admissible evidence relevant to any element
8 of any claim or defense pending in this action.

9 **II. OBJECTIONS TO DOCUMENTS EXPECTED TO BE OFFERED BY PLAINTIFF**

10 Mineau and Legion impose the following objections to documents identified by Kvam as
11 expected to be offered at trial:

12 1. 719630.96 – 719630.100: Mineau and Legion object to this document as irrelevant,
13 as it does not bear any relevance to any element of any claim or defense pending in this action.

14 2. KVM0362, "Email with Project Costs Breakdown": Mineau and Legion object to
15 this document as insufficiently identified. The document identified as KVM0362 is not an "Email
16 with Project Costs Breakdown."

17 3. KVM0044: Mineau and Legion object to this document as containing hearsay.

18 4. KVM0045 – KVM0046: Mineau and Legion object to this document as untimely
19 identified. Kvam should be prohibited from offering any documents at trial not timely disclosed in
20 his NRCP 16.1(a)(3) pretrial disclosures. Mineau and Legion also object to this document as hearsay.

21 5. 719630.1 – 719630.6: Mineau and Legion object to this designation as containing two
22 separate documents. The document identified as 719630.1 – 719630.5 is a separate document from
23 719630.6 and these separate documents should not be jointly designated as a single document.
24 Mineau and Legion also object that both of these documents are irrelevant, as they do not bear any
25 relevance to any element of any claim or defense pending in this action.

26 6. 719630.36: Mineau and Legion object to this document as incomplete. 719630.36 is
27 the first page of a three-page document, fully identified as 719630.36 – 719630.38.

28 ///

1 7. KVAM0049: Mineau and Legion object to this document as untimely identified.
2 Kvam should be prohibited from offering any documents at trial not timely disclosed in his NRC
3 16.1(a)(3) pretrial disclosures.

4 8. 719630.67 – 719630.71: Mineau and Legion object to this designation as containing
5 three separate documents. The documents identified as 719630.67 – 719630.69, 719630.70, and
6 719630.71 are each separate documents and should not be jointly designated as a single document.

7 9. KVAM0092: Mineau and Legion object to this document as containing hearsay.

8 10. KVAM0185: Mineau and Legion object to this document as incomplete. KVAM0185
9 is the last page of a three-page document, fully identified as KVAM0183 – KVAM0185.

10 11. KVAM0053: Mineau and Legion object to this document as incomplete. KVAM0053
11 is the first page of a multi-page document. To provide full context, the entire conversation should be
12 produced, identified as KVAM0053 – KVAM0054.

13 12. KVAM0222 and KVAM0107 – KVAM0123: Mineau and Legion object to this
14 designation as containing two separate documents, one of which is incomplete. The documents
15 identified as KVAM0222 and KVAM0107 – KVAM0123 are separate documents and should not be
16 jointly designated as a single document. Furthermore, the document identified as KVAM0107 –
17 KVAM0123 is only part of a multi-page document. To provide full context, the entire conversation
18 should be produced, identified as KVAM0106 – KVAM0124.

19 13. KVAM0207 – KVAM0208: Mineau and Legion object to this document as
20 incomplete. KVAM0207 – KVAM0208 are the last two pages of a four-page document, fully
21 identified as KVAM0205 – KVAM0208.

22 14. KVAM0143: Mineau and Legion object to this document as incomplete. KVAM0143
23 is one page of a multi-page document. To provide full context, the entire conversation should be
24 produced, identified as KVAM0141 – KVAM0144.

25 15. 730323.260: Mineau and Legion object to this document as irrelevant, as it does not
26 bear any relevance to any element of any claim or defense pending in this action.

27 16. 730323.156: Mineau and Legion object to this document as irrelevant, as it does not
28 bear any relevance to any element of any claim or defense pending in this action. Mineau and Legion

1 also object to this document as lacking foundation and containing hearsay.

2 17. 730323.155: Mineau and Legion object to this document as irrelevant, as it does not
3 bear any relevance to any element of any claim or defense pending in this action. Mineau and Legion
4 also object to this document as lacking foundation and containing hearsay.

5 18. KVAM0010 – KVAM0011: Mineau and Legion object to this document as untimely
6 identified. Kvam should be prohibited from offering any documents at trial not timely disclosed in
7 his NRCP 16.1(a)(3) pretrial disclosures. Mineau and Legion object to this document as irrelevant,
8 lacking foundation and containing hearsay.

9 19. KVAM0530 – KVAM0533: Mineau and Legion object to this designation as
10 containing three separate documents, two of which appear to be identical. The documents identified
11 as KVAM0530 and KVAM0533 appear to be identical and are separate documents from the
12 document identified as KVAM0531 – KVAM0532. Mineau and Legion further object to each of
13 these documents as irrelevant, lacking foundation and containing hearsay.

14 20. 730323.240 – 730323.246: Mineau and Legion object to this document as irrelevant,
15 as it does not bear any relevance to any element of any claim or defense pending in this action.
16 Mineau and Legion also object to this document as lacking foundation and containing hearsay.

17 21. 730323.258 – 730323.259: Mineau and Legion object to this document as irrelevant,
18 as it does not bear any relevance to any element of any claim or defense pending in this action.

19 22. 730323.28: Mineau and Legion object to this document as duplicative, as Kvam has
20 designated this document twice.

21 23. KVAM0387 – KVAM0391: Mineau and Legion object to this designation as
22 containing four separate documents. The documents identified as KVAM0387, KVAM0388,
23 KVAM0389, and KVAM0390 – KVAM0391 are each separate documents and should not be jointly
24 designated as a single document. Mineau and Legion also object to each of these documents as
25 lacking foundation and containing hearsay.

26 24. KVAM0485 – KVAM0487: Mineau and Legion object to this document as lacking
27 foundation and containing hearsay.

28 ///

1 25. KVAM0488 – KVAM0493: Mineau and Legion object to this document as lacking
2 foundation and containing hearsay.

3 26. KVAM0478 – KVAM0484: Mineau and Legion object to this document as lacking
4 foundation and containing hearsay.

5 27. SB 1022150-F1 158 – 159: Mineau and Legion object to this document as incomplete.
6 SB 1022150-F1 158 – 159 are the first two pages of a six-page document, fully identified as SB
7 1022150-F1 158 – 163. Mineau and Legion further object to this document as irrelevant and
8 containing hearsay.

9 28. SB 1022150-F1 166 – 169: Mineau and Legion object to this designation as
10 containing three separate documents, one of which is incomplete. The documents identified as SB
11 1022150-F1 166, SB 1022150-F1 167, and SB 1022150-F1 168 - 169 are each separate documents
12 and should not be jointly designated as a single document. Mineau and Legion further object that
13 document SB 1022150-F168 - 169 is incomplete, as they are the first two pages of a six-page
14 document, fully identified as SB 1022150-F1 168 – 173. Mineau and Legion further object to each
15 of these documents as irrelevant and containing hearsay.

16 29. SB 1022150-F1 174 – 175: Mineau and Legion object to this designation as
17 containing two separate documents. The documents identified as SB 1022150-F1 174 and SB
18 1022150-F1 175 are separate documents and should not be jointly designated as a single document.
19 Mineau and Legion further object to each of these documents as irrelevant and containing hearsay.

20 30. SB 1013248-F1 81: Mineau and Legion object to this document as incomplete. SB
21 1013248-F1 81 is the first page of an eight-page document, fully identified as SB 1013248-F1 81 –
22 88. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
23 hearsay.

24 31. SB 1013248-F1 85: Mineau and Legion object to this document as incomplete. SB
25 1013248-F1 85 is the fifth page of an eight-page document, fully identified as SB 1013248-F1 81 –
26 88. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
27 hearsay.

28 ///

1 32. SB 1013248-F1 89: Mineau and Legion object to this document as incomplete. SB
2 1013248-F1 89 is the first page of a six-page document, fully identified as SB 1013248-F1 89 – 94.
3 Mineau and Legion further object to this document as irrelevant, cumulative, and containing hearsay.
4 33. SB 1013248-F1 92: Mineau and Legion object to this document as incomplete. SB
5 1013248-F1 92 is the fourth page of a six-page document, fully identified as SB 1013248-F1 89 – 94.
6 Mineau and Legion further object to this document as irrelevant, cumulative, and containing hearsay.
7 34. SB 1013248-F1 95 - 96: Mineau and Legion object to this document as incomplete.
8 SB 1013248-F1 95 - 96 are the first two pages of an eight-page document, fully identified as SB
9 1013248-F1 95 – 102. Mineau and Legion further object to this document as irrelevant, cumulative,
10 and containing hearsay.
11 35. SB 1013248-F1 99: Mineau and Legion object to this document as incomplete. SB
12 1013248-F1 99 is the fifth page of an eight-page document, fully identified as SB 1013248-F1 95 –
13 102. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
14 hearsay.
15 36. SB 1013248-F1 104: Mineau and Legion object to this document as incomplete. SB
16 1013248-F1 104 is the second page of an eight-page document, fully identified as SB 1013248-F1
17 103 – 110. Mineau and Legion further object to this document as irrelevant, cumulative, and
18 containing hearsay.
19 37. SB 1013248-F1 107 - 108: Mineau and Legion object to this document as incomplete.
20 SB 1013248-F1 107 - 108 are the fifth and sixth pages of an eight-page document, fully identified
21 as SB 1013248-F1 103 – 110. Mineau and Legion further object to this document as irrelevant,
22 cumulative, and containing hearsay.
23 38. SB 1013248-F1 120: Mineau and Legion object to this document as incomplete. SB
24 1013248-F1 120 is the second page of an eight-page document, fully identified as SB 1013248-F1
25 119 – 126. Mineau and Legion further object to this document as irrelevant, cumulative, and
26 containing hearsay.
27 39. SB 1013248-F1 123: Mineau and Legion object to this document as incomplete. SB
28 1013248-F1 123 is the fifth page of an eight-page document, fully identified as SB 1013248-F1 119

1 – 126. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
2 hearsay.

3 40. SB 1013248-F1 127: Mineau and Legion object to this document as incomplete. SB
4 1013248-F1 127 is the first page of a ten-page document, fully identified as SB 1013248-F1 127 –
5 136. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
6 hearsay.

7 41. SB 1013248-F1 131: Mineau and Legion object to this document as incomplete. SB
8 1013248-F1 131 is the fifth page of a ten-page document, fully identified as SB 1013248-F1 127 –
9 136. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
10 hearsay.

11 42. SB 1013248-F1 137: Mineau and Legion object to this document as incomplete. SB
12 1013248-F1 137 is the first page of an eight-page document, fully identified as SB 1013248-F1 137
13 – 144. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
14 hearsay.

15 43. SB 1013248-F1 140: Mineau and Legion object to this document as incomplete. SB
16 1013248-F1 140 is the fourth page of an eight-page document, fully identified as SB 1013248-F1 137
17 – 144. Mineau and Legion further object to this document as irrelevant, cumulative, and containing
18 hearsay.

19 44. “Plaintiff’s Expert Witness Disclosure and Reports of Benjamin Charles Steele, CPA
20 and Amended Report”: Mineau and Legion object to this document as hearsay. Furthermore, as
21 explained more fully in Mineau and Legion’s *Motion in Limine to Exclude Expert Opinion*, Mr.
22 Steele’s testimony and report is irrelevant because Mr. Steele cannot present any admissible evidence
23 relevant to any element of any claim or defense pending in this action.

24 45. KVAM0153: Mineau and Legion object to this document as irrelevant and containing
25 hearsay.

26 46. KVAM0206 – KVAM0208: Mineau and Legion object to this document as
27 incomplete. KVAM0206 – KVAM0208 are the last three pages of a four-page document, fully
28 identified as KVAM0205 – KVAM0208.

1 47. KVAM0253 – KVAM0256: Mineau and Legion object to this document as irrelevant
2 and containing hearsay.

3 48. “Transcript of the Deposition of Colleen Burke, pp. 1 – 28, and 41 – 45”: Mineau and
4 Legion object to this document as hearsay, cumulative, and inadmissible as a stand-alone document,
5 independent from Ms. Burke’s videotaped deposition testimony. Mineau and Legion further object
6 to this document as incomplete: if Ms. Burke’s deposition transcript is admitted as an exhibit, the
7 cross-examination portions must be admitted as well.

8 **III. OBJECTIONS TO DOCUMENTS WHICH MAY BE OFFERED BY PLAINTIFF IF**
9 **THE NEED ARISES**

10 Mineau and Legion impose the following objections to documents identified by Kvam as
11 documents which may be offered at trial if the need arises:

12 1. 730323.180 – 730323.191: Mineau and Legion object to this document as irrelevant,
13 as it does not bear any relevance to any element of any claim or defense pending in this action.

14 2. 730323.209: Mineau and Legion object to this document as irrelevant, as it does not
15 bear any relevance to any element of any claim or defense pending in this action.

16 3. 719630.11: Mineau and Legion object to this document as irrelevant, as it does not
17 bear any relevance to any element of any claim or defense pending in this action.

18 4. KVAM0229: Mineau and Legion object to this document as untimely identified.
19 Kvam should be prohibited from offering any documents at trial not timely disclosed in his NRC
20 16.1(a)(3) pretrial disclosures. Mineau and Legion further object to this document as irrelevant and
21 containing hearsay.

22 5. 730323.10: Mineau and Legion object to this document as irrelevant and containing
23 hearsay.

24 6. 719630.6: Mineau and Legion object to this document as duplicative, as Kvam has
25 designated this document twice. Mineau and Legion also object that this document is irrelevant, as
26 it does not bear any relevance to any element of any claim or defense pending in this action.

27 7. 730323.17: Mineau and Legion object that this document is irrelevant, as it does not
28 bear any relevance to any element of any claim or defense pending in this action.

1 8. KVAM0387 – KVAM0391: Mineau and Legion object to these documents as
2 untimely identified. Kvam should be prohibited from offering any documents at trial not timely
3 disclosed in his NRCP 16.1(a)(3) pretrial disclosures. Mineau and Legion further object to this
4 designation as containing four separate documents. The documents identified as KVAM0470,
5 KVAM0471, KVAM0472, and KVAM0473 are each separate documents and should not be jointly
6 designated as a single document. Mineau and Legion also object to each of these documents as
7 lacking foundation and containing hearsay.

8 9. “Opposition to Motion for Protective Order Ex. 10, Michael Spinola Grand Jury
9 Indictment and Plea Agreement”: Mineau and Legion object to this document as untimely identified.
10 Kvam should be prohibited from offering any documents at trial not timely disclosed in his NRCP
11 16.1(a)(3) pretrial disclosures. Mineau and Legion further object to this document as irrelevant,
12 containing hearsay, and inadmissible under NRS 48.045 and NRS 50.095.

13 10. LEG0263 – LEG0273: Mineau and Legion object to this document as untimely
14 identified. Kvam should be prohibited from offering any documents at trial not timely disclosed in
15 his NRCP 16.1(a)(3) pretrial disclosures. Mineau and Legion further object that this document is
16 irrelevant and contains hearsay.

17 11. “Transcript of the Deposition of Michelle Salazar”: Mineau and Legion object to this
18 document as hearsay, cumulative, and inadmissible. NRCP 32(a) sets forth the circumstances
19 pursuant to which all or part of a deposition may be used at trial and those criteria are not met here.

20 12. KVAM0093 – KVAM0133: Mineau and Legion object to this designation as
21 containing multiple separate documents. Separate document should not be jointly designated as a
22 single document.

23 13. “TBD, Documents to be produced pursuant to January 10, 2020 Recommendation for
24 Order”: Mineau and Legion object to this document as untimely identified. Kvam should be
25 prohibited from offering any documents at trial not timely disclosed in his NRCP 16.1(a)(3) pretrial
26 disclosures. Mineau and Legion further object to these documents for the reasons set forth in their
27 *Objection to Recommendation for Order*, filed January 13, 2020. Mineau and Legion reserve their
28 right to impose additional objections to any documents ultimately required to be produced because a

1 finding that any such documents are discoverable does not necessarily mean such documents are
2 admissible at trial.

3 14. "Plaintiff's First Set of Requests for Admissions, Exs. 1-11, Real property
4 documents": Mineau and Legion object to these documents as never formally disclosed pursuant to
5 NRCP 16.1. Mineau and Legion further object to these documents as untimely identified. Kvam
6 should be prohibited from offering any documents at trial not timely disclosed in his NRCP 16.1(a)(3)
7 pretrial disclosures. Mineau and Legion further object to these documents for the reasons set forth in
8 their *Objection to Recommendation for Order*, filed January 13, 2020. Mineau and Legion reserve
9 their right to impose additional objections to any documents ultimately required to be produced
10 because a finding that any such documents are discoverable does not necessarily mean such
11 documents are admissible at trial.

12 15. "Defendants' Response to Plaintiff's First Set of Requests for Admissions": Mineau
13 and Legion object to this document as untimely identified. Kvam should be prohibited from offering
14 any documents at trial not timely disclosed in his NRCP 16.1(a)(3) pretrial disclosures. Mineau and
15 Legion further object to this document for the reasons set forth in their *Objection to Recommendation*
16 *for Order*, filed January 13, 2020.

17 **IV. OBJECTIONS TO VIDEO DEPOSITION RUN TIMES**

18 Mineau and Legion impose the following objections to video deposition run times identified
19 by Kvam:

20 Colleen Burke: Mineau and Legion object to the designated video deposition run times for
21 two reasons. First, Mineau and Legion have not been provided a copy of the video and therefore

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1 cannot determine or analyze the propriety of the designated run times. Mineau and Legion further
2 object to the extent that Kvam appears to be offering Ms. Burke's direct examination and omitting
3 her cross-examination by Defendants' counsel.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the preceding document, **DEFENDANTS'**
6 **OBJECTIONS TO PLAINTIFF'S AMENDED PRETRIAL DISCLOSURES PURSUANT TO**
7 **NRCP 16.1**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe,
8 does not contain the social security number of any person.

9 DATED this 17 day of February, 2020.

10 GUNDERSON LAW FIRM

11
12
13 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

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*Attorneys for Brian Mineau and Legion
Investments*

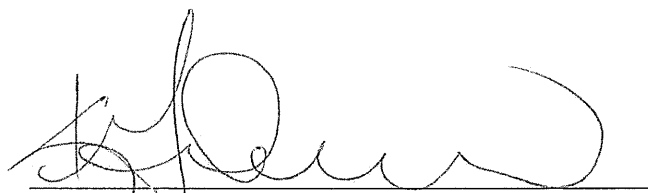
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 17 day of February, 2020, I electronically filed a true and correct copy of
4 the **DEFENDANTS' OBJECTIONS TO PLAINTIFF'S AMENDED PRETRIAL**
5 **DISCLOSURES PURSUANT TO NRCP 16.1**, with the Clerk of the Court by using the electronic
6 filing system which will send a notice of electronic filing to the following:

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

13 Pursuant to NRCP 5(b), I further certify that I am an employee of the law office of Gunderson
14 Law Firm, and that on the 17 day of February, 2019, I deposited for mailing in Reno, Nevada a
15 true and correct copy of the **DEFENDANTS' OBJECTIONS TO PLAINTIFF'S AMENDED**
16 **PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1**, addressed to:

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

22 
23 Kelly Gunderson
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1 **CODE 4205**

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12 *Attorneys for Brian Mineau and Legion Investments*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 JAY KVAM,

Case No. CV18-00764

17 Plaintiff / Counterdefendant,

Dept. No. 6

18 vs.

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

22 Defendants / Counterclaimants.

23 **DEFENDANTS' TRIAL STATEMENT**

24 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
25 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.,
26 and Mark H. Gunderson, Esq., file this *Trial Statement* in accordance with this Court's *Supplemental*
27 *Uniform Pretrial Order* and WDCR 5.

28 **A. A Concise Statement Of The Claimed Facts Supporting Legion's and Mineau's Claims
and Defenses, Organized By Listing Each Essential Element Of The Claim Or Defense
And Separately Stating The Facts In Support Of Each Such Element.**

Legion and Mineau have filed a *Motion for Summary Judgment* which they anticipate will
resolve most, if not all, of the outstanding claims and defenses. However, in the event that any of
Kvam's claims survive summary judgment, Legion and Mineau may present the following

1 affirmative defenses at trial, if necessary:

2 ***1. The Terms of Agreement lacks essential terms of a loan agreement and is therefore***
3 ***not an enforceable loan contract.***

4 “Basic contract principles require, for an enforceable contract, an offer and acceptance,
5 meeting of the minds, and consideration.” Certified Fire Prot. Inc. v. Precision Constr., 128 Nev.
6 371, 378, 283 P.3d 250, 255 (2012) (citing May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254,
7 1257 (2005)). “A meeting of the minds exists when the parties have agreed upon the contract's
8 essential terms.” Id. (citing Roth v. Scott, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996)).
9 “Which terms are essential ‘depends on the agreement and its context and also on the subsequent
10 conduct of the parties, including the dispute which arises and the remedy sought.’” Id. (quoting
11 Restatement (Second) of Contracts § 131 cmt. g (1981)). “A valid contract cannot exist when material
12 terms are lacking or are insufficiently certain and definite for a court to ascertain what is required of
13 the respective parties and to compel compliance if necessary.” Grisham v. Grisham, 128 Nev. 679,
14 685, 289 P.3d 230, 235 (2012) (internal citations omitted). The court cannot force upon parties
15 contractual obligations, terms or conditions which are not contained in the contract. McCall v.
16 Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946); Harrison v. Harrison, 132 Nev. 564, 376 P.3d
17 173 (2016); Golden Rd. Motor Inn, Inc. v. Islam, 132 Nev. 476, 376 P.3d 151 (2016); Reno Club,
18 Inc. v. Young Inv. Co., 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947).

19 Kvam has alleged that the Terms of Agreement is a loan agreement, under which Kvam is a
20 lender and Mineau and Legion are the borrowers, such that Mineau and Legion are contractually
21 obligated to repay all of the funds Kvam invested in the project, plus interest. However, this
22 transaction was an investment, not a loan. The Terms of Agreement contains none of the essential
23 terms of a loan agreement, including a defined borrower or a maturity date. Since the Terms of
24 Agreement lacks the material terms of a loan agreement, no valid and enforceable loan contract exists.

25 ***2. Kvam's Claims Are Barred By The Parol Evidence Rule.***

26 Under the parol evidence rule, parol or extrinsic evidence is not admissible to add to, subtract
27 from, vary, or contradict written instruments which ... are contractual in nature and which are valid,
28 complete, unambiguous, and unaffected by accident or mistake.” M.C. Multi-Family Dev., L.L.C. v.

1 Crestdale Assocs., Ltd., 124 Nev. 901, 913–14, 193 P.3d 536, 544–45 (2008). While parol evidence
2 may be admitted to interpret an ambiguous contract, show subsequent oral agreements, or to show a
3 separate agreement on which a written contract is silent, parol evidence is not admissible to show the
4 existence of a separate agreement which is inconsistent with the terms of the written instrument. Id.

5 Kvam has alleged that the Terms of Agreement is a loan agreement, such that Mineau and
6 Legion are contractually obligated to repay all of the funds Kvam invested in the project, plus interest.
7 However, this allegation is inconsistent with the written Terms of Agreement. This transaction was
8 an investment, not a loan. The Terms of Agreement provides that, if the project fails, all interest and
9 remedies in the partnership are assigned to Kvam. Any claim that Kvam is entitled to a different
10 remedy, including reimbursement of his investment as a “loan,” is barred by the parol evidence rule.

11 **3. *Kvam’s Claims Are Barred By The Statute Of Frauds.***

12 Pursuant to the statute of frauds, every special promise to answer for the debt, default, or
13 miscarriage of another is void unless the agreement, or some note or memorandum therefor
14 expressing the consideration, is in writing. NRS 111.220(2).

15 Kvam alleges that Legion and Mineau are obligated to reimburse all of the funds Kvam
16 invested in the project, plus interest. Even if Kvam is able to establish that this transaction was a
17 loan, not an investment, any loan was made to the partnership pursuant to NRS 87.4333, not to Legion
18 or Mineau. Any allegation that Legion and Mineau are obligated to answer for the debt, default, or
19 miscarriage of the partnership is barred by the statute of frauds. Further, even if Kvam is able to
20 establish that any loan was actually made to Legion, as the owner of the Property, the statute of frauds
21 still bars any claim that Mineau is obligated to answer for the debt, default, or miscarriage of Legion.

22 Similarly, Kvam’s losses can be directly attributed to the contractor, TNT Complete Facility
23 Care, Inc. (“TNT”). Any allegation that Legion and Mineau are obligated to answer for the debt,
24 default, or miscarriage of TNT is barred by the statute of frauds.

25 **4. *Mineau’s And/Or Legion’s Performance Under The Terms Of Agreement Was***
26 ***Excused Under The Doctrine Of Impossibility.***

27 “The defense of impossibility is available to a promissor where his performance is made
28 impossible or highly impractical by the occurrence of unforeseen contingencies” Nebaco, Inc. v.

1 Riverview Realty Co., 87 Nev. 55, 57, 482 P.2d 305, 307 (1971) (citing Restatement (Second) of
2 Contracts § 265 (1981)). If the contingency was foreseeable and “is provided for in the contract, its
3 occurrence does, of course, provide an excuse for nonperformance.” Id.

4 Kvam alleges that Mineau and Legion breached their legal, contractual, and fiduciary duties
5 to Kvam and the partnership by failing to properly manage and complete the renovation. Mineau and
6 Legion dispute that either of them had any legal, contractual, or fiduciary duty to “properly manage
7 and complete the renovation.” However, even if Kvam is able to establish such duties, Mineau and
8 Legion’s performance was made impossible or highly impractical by the occurrence of the following
9 unforeseen contingencies: (1) TNT breaching the Contractor Agreement; (2) Kvam withdrawing from
10 the partnership, demanding his money back, and filing suit before the project was completed; and (3)
11 the Property flooding. Further, even if Kvam can establish that any of these contingencies was
12 foreseeable, the Terms of Agreement provided for its occurrence by stating that, if the project fails,
13 all interest and remedies in the partnership are assigned to Kvam.

14 **5. *Kvam’s Claims Are Barred By The Doctrine Of Waiver.***

15 “Waiver requires the intentional relinquishment of a known right.” Nevada Yellow Cab Corp.
16 v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007).

17 Kvam alleges that he is entitled to a variety of contractual remedies, including reimbursement
18 in full of all of the funds Kvam invested in the project, plus interest, plus anticipated profit. However,
19 the Terms of Agreement provides that, if the project fails for any reason, all interest and remedies in
20 the partnership are assigned to Kvam. By expressly agreeing to the remedy set forth in the Terms of
21 Agreement, Kvam waived any and all other available remedies.

22 **6. *Kvam’s Has Suffered No Damages For Which Mineau Or Legion Can Be Held***
23 ***Liabile, And Any Damages Suffered By Kvam Were Caused By The Negligence,***
24 ***Acts, Or Omissions of TNT.***

25 Damages is an essential element of each of Kvam’s affirmative claims for relief. However,
26 as explained in the *Motion for Summary Judgment*, Kvam has not presented any admissible evidence,
27 and none exists, that Mineau or Legion are the cause of any of Kvam’s financial losses. The facts
28 establish that TNT is responsible for Kvam’s financial losses, and the Terms of Agreement assigned

1 all remedies to Kvam, including all remedies against TNT. Kvam's proper legal recourse is therefore
2 against TNT, not Legion or Mineau.

3 **7. *Kvam's Claims Are Mitigated By Assumption Of The Risk.***

4 "[M]utual mistake will not provide grounds for rescission where a party bears the risk of
5 mistake." Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686, 694, 356 P.3d 511, 517
6 (2015) (citing Restatement (Second) of Contracts §§ 152(1), 154(b), (c) (1981)). "If the party is
7 aware at the time he enters into the contract that he has only limited knowledge with respect to the
8 facts to which the mistake relates but treats his limited knowledge as sufficient, that party will bear
9 the risk." Id. (internal citations omitted). "One who acts, knowing that he does not know certain
10 matters of fact, makes no mistake as to those matters." Tarrant v. Monson, 96 Nev. 844, 845, 619
11 P.2d 1210, 1211 (1980). "If a person is in fact aware of certain uncertainties a mistake does not exist
12 at all." Id.

13 Kvam alleges that he was mistaken about the viability of the project, entitling him to rescind
14 the Terms of Agreement and obligating Mineau and Legion to reimburse Kvam all of the funds he
15 invested in the project, plus interest. However, Kvam was aware at the time he entered into the Terms
16 of Agreement that this investment carried risk and that he had limited knowledge with respect to the
17 viability of the project, but he treated that limited knowledge as sufficient. Kvam therefore bore the
18 risk of the uncertainties inherent in a real estate renovation investment such as this project, including
19 that the project would not succeed and might lose money.

20 **8. *Kvam's Damages, If Any, Were Caused Or Exacerbated By His Own Actions.***

21 "As a general rule, a party cannot recover damages for loss that he could have avoided by
22 reasonable efforts." Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219,
23 226 (2005).

24 Kvam alleges that he has suffered damages in the amount of all of the funds he invested in
25 the project, plus interest, plus anticipated profit. However, most, if not all, of Kvam's alleged
26 damages were caused by his own actions and could have been avoided by reasonable efforts.
27 Specifically:

28 ///

- Kvam was in direct and regular contact with TNT throughout the course of the scheduled renovation and prior to making at least the second and third renovation draws. Had Kvam taken reasonable efforts to confirm his understandings and beliefs about TNT's conduct, he could have mitigated his damages.
- Kvam turned off the power to the Property without notifying Legion or Mineau, causing the pipes to freeze and burst and flood the Property. Had Kvam taken reasonable efforts to maintain the power and heat at the Property, these damages could have been avoided.
- Kvam filed suit and demanded that the Property be sold before the project was finished or even the water damage repaired, resulting in the Property being sold at a substantial loss.

9. *Mineau's And Legion's Contractual Obligations, If Any, Were Excused Because Kvam Breached The Terms Of Agreement First.*

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

Kvam alleges that Mineau and Legion breached their legal, contractual, and fiduciary duties to Kvam and the partnership by failing to properly manage and complete the renovation. Mineau and Legion dispute that either of them had any legal, contractual, or fiduciary duty to "properly manage and complete the renovation." However, even if Kvam is able to establish such duties, Mineau and Legion's performance was excused because Kvam breached the Terms of Agreement first by refusing to accept an assignment of all interest and remedies in the partnership as required by the Terms of Agreement and by filing suit against Legion and Mineau and demanding that the Property be sold before the project was finished, resulting in the Property being sold at a substantial loss.

10. *Mineau's And Legion's Conduct Was Not Wrongful, Fraudulent, Oppressive, Or Malicious.*

Some manner of wrongful, fraudulent, oppressive, or malicious misconduct is an essential element of each of Kvam's fraud, conversion, RICO, and punitive damages claims. However, as explained in the *Motion for Summary Judgment*, Kvam has not presented any admissible evidence, and none exists, that Mineau or Legion engaged in any wrongful, fraudulent, oppressive, or malicious

1 misconduct.

2 **11. All Actions Taken By Mineau And Legion Were Just, Fair, Privileged, With Good**
3 **Cause, In Good Faith, And Without Malice.**

4 Some manner of improper conduct is an essential element of Kvam's claims for breach of
5 fiduciary duties, tortious breach of the implied covenant of good faith and fair dealing, fraud,
6 conversion, RICO, and punitive damages claims. However, as explained in the *Motion for Summary*
7 *Judgment*, Kvam has not presented any admissible evidence, and none exists, that Mineau or Legion
8 engaged in any misconduct.

9 **B. A Statement Of Admitted Or Undisputed Facts.**

10 As presented in the *Motion for Summary Judgment* and not materially disputed in the
11 opposition, Legion and Mineau believe the following facts are undisputed:

12 1. In late 2016 / early 2017, Mineau, Kvam, and Michael J. Spinola ("Spinola") began
13 formulating a plan to purchase the Property, renovate it, and sell it for a profit

14 2. On January 3, 2017, Legion entered into a *Residential Real Estate Purchase and Sale*
15 *Contract* to purchase the Property for \$44,000.00.

16 3. On February 13, 2017, the parties entered into a document entitled *Terms of*
17 *Agreement between Legion Investments LLC (its Members) And Jay Kvam (Initial Funding Member*
18 *of Same) RE: 7747 S. May Street, Chicago Illinois* ("Terms of Agreement").

19 4. The Terms of Agreement reads, in its entirety, as follows:

20 With Regards to acquisition of the aforementioned property, it is understood that the
21 membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay
22 Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all
23 expenses are accounted for, to include interest due on funds dispersed. Initial purchase
24 is being funded by Jay Kvam, who is there by assigned any remedies due should the
25 transaction fail in anyway. Initial funder will be due a 7% annual return on any funds
26 provided due from date of disbursement. There is expected to be 3 renovation draws
27 necessary on this project. First draw to be funded by Mr. Kvam, Due to present and
28 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.

(all typographical errors in original).

5. The Terms of Agreement was signed by Kvam, Mineau, and Spinola.

6. On February 13, 2017, Kvam wired \$44,000.00 to Citywide Title Corp, Escrow No.

1 719630, for the purchase of the Property.

2 7. Kvam subsequently wired an additional \$784.31 to the title company to cover the
3 buyer's portions of the closing costs.

4 8. Pursuant to the Terms of Agreement, Legion took title to the Property that same day.

5 9. Legion promptly undertook efforts to identify a contractor and obtain bids to renovate
6 the Property.

7 10. On March 16, 2017, Legion's property manager in Chicago, Colleen Burke, texted to
8 Mineau, "I have the other contractor I told you about going to May Street. I'm really liking this guy.
9 He seems very fair and hard worker. I would like to set up a conference call with him this weekend."
10 That contractor turned out to be TNT Complete Facility Care Inc. ("TNT").

11 11. On March 19, 2017, Ms. Burke emailed Mineau the contact information for TNT's
12 principals, Derek Cole and Todd Hartwell, along with TNT's references and Certificate of Insurance.

13 12. On March 23, 2017, Legion entered into a *Contractor Agreement* with TNT
14 ("Contractor Agreement").

15 13. The Contractor Agreement identified Todd Hartwell as TNT's CEO and Derek Cole
16 as TNT's Field Operations VP.

17 14. Pursuant to the Contractor Agreement, TNT agreed to fully renovate the Property for
18 a flat fee of \$80,000.00.

19 15. Progress payments were to be made pursuant to a defined schedule. Id. TNT agreed
20 to complete the project by June 1, 2017.

21 16. On March 23, 2017, pursuant to the Terms of Agreement and the Contractor
22 Agreement, Kvam wired \$20,000.00 directly to TNT with the reference "7747 South May Street –
23 Legion Investments – Jay Kvam." This represented the required down payment "to secure permits,
24 architect, demo."

25 17. On April 9, 2017, TNT emailed proposed floor plans to Mineau, who forwarded them
26 to Kvam and Spinola for review and input.

27 18. On April 14, 2017, Kvam emailed Todd Hartwell (TNT's CEO) to inquire as to
28 whether Legion had an assigned account number with TNT and the preferred way for Kvam to send

1 TNT the next progress payment.

2 19. Kvam then wrote Todd Hartwell again, indicating that he had just spoken with Mr.
3 Hartwell and that he was "heading to the bank now to set up the wire."

4 20. Shortly thereafter, Kvam wired another \$20,000.00 directly to TNT with the reference
5 "Second Draw Legion Investments Jay Kvam."

6 21. On and around May 5, 2017, Derek Cole (TNT's Field Operations VP) came to Reno
7 to visit with Mineau, Kvam, and others. Kvam's notes indicate that they first met at Mineau and
8 Spinola's office, where they discussed Mr. Cole's thoughts on development in the Chicago area, his
9 construction experience and affiliations, his family and community background, his work ethic, and
10 general information about how they could best work together on current and future projects in the
11 Chicago area. Kvam's notes indicate that the group then went to Skipolini's Pizza for dinner and
12 continued discussing business opportunities in the Chicago area. Kvam's notes indicate that, after
13 dinner, *just Kvam and Mr. Cole* retired to Kvam's home and continued discussing business
14 opportunities and general operating practices in the Chicago area.

15 22. Kvam and Mr. Cole also specifically discussed the renovation of the Property, and Mr.
16 Cole represented to Kvam that the project would be "done in early June." Mr. Cole spent the night
17 at Kvam's home (which Kvam offered as a vacation rental) and Kvam took Mr. Cole to the airport
18 the next morning.

19 23. On May 9, 2017, Mineau texted Kvam and Spinola approximately nine (9)
20 photographs of the Property which he had received from Mr. Cole.

21 24. Mineau also informed Kvam and Spinola that he "just got this from Derek [Cole] roof
22 is all done at May street."

23 25. On May 15, 2017, Kvam texted Derek Cole to check on him after an apparent car
24 accident and to give Kvam's mobile telephone number to Mr. Cole.

25 26. Mr. Cole responded by sending Kvam forty-six (46) photographs of the interior and
26 exterior of the Property, purportedly showing the work TNT had completed to date and the current
27 status of the project. These pictures included the nine (9) pictures of the roof which Mineau had
28 forwarded to Kvam on May 9, 2017.

1 27. On May 17, 2017, Kvam sent Mr. Cole a message on Slack indicating, "first half of
2 the third draw on May to go out tomorrow."

3 28. On May 18, 2017, Kvam wired \$9,000.00 directly to TNT with the reference "Half of
4 Third Installment."

5 29. On May 21, 2017, Mr. Cole informed Mineau that TNT would be "installing floors
6 this week and should be finishing very soon." Mineau forwarded this information on to Kvam.

7 30. On May 26, 2017, Criterion NV LLC, acting on Mineau's behalf, wired \$20,000.00
8 directly to TNT with the reference "May Street."

9 31. Over the course of the next week, Kvam and Mr. Cole texted regularly concerning the
10 Property.

11 32. On May 31, 2017, Kvam texted Mineau and said, "Just let me know if you ever feel
12 that I'm overly involved with anything; I don't want to step on your toes. ☺ I just figure that billings
13 are financial matters, so I can help shoulder some of that responsibility in my role for our properties.
14 I can receive, process, manage, account, and pay for them as a routine matter for our acquisitions."

15 33. Mineau responded and said, among other things, "No problem at all I don't mind the
16 help, just want to make sure we are all on the same page with everything. Perhaps you and I can get
17 together to figure out how we want to run these projects going forward." Kvam responded with, "Just
18 wanted to apologize for inadvertently putting you in an awkward position with Derek regarding the
19 status of our single family house rehabs. He asked me whether I needed more, and I told him that I
20 was analyzing what we currently have this week and next. I'll play it closed to the [vest] with Derek
21 going forward. Again, really sorry."

22 34. Over the course of next month, Kvam and Mr. Cole texted regularly concerning the
23 Property. Among other things, Mr. Cole sent Kvam and Mineau dozens of pictures of the work being
24 performed at the Property. Mr. Cole also notified Kvam that "I got all the permits and paperwork
25 back from the city last week file from [sic] my inspections as soon as they come do those I'm two
26 weeks after that." In response to Kvam's inquiry, Mr. Cole explained that the inspections were "for
27 the rough plumbing and electrical."

28 35. TNT failed to complete the project.

1 36. By December 2017, Kvam had become frustrated with TNT's excuses and delays and
2 indicated his fear that TNT had defrauded them.

3 37. Bradley Tammen, informed Mineau and Kvam that he had a friend drive by the
4 Property and described its condition as "kind of 'condemned looking.'"

5 38. Mineau shared these concerns with Mr. Cole, who attempted to justify the street-
6 appearance of the Property as merely security measures during the construction.

7 39. Mineau notified Kvam that he had asked his attorney in Chicago to draft a demand
8 letter to TNT. Alternatively, Mineau offered to "sign the property over" to Kvam and Mr. Tammen,
9 allowing them to complete the construction and keep the profit themselves.

10 40. On December 31, 2017, Kvam delivered a letter to Mineau concerning the Property.

11 41. In his letter, Kvam requested that Mineau "refund [his] investment to-date plus
12 accrued interest...." Kvam also expressly rejected Mineau's offer to transfer the Property to Kvam
13 and Tammen, stating that he did not want to assume the role of managing the project and expressing
14 concern that TNT had done little construction work for the money it had been paid. Kvam further
15 stated, "I deem the project a failure...."

16 42. On October 24, 2018, Legion entered into a *Residential Real Estate Purchase and Sale*
17 *Contract* to sell the Property for \$41,000.00.

18 43. On November 16, 2018, escrow closed on the Property.

19 44. Legion's share of prorated property taxes, closing costs, and the commission owed to
20 the real estate brokers equaled \$16,526.23.

21 45. The net proceeds from the closing were therefore \$24,473.77.

22 46. On December 12, 2018, the parties entered into a *Stipulation to Deposit Funds; Order*
23 in this action, pursuant to which Legion deposited the \$24,473.77 of net proceeds from the sale with
24 the Clerk of Court in this action.

25 47. On December 19, 2018, Legion's attorney in Chicago notified it that an additional
26 \$1,864.14 had been received from the sale of the Property as a result of a refund on a tax bill and a
27 water bill. With this refund, the total net proceeds from the sale of the Property are \$26,337.91.

28 ///

1 **C. A Statement Of Issues Of Law Supported By A Memorandum Of Authorities.**

2 **1. *Kvam's First Cause Of Action (Declaration of Joint Venture).***

3 The legal status of the parties and their respective duties are governed by NRS Chapter 87 and
4 the Terms of Agreement. A issue of law exists concerning the legal rights created by the Terms of
5 Agreement, the status of the unincorporated joint venture, the respective interests of the joint
6 venturers, a declaration on the amount of loans and contributions made by each of the joint venturers,
7 and a declaration that the parties were required to assign the entire interest in the joint venture to
8 Kvam in the event it failed in any way.

9 "The only fiduciary duties a partner owes to the partnership and the other partners are the duty
10 of loyalty and the duty of care." NRS 87.4336(1). The statutory duty of loyalty is limited to the
11 following:

12 (a) To account to the partnership and hold as trustee for it any property, profit or
13 benefit derived by the partner in the conduct and winding up of the partnership
14 business or derived from a use by the partner of partnership property, including the
15 appropriation of a partnership opportunity;

16 (b) To refrain from dealing with the partnership in the conduct or winding up of the
17 partnership business as or on behalf of a party having an interest adverse to the
18 partnership; and

19 (c) To refrain from competing with the partnership in the conduct of the partnership
20 business before the dissolution of the partnership.

21 NRS 87.4336(2). The statutory duty of care is limited to "refraining from engaging in grossly
22 negligent or reckless conduct, intentional misconduct or a knowing violation of law." Id. at (3).

23 **2. *Kvam's Second Cause Of Action (Rescission or Reformation of Agreement).***

24 An issue of law exists concerning whether the Terms of Agreement should be rescinded or
25 reformed.

26 "A contract may be rescinded on the basis of mutual mistake when both parties, at the time
27 of contracting, share a misconception about a vital fact upon which they based their bargain." Land
28 Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686, 694, 356 P.3d 511, 517 (2015) (internal
citations omitted). "However, mutual mistake will not provide grounds for rescission where a party

bears the risk of mistake.” Id. (citing Restatement (Second) of Contracts §§ 152(1), 154(b), (c) (1981)). “[I]f the risk is reasonably foreseeable and yet the contract fails to account for that risk, a court may infer that the party assumed that risk.” Id.

Alternatively, “courts in this state will reform contracts ... in accordance with the true intention of the parties when their intentions have been frustrated by a mutual mistake.” Seyden v. Frade, 88 Nev. 174, 178, 494 P.2d 1281, 1284 (1972). “Reformation is based upon equitable principles, applied when a written instrument fails to conform to the parties' previous understanding or agreement.” Grappo v. Mauch, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994).

3. *Kvam's Third Cause Of Action (Breach of Contract - Loan).*

An issue of law exists concerning whether the Terms of Agreement constitutes a loan agreement, pursuant to which Legion and/or Mineau are legally obligated to “repay” Kvam, and whether Legion and/or Mineau are liable to Kvam for having breached such a loan agreement.

Contract interpretation is a question of law. Am. First Fed. Credit Union v. Soro, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015); see also Fed. Ins. Co. v. Am. Hardware Mut. Ins. Co., 124 Nev. 319, 322, 184 P.3d 390, 392 (2008). Generally, when a contract is clear on its face, it will be construed from the written language and enforced as written. Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The court has no authority to alter the terms of an unambiguous contract. Id. Furthermore, the court cannot force upon parties contractual obligations, terms or conditions which are not contained in the contract. McCall v. Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946); Harrison v. Harrison, 132 Nev. 564, 376 P.3d 173 (2016); Golden Rd. Motor Inn, Inc. v. Islam, 132 Nev. 476, 376 P.3d 151 (2016); Reno Club, Inc. v. Young Inv. Co., 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947).

4. *Kvam's Fourth Cause Of Action (Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing – Joint Venture Agreement).*

An issue of law exists concerning the scope of the Terms of Agreement and the covenant of good faith and fair dealing implied therein, and whether Legion and/or Mineau are liable to Kvam for having breached the Terms of Agreement or tortiously breached the implied covenant of good faith and fair dealing.

1 To prevail upon a claim for tortious breach of the covenant of good faith and fair dealing, the
2 plaintiff must prove that: (1) plaintiff and defendant entered into a contract; (2) defendant owed a
3 duty of good faith to plaintiff arising from the contract; (3) a special element of reliance or fiduciary
4 duty existed between plaintiff and defendant where defendant was in a superior or entrusted position;
5 (4) defendant breached the duty of good faith by engaging in grievous and perfidious misconduct;
6 and (5) plaintiff suffered damages as a result of the breach. Great Amer. Ins. Co. v. Gen. Builders,
7 Inc., 113 Nev. 346, 355, 934 P.2d 257, 263 (1997); see also State, Univ. & Cmty. Coll. Sys. v. Sutton,
8 120 Nev. 972, 989, 103 P.3d 8, 19 (2004).

9 **5. *Kvam's Fifth Cause Of Action (Accounting).***

10 An issue of law exists concerning the scope of Legion's and/or Mineau's duty to account to
11 Kvam and whether Legion and/or Mineau have satisfied that duty, or whether either Legion or
12 Mineau still owes Kvam some duty to account.

13 Nevada law requires a partner to account to the partnership for any partnership property held
14 by that partner. NRS 87.4336(2)(a).

15 **6. *Kvam's Sixth Cause Of Action (Court Supervision of Dissolution and Winding Up,***
16 ***and Appointment of Receiver).***

17 An issue of law exists concerning whether, and to what extent, court supervision of the
18 dissolution and winding up of the partnership is required.

19 **7. *Kvam's Seventh Cause Of Action (Temporary and Permanent Injunction).***

20 Upon information and belief, no issues remain concerning Kvam's Seventh Cause of Action.

21 **8. *Kvam's Eighth Cause Of Action (Fraud, Fraudulent Inducement and Fraudulent***
22 ***Concealment).***

23 An issue of law exists concerning whether Legion and/or Mineau committed any manner of
24 fraud upon Kvam which has caused Kvam to suffer damages.

25 The elements of fraud are: (1) a false representation made by the defendant; (2) defendant's
26 knowledge or belief that the representation is false or that defendant has an insufficient basis for
27 making the representation; (3) defendant's intention to induce the plaintiff to act or to refrain from
28 acting in reliance upon the misrepresentation; (4) plaintiff's justifiable reliance upon the

1 misrepresentation; and (5) damage to the plaintiff resulting from such reliance. Bulbman, Inc. v.
2 Nevada Bell, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). Under Nevada law, Kvam has the burden
3 of proving each and every element of his fraudulent misrepresentation claim by clear and convincing
4 evidence. Barmettler v. Reno Air, Inc., 114 Nev. 441, 446–47, 956 P.2d 1382, 1386 (1998).

5 **9. *Kvam's Ninth Cause Of Action (Conversion).***

6 An issue of law exists concerning whether Legion and/or Mineau converted and of Kvam's
7 personal property.

8 To prevail on his claim for conversion, Kvam must establish that Legion and/or Mineau
9 committed a "distinct act of dominion wrongfully exerted over [Kvam's] personal property in denial
10 of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title
11 or rights." M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910, 193 P.3d
12 536, 542 (2008). "Conversion generally is limited to those severe, major, and important interferences
13 with the right to control personal property that justify requiring the actor to pay the property's full
14 value." Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328–29, 130 P.3d 1280, 1287 (2006).

15 **10. *Kvam's Tenth Cause Of Action (RICO).***

16 An issue of law exists concerning whether Legion and/or Mineau violated predicate
17 racketeering acts under Nevada's Racketeer Influenced and Corrupt Organizations ("RICO") act.

18 Any person who is injured in his business or property by reason of any violation of NRS
19 207.400 has a cause of action against a person causing such injury for three times the actual damages
20 sustained. NRS 207.470. NRS 207.400 lists several crimes relating to racketeering activity and
21 criminal syndicates. "'Racketeering activity' means engaging in at least two crimes related to
22 racketeering that have the same or similar pattern, intents, results, accomplices, victims, or methods
23 of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated
24 incidents...." NRS 207.390. "'Criminal syndicate' means any combination of persons, so structured
25 that the organization will continue its operation even if individual members enter or leave the
26 organization, which engages in or has the purpose of engaging in racketeering activity." NRS
27 207.370.

28 ///

1 **11. *Kvam's Eleventh Cause Of Action (Derivative Claim).***

2 An issue of law exists concerning whether any of the claims alleged by Kvam in this action
3 are actually held by the partnership rather than Kvam personally.

4 **D. A List Of Summaries Of Schedules.**

5 None.

6 **E. The Names And Addresses Of All Witnesses, Except Impeaching Witnesses.**

- 7 1. Brian Mineau
8 c/o Gunderson Law Firm
9 3895 Warren Way
 Reno, Nevada 89509
- 10 2. Jay Kvam
11 c/o Matuska Law Offices
12 2310 South Carson Street, Suite 6
 Carson City, Nevada 89701
- 13 3. Michael Spinola (if necessary)
14 7560 Michaela Drive
 Reno, Nevada 89511
- 15 4. Michelle L. Salazar, CPA/ABV, CVA, CFE, CDFA
16 Litigation and Valuation Consultants, Inc.
17 5488 Reno Corporate Drive, Suite 200
 Reno, Nevada 89511

18 **F. Any Other Appropriate Comment, Suggestion, Or Information For The Assistance Of
19 The Court In The Trial Of The Case.**

20 None.

21 **G. A List Of Special Questions Requested To Be Propounded To Prospective Jurors.**

22 Not applicable, as the jury demand has been withdrawn.

23 **I. Certification By Counsel That Discovery Has Been Completed, Unless Late Discovery
24 Has Been Allowed By Order Of The Court.**

25 Counsel for Legion and Mineau certifies that Legion and Mineau have completed discovery.

26 ///

27 ///

28 ///

1 **J. Certification By Counsel That, Prior To The Filing Of The Trial Statement, They Have**
2 **Personally Met And Conferred In Good Faith To Resolve The Case By Settlement.**

3 Counsel for Legion and Mineau certifies that he has personally met and conferred with
4 opposing counsel in good faith to resolve the case by settlement.

5 **AFFIRMATION**

6 The undersigned does hereby affirm that the preceding document, **DEFENDANTS' TRIAL**
7 **STATEMENT**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe,
8 does not contain the social security number of any person.

9 DATED this 24 day of February, 2020.

10 GUNDERSON LAW FIRM

11
12
13 By: 

Austin K. Sweet, Esq.

Nevada State Bar No. 11725

Mark H. Gunderson, Esq.

Nevada State Bar No. 2134

3895 Warren Way

Reno, Nevada 89509

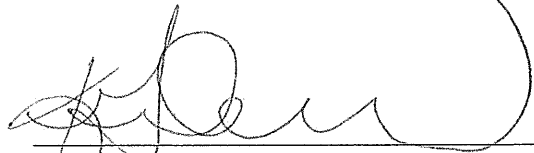
Telephone: 775.829.1222

*Attorneys for Brian Mineau and Legion
Investments*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 24 day of February, 2020, I electronically filed a true and correct copy of
4 the **DEFENDANTS' TRIAL STATEMENT**, with the Clerk of the Court by using the electronic
5 filing system which will send a notice of electronic filing to the following:

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

12 
13 Kelly Gunderson

CASE NO. CV18-00764 **JAY KVAM VS. BRIAN MINEAU, ETAL**

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

2/24/2020
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
Not reported

SETTLEMENT CONFERENCE

9:00 a.m. – Court convened in chambers.

Michael Matuska, Esq., was present on behalf of the Plaintiff, Jay Kvam. *(Mr. Kvam was present for the settlement conference, however he was not present in chambers during the Court's initial conversation with respective counsel.)*

Austin Sweet, Esq., was present on behalf of the Defendants. *(Defendant Brian Mineau was present for the settlement conference, however he was not present in chambers during the Court's initial conversation with respective counsel.)*

COURT reviewed the procedural history of the case, noting that a bench trial is set to begin in Dept. 6 next Monday, March 2, 2020, and there is also a pending Motion for Summary Judgment, which should be decided in the next two (2) business days.

COURT further advised respective counsel that he has reviewed the settlement briefs, noting that the parties' first settlement conference in November 2019 with Mr.

Enzenberger was unsuccessful, and the parties have been ordered by Judge Simons to participate in another settlement conference today.

Upon questioning by the Court, counsel Sweet stated none of the circumstances present during the last settlement conference have changed.

Discussion ensued between the Court and respective counsel regarding the case, the settlement conference, and the pending Motion for Summary Judgment.

COURT noted that a decision on the Motion for Summary Judgment is imminent, and spending today working on settling this case, knowing that an order will be filed in the very near future that could drastically change things, would not be an efficient use of everyone's time. **COURT** recommended that the attorneys vacate the upcoming trial, and continue this settlement conference to next Monday, March 2, 2020, if necessary. Counsel Sweet concurred with the Court's recommendation.

Counsel Matuska indicated that he still had some issues he wanted to discuss privately with the Court.

9:21 a.m. – Court adjourned.

At this point, counsel Sweet and the Clerk left chambers, and the Court spoke with counsel Matuska. Court then conducted a settlement conference with respective counsel and the parties until approximately noon.

COURT directed the Clerk to continue the settlement conference to next Monday, March 2, 2020.

1 **CODE: 4205**

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 mlm@matuskalawoffices.com

8 Attorneys for Plaintiff

9
10 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13 JAY KVAM,

14 Plaintiff,

Case No. CV18-00764

15 v.

Dept. No. 6

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

**Trial: March 2, 2020
9:00 a.m.**

19 Defendants.

20 **PLAINTIFF JAY KVAM'S TRIAL STATEMENT**

21 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska
22 Law Offices, Ltd., Michael L. Matuska, and hereby submits this Trial Statement pursuant
23 to the June 12, 2019 Supplemental Uniform Pretrial Order and WDCR 5.

24 A. **Concise Statement of Claimed Facts**

25 1. **First Cause of Action – Declaration of Partnership**

26 "Except as otherwise provided in subsection 2, the association of two or more
27 persons to carry on as co-owners of a business for profit forms a partnership, whether or
28 not the persons intend to form a partnership." NRS 87.4322. The investment at 7747 S.
May Street, Chicago, Illinois (the "Project" or the "Property") was carried on for profit.
Kvam has therefore claimed that this was a joint venture, which is essentially a single
purpose partnership, and that partnership law applies. See *Clark v. Jdi Loans, LLC* (In re
Clubs), 130 Nev. Adv. Op. 14, 319 P.3d 625, 631 (2014). Mineau denied these

1 allegations in his Answer and in his Opposition to Kvam's Motion for Dissolution on July
2 26, 2018. Mineau reversed course in his January 6, 2020 Motion for Summary Judgment
3 and conceded that partnership law applies. Consequently, Mineau has also conceded
4 that he owes a fiduciary duty to Kvam pursuant to NRS 87.4336 which includes the duty
5 of care, duty of loyalty and the duty to account, and imposes a trusteeship over any
6 property held for the partnership (i.e., 7747 S. May Street). These duties influence the
7 rest of this statement.

8 2. Second Cause of Action – Rescission or Reformation of Agreement

9 Rescission is a remedy, equitable in nature, that allows an aggrieved party to a
10 contract to abrogate totally, or cancel, the contract, with the final result that the parties
11 are returned to the position they occupied prior to formation of the contract. *Bergstrom v.*
12 *Estate of DeVoe*, 109 Nev. 575, 577, 854 P.2d 860, 861 (1993). *citing* *Crowley v.*
13 *Lafayette Life Ins. Co.*, 106 Idaho 818, 683 P.2d 854 (1984); *Breuer-Harrison, Inc. v.*
14 *Combe*, 799 P.2d 716 (Utah Ct.App.1990); *Busch v. Nervik*, 38 Wash.App. 541, 687 P.2d
15 872 (1984).

16 Similarly, the remedy of reformation is available to relieve a party to a contract of a
17 mistake. *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 839 P.2d 399, 108 Nev. 811
18 (1992); 1 Restatement of the Law Second (Contracts 2d) § 158 (Am. Law Institute 1979);
19 2 Restatement of the Law Second (Contracts 2d) § 204 (Am. Law Institute 1979). "Under
20 the rule stated in § 204, when the parties have not agreed with respect to a term that is
21 essential to a determination of their rights and duties, the court will supply a term that is
22 just in the circumstances." *Id.* at § 158, Comment c. "Or they may have expectations but
23 fail to manifest them, either because the expectation rests on an assumption which is
24 unconscious or only partly conscious, or because the situation seems to be unimportant
25 or unlikely, or because discussion of it might be unpleasant or might produce delay or
26 impasse." *Id.* at § 204, Comment c. "The fact that an essential term is omitted may
27 indicate that the agreement is not integrated or that there is a partial rather than complete
28 integration. In such cases, the omitted term may be supplied by prior negotiations or a

1 prior agreement.” *Id.* at § 204, Comment e.

2 The February 14, 2017 Terms of Agreement is not a complete, integrated contract.
3 The Terms of Agreement needs to be supplemented by the oral agreements between the
4 parties and additional writings. To the extent the parties did not have a meeting of the
5 minds or their agreement is otherwise characterized by fraud or mistake, it should be
6 rescinded or reformed.

7 3. Third Cause of Action – Breach of Loan Agreement

8 The basic elements of a cause of action for breach of contract are well known.

- 9 1. The plaintiff and defendant entered into a valid and existing contract;
- 10 2. Plaintiff performed or was excused from performance;
- 11 3. Defendant breached the contract; and
- 12 4. Plaintiff sustained damages as a result of the breach.

13 *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). Kvam fully
14 performed any obligations required of him. Both the outline of project financing and the
15 Terms of Agreement are clear on one essential point – the funding for the Project is to be
16 repaid at 7% interest. The Terms of Agreement refers to Kvam as the Initial Funding
17 Member and specifies that “Initial Funder will be due a 7% annual return on any funds
18 provided due from date of disbursement.” The Terms of Agreement do not contain any
19 conditions to the obligation to repay Kvam. It is inconsistent for Defendants to point to
20 the Terms of Agreement as the sole agreement between the parties, but then deny what
21 is clearly stated in the Terms of Agreement regarding repayment with 7% interest.

22 4. Fourth Cause of Action – Breach of Contract and Breach
23 Implied Covenant of Good Faith and Fair Dealing – Joint
24 Venture Agreement

25 Kvam’s Fourth Cause of Action is for breach of contract due to Mineau’s failure to
26 provide funding and manage the project. Kvam further alleges Mineau breached the
27 covenant of good faith and fair dealing. “Every contract imposes upon each party a duty
28 of good faith and fair dealing in its performance and enforcement.” *A.C. Shaw Constr.*,

1 *Inc. v. Washoe County*, 105 Nev. 913, 784 P.2d 9 (1989) quoting Restatement (Second)
2 of Contracts, § 205. "Under the implied covenant, each party must act in a manner that is
3 faithful 'to the purpose of the contract and the justified expectations of the other party.'"
4 *Morris v. Bank of America Nevada*, 110 Nev. 1274, 866 P.2d 454 at fn. 2 (1994)
5 (emphasis added) (quoting *Hilton v. Butch Lewis Productions*, 107 Nev. 226, 234, 808
6 P.2d 919, 923 (1991)).¹ A plaintiff may recover damages for breach of the implied
7 covenant of good faith and fair dealing even where there has not been a breach of
8 contract. *Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 886 P.2d 454, 457 (1994).
9 Good faith is a question of fact. *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*,
10 114 Nev. 1304, 971 P.2d 1251 (1998).

11 Where a fiduciary relationship or other special relationship exists, a breach of the
12 covenant of good faith and fair dealing is tortious. A partnership is a special relationship.
13 *Great Amer. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 934 P.2d 257, 263; *K-Mart*
14 *Corp. v. Ponsock*, 103 Nev. 39, 732 P.2d 1364, 1371 (1987) abrogated on other grounds
15 by *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478, 112 L.Ed.2d 474
16 (1990).

17 Mineau acted inconsistent with the intended purpose of the joint venture by not
18 providing funding (or possibly by transferring his interest to Bradley Tammen), not
19 properly managing the Project, allowing Project funds to become commingled with funds
20 for his other Projects, having the contractor work on his other projects instead of the May
21 Street Project, and then failing to repay Kvam from the proceeds of sale. Mineau further
22 denied that he owed any duties to Kvam and failed to account to him.

23 5. Fifth Cause of Action - Accounting

24 The duty to account is one of the essential precepts of the Uniform Partnership
25

26 ¹ "Dynamic Duo, Lewis and King, under the implied covenant of good faith and fair dealing, had a duty to
27 promote the Hilton events in a fair manner and not to manipulate who would be or who would not be the
28 IBF champion and so advance their own interests in a manner that would compromise Hilton's benefits
under the contract." *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 107 Nev. at 234, 808 P.2d at
923.

1 Act: "2. A partner's duty of loyalty to the partnership and the other partners is limited to
2 the following: (a) **To account** to the partnership and **hold as trustee** for it any property,
3 profit or benefit derived by the partner in the conduct and winding up of the partnership
4 business . . ." NRS 87.4336(2)(a). (emphasis added). Mineau failed to account, even
5 though he held title to the Property "as trustee." "1. Each partner is deemed to have an
6 account that is: (a) Credited with an amount equal to the money plus the value of any
7 other property, net of the amount of any liabilities, the partner contributes to the
8 partnership and the partner's share of the partnership profits; and (b) Charged with an
9 amount equal to the money plus the value of any other property, net of the amount of any
10 liabilities, distributed by the partnership to the partner and the partner's share of the
11 partnership losses." NRS 87.4333. "1. In winding up a partnership's business, the
12 assets of the partnership, including the contributions of the partners required by this
13 section, must be applied to discharge its obligations to creditors, including, to the extent
14 permitted by law, partners who are creditors. Any surplus must be applied to pay in cash
15 the net amount distributable to partners in accordance with their right to distributions
16 under subsection 2." NRS 87.4357.

17 Prior to filing suit, Kvam's attorney demanded an accounting. Mineau refused to
18 provide an accounting and responded that "No aspect of NRS Chapter 87 applies to this
19 dispute." (See Plaintiff's Motion in Limine, Ex. "9"). Mineau has now reversed course
20 and conceded that the Uniform Partnership Act applies to this dispute; however, his
21 position on the accounting cause of action remains murky. He no longer seems to deny
22 that Kvam is entitled to an accounting but seems to argue that he has no accounting to
23 provide.

24 6. Sixth Cause of Action – Court Supervision of Dissolution and
25 Winding Up, and Appointment of Receiver

26 Dissolution by court decree is allowed by NRS 87.320. "[A]" partnership continues
27 after dissolution only for the purpose of winding up its business. The partnership is
28 terminated when the winding up of its business is completed." NRS 87.4352(1). Kvam

1 filed this case on April 11, 2018 and included a claim for court supervised dissolution,
2 winding up and appointment of a receiver. Kvam filed a Motion for Dissolution on July
3 11, 2018, which relied heavily on the Uniform Partnership Act. Mineau opposed that
4 motion and disputed the application of the Uniform Partnership Act. Mineau has now
5 reversed his position, entirely, and admits to the application of the Uniform Partnership
6 Act and relies on NRS 87.4336 in his argument regarding Kvam's First and Fifth Causes
7 of Action.

8 Ultimately, Mineau sold the property on November 16, 2018 for net proceeds of
9 \$24,473.77. He did not pay this money to Kvam; rather, Kvam found out about the sale
10 on his own and moved for a restraining order to prevent Mineau from absconding with the
11 money. The Temporary Restraining Order was entered on December 3, 2018. For
12 reasons that are not clear, Mineau did not agree to pay the funds to Kvam, but rather,
13 stipulated to deposit them with the Clerk of the Court. Throughout these proceedings, it
14 seemed as if Mineau was refusing to release the funds to Kvam because someone else
15 might have a claim to the funds, whether Mineau, Bradley Tammen, or someone else.
16 Hereto, Mineau has now reversed his position, and has agreed to release the funds to
17 Kvam. However, his agreement is qualified, and subject to some inchoate claim of offset.
18 Once the funds are eventually released to Kvam, the winding up will be complete, at
19 which time Kvam should be considered the prevailing party on this Sixth Cause of Action.
20 Until then, the winding up needs to be completed with court supervision.

21 7. Seventh Cause of Action – Temporary And Permanent Injunction

22 An injunction is a remedy that does not have to be plead as a separate cause of
23 action and is not susceptible to summary judgment in these circumstances. Injunctive
24 relief typically follows a claim for dissolution and winding up and is intended to prevent a
25 partner from self-dealing with partnership assets and incurring new liabilities outside of
26 the winding up process. "Pursuant to subsection 2, a partnership continues after
27 dissolution only for purposes of winding up its business." NRS 87.4352(1).

28 //

1 The discussion on Kvam's Seventh Cause of Action is similar to the discussion on
2 his Sixth Cause of Action. Many of the objectives of these two causes of action have
3 been achieved. The Property has been sold and the funds secured with the clerk of the
4 court. Once the funds are distributed and the joint venture finally wound up a permanent
5 injunction may not be necessary. Until then, the stipulated, temporary injunction should
6 remain to prevent the loss of the funds.

7 8. Eighth Cause of Action – Fraud, Fraudulent Inducement and
8 Fraudulent Concealment

9 Kvam's Eighth Cause of Action incorporates the various types of fraud and deceit
10 at issue:

11 i. Fraudulent or Intentional Misrepresentation:

- 12 1. A false representation made by the defendant;
- 13 2. Knowledge or belief on the part of the defendant that the representation
14 was false or that he had an insufficient basis of information to make the
15 representation;
- 16 3. An intention on the part of the defendant to induce plaintiff to act or
17 refrain from acting upon the misrepresentation;
- 18 4. Justifiable reliance upon the misrepresentation on the part of the plaintiff
19 in taking the action or refraining from it; and
- 20 5. Damage to the plaintiff, resulting from such reliance.

21 *Nev. J.I. 10.2; Barnletter v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998);
22 *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992).

23 ii. False Promise

- 24 i. The defendant made a promise as to a material matter; and
- 25 ii. At the time it was made, the defendant did not intend to perform;
- 26 iii. The defendant made the promise with the intent to induce
27 plaintiff to rely upon it and act or refrain from acting accordingly;
- 28

- iv. The plaintiff was unaware of the defendant's intention not to perform the promise;
- v. The plaintiff acted in reliance upon the promise;
- vi. The plaintiff was justified in relying upon the promise; and
- vii. The plaintiff sustained damages as a result of plaintiff's reliance on defendant's promise.

Nev. J.I. 10.3; Balsamo v. Sheriff, Clark County, 93 Nev. 315, 316, 565 P.2d 650, 651 (1977).

iii. Concealment

- i. The defendant assumed the responsibility to give information;
- ii. The defendant concealed or suppressed a material fact;
- iii. The defendant was under a duty to disclose the fact to the plaintiff;
- iv. The defendant knew [he] [she] [it] was concealing the fact;
- v. The defendant intended to induce the plaintiff to act or refrain from acting in a manner different than the plaintiff would have done had [he] [she] [it] known the truth;
- vi. The plaintiff was unaware of the fact and would not have acted as [he] [she] [it] did had [he] [she] [it] known of the concealed or suppressed fact; and
- vii. The concealment or suppression of the fact caused the plaintiff to sustain damage.

Nev. J.I. 10.4; Midwest Supply, Inc. v. Waters, 89 Nev. 210, 212-133, 510 P.2d 876, 878 (1973) ("The suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist."); Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406, 1415 (D. Nev. 1995) ("A plaintiff alleging fraud may also ground its case on negative misrepresentations, omissions or fraudulent concealment. 'A defendant may be found liable for misrepresentation even when the defendant does not make an

1 express misrepresentation, but instead makes a representation which is misleading
2 because it partially suppresses or conceals information.”); *Blanchard v. Blanchard*, 108
3 Nev. 908, 911, 839 P.2d 1320, 1322 (1992) (“A defendant may be found liable for
4 misrepresentation even when the defendant does not make an express
5 misrepresentation, but instead makes a representation which is misleading because it
6 partially suppresses or conceals information.”)

7 iv. Fraud by Nondisclosure (Silence):

- 8 i. The defendant assumed the responsibility to give information;
9 ii. The defendant was silent regarding a material fact;
10 iii. The defendant was under a duty to disclose the fact to the plaintiff;
11 iv. The defendant knew [he] [she] [it] was omitting the fact;
12 v. The defendant intended to induce the plaintiff to act or refrain from
13 acting in a manner different than the plaintiff would have done had
14 [he] [she] [it] known the truth;
15 vi. The plaintiff was unaware of the fact and would not have acted as [he]
16 [she] [it] did had [he] [she] [it] known of the omitted fact; and
17 vii. The omission of the fact caused the plaintiff to sustain damage.

18 *Nev. J.I.* 10.5; *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415;
19 *Cohen v. Wedbush, Noble, Cooke, Inc.*, 841 F.2d 282, 287 (9th Cir. 1988) (“In order for
20 a mere omission to constitute actionable fraud, a plaintiff must first demonstrate that the
21 defendant had a duty to disclose the fact at issue.”).

22 v. Negligent Misrepresentation:

- 23 1. The defendant made a representation;
24 2. While in the course of his business, profession, employment or other
25 action of pecuniary interest;
26 3. The defendant failed to exercise reasonable care or competence in
27 obtaining or communicating the representation to the plaintiff;
28 4. The representation was false;

5. The representation was supplied for the purpose of guiding the plaintiff in its business transactions;
6. The plaintiff justifiably relied on the false information; and
7. The plaintiff sustained a loss due to the false information.

Nev. J.I. 10.7; *Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nevada*, 94 Nev. 131, 575 P.2d 938 (1978); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998) ("In *Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nevada*, we adopted the RESTATEMENT (SECOND) OF TORTS § 552 definition of the tort of negligent misrepresentation: (1) One who in the course of his business, profession, or employment or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.").

As explained above, Mineau's fiduciary duty also includes the duty of care, duty of loyalty, duty to hold the Property as a trustee, and duty to account. NRS 87.4336. Mineau's fiduciary duty also includes a duty to disclose. *Nev. J.I.* 10.4; *Midwest Supply, Inc. v. Waters*, 89 Nev. 210, 212-133, 510 P.2d 876, 878 (1973) ("The suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist."); *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D. Nev. 1995) ("A plaintiff alleging fraud may also ground its case on negative misrepresentations, omissions or fraudulent concealment. 'A defendant may be found liable for misrepresentation even when the defendant does not make an express misrepresentation, but instead makes a representation which is misleading because it partially suppresses or conceals information.'"); *Blanchard v. Blanchard*, 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992) ("A defendant may be found liable for misrepresentation even when the defendant does not make an express

1 misrepresentation, but instead makes a representation which is misleading because it
2 partially suppresses or conceals information.”)

3 Mineau’s misrepresentations, concealment and non-disclosure, include: (i)
4 Mineau misrepresented that he would provide funding to the project and concealed that
5 he was unable to provide funding and had to borrow money (if that actually happened);
6 (ii) Mineau misrepresented that he had successfully completed flip projects in Chicago
7 (past tense) and concealed that the same contractor was working on his other projects
8 that could take time and resources away from the May Street Project; (iii) Mineau
9 misrepresented his intention to supervise the Project and concealed his lack of project
10 supervision (he admits that he did not demand invoices from the contractor and that he
11 failed to inspect the percentage of completion); (iv) Mineau misrepresented that Kvam’s
12 project funds would be placed in a separate account and concealed that the funds were
13 commingled with funds for his other projects; (v) Mineau concealed that the contract price
14 had increased to \$70,000; (vi) Mineau concealed that he transferred his partnership
15 interest to Bradley Tammen (if that is what happened); (vii) Mineau concealed the sale of
16 the property; and (ix) Mineau made multiple misrepresentations concerning the status of
17 the project when he instructed Kvam to make payment and thereafter.

18 One of the most obvious pieces of evidence regarding Mineau’s
19 misrepresentation is the April 13, 2017 text from Mineau requesting the second payment
20 from Kvam: “I spoke with Derek last night and this morning and next Tuesday or
21 Wednesday is good for the next draw if that works for you. He said Easter pushed a few
22 inspections back but we will be done no later than the 16th of May.” (See Kvam’s
23 Opposition to Motion for Summary Judgment, Ex. “19”). This was false. The first
24 payment of \$20,000 should have covered all permits and demolition work. The Project
25 never proceeded beyond the demolition phase and based on the Cook County building
26 records provided as Mineau’s Ex. 23, no permits had been issued. The main permit for
27
28

1 Interior Alteration of a Single Family Residence was not issued until June 14, 2017, and
2 the Project partially passed plumbing and electrical inspections on July 17, 2017. There
3 is no record of an inspection on the main permit for Interior Alteration of a Single Family
4 Residence.

5
6 At the hearing on February 11, 2020, Defendants counsel argued that Mineau
7 was simply passing on information from the contractor. Although that may be true for
8 some of the text messages at issue, it is not true for all of the messages. This defense
9 does not explain the other alleged misrepresentations that occurred prior to the
10 Contractor Agreement on March 20, 2017 and it does not explain the concealed facts at
11 all. Moreover, Defendants failed to provide points and authorities on how or why relaying
12 unreliable information from the contractor offers them a defense. It does not. A
13 misrepresentation is fraudulent based on knowledge or belief on the part of the
14 defendant that the representation was false or that he had an insufficient basis of
15 information to make the representation. *Nev. J.I.* 10.2; *Barmletter v. Reno Air, Inc.*, 114
16 *Nev. 441, 956 P.2d 1382 (1998); Blanchard v. Blanchard*, 108 *Nev. 908, 839 P.2d 1320*
17 *(1992)*. Mineau also had a duty of care that required him to exercise reasonable care or
18 competence in obtaining or communicating information to Kvam. *Nev. J.I.* 10.7; *Bill*
19 *Stremmel Motors, Inc. v. First Nat'l Bank of Nevada*, 94 *Nev. 131, 575 P.2d 938 (1978);*
20 *Barmettler v. Reno Air, Inc.*, 114 *Nev. 441, 956 P.2d 1382 (1998)* ("In *Bill Stremmel*
21 *Motors, Inc. v. First Nat'l Bank of Nevada*, we adopted the RESTATEMENT (SECOND)
22 OF TORTS § 552 definition of the tort of negligent misrepresentation: (1) One who in the
23 course of his business, profession, or employment or in any other action in which he has
24 a pecuniary interest, supplies false information for the guidance of others in their
25 business transactions is subject to liability for pecuniary loss caused to them by their
26
27
28

1 justifiable reliance upon the information, if he fails to exercise reasonable care or
2 competence in obtaining or communicating the information.”)

3 9. Ninth Cause of Action - Conversion

4 To prove a claim of conversion, the Plaintiff has the burden of proving each
5 of the following:

- 6 1. That the Defendants committed a distinct act of dominion wrongfully
7 exerted over Kvam’s (or the joint venture’s) personal property, and
- 8 2. The act was in denial of, or inconsistent with, Kvam’s (or the joint venture’s)
9 title or rights therein, or
- 10 3. The act was in derogation, exclusion, or defiance of Kvam’s (or the joint
11 venture’s) title or rights in the personal property.

12 See *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048
13 (2000) (“Conversion is a distinct act of dominion wrongfully exerted over another’s
14 personal property in denial of, or inconsistent with his title or rights therein or in
15 derogation, exclusion, or defiance of such title or rights.”); *Edwards v. Emperor’s Garden*
16 *Restaurant*, 122 Nev. 317, 328, 130 P.3d 1280, 1287 (2006) (“Conversion is a distinct
17 act of dominion wrongfully exerted over personal property in denial of, or inconsistent
18 with, title or rights therein or in derogation, exclusion or defiance of such rights.”).

19 It is important to note that the tort of conversion focuses on the distinct act of
20 dominion. The tort of conversion is not concerned with the question of who received the
21 illicit proceeds. Personal liability attaches when a person participates in conversion, even
22 if that person does not personally benefit from the conversion. *Casias v. Wal-Mart*
23 *Stores, Inc.*, 695 F.3d 428, 434 (6th Cir. 2012), rehearing and rehearing denied; *Binder v.*
24 *Disability Group, Inc.*, 772 F.Supp.2d 1172, 1182 (C.D. Cal. 2011); *In re American Home*
25 *Mortgage Holding*, 458 B.R. 161, 170 (Bankr. D. Del. 2011); Knepper & Bailey *Liability of*
26 *Corporate Officers and Directors* § 6.07[2] (8th ed.) (“It is not necessary that the property
27 be converted for their own personal benefit.”). “Further, conversion is an act of general
28

1 intent, which does not require wrongful intent and is not excused by care, good faith, or
2 lack of knowledge.” *Evans v. Dean Witter Reynolds*, 116 Nev. 538, 5 P.3d 1043, 1048
3 citing *Bader v. Cerri*, 96 Nev. 352, 357 n. 1, 609 P.2d 314, 317 n. 1 (1980). “Whether a
4 conversion has occurred is generally a question of fact for the jury.” *Id.*

5 It is undisputed that Mineau and Legion took title. It is also undisputed that
6 Mineau represented that the project funds would be held in a “separate account so he
7 could keep May street funds separate from other projects.” This did not happen. The
8 conversion was diverting Project funds and holding the proceeds of sale. The main focus
9 is the act in derogation of Kvam’s and the joint venture’s rights to have the Project funds
10 applied to Project. It does not matter who ultimately received the funds, so long as
11 Mineau participated in the conversion, which he did by allowing Project funds to be
12 commingled with other funds. As for proceeds of sale, there is no dispute that Mineau
13 kept those from Kvam. Mineau no longer denies the diversion of funds, and the record
14 demonstrates that he did not pay the proceeds of sale to Kvam.

15 10. Tenth Cause of Action - RICO

16 **NRS 207.390 “Racketeering activity” defined.** “Racketeering
17 activity” means engaging in at least two crimes related to racketeering that
18 have the same or similar pattern, intents, results, accomplices, victims or
19 methods of commission, or are otherwise interrelated by distinguishing
20 characteristics and are not isolated incidents, if at least one of the
incidents occurred after July 1, 1983, and the last of the incidents occurred
within 5 years after a prior commission of a crime related to racketeering.

21 NRS 207.390 only requires two crimes that involve the same or similar victims, or
22 accomplices, results, etc. In this case, the victims are the same, Kvam and the joint
23 venture. The accomplices are the same, or related, including Mineau, Legion
24 Investments, LLC, Michael Spinola, Criterion Investments, Wyoming Partners, LLC, and
25 Imperium 5, LLC. This case involves six (6) wire transfers, and a later sale. Exs. “7”, “8”,
26 “18”, “20”, “21”, “35” and Mineau’s Ex. “19). The pattern, methods, intents and results are
27 the same and involve repeated misrepresentations and concealment.

28 We have said that “Nevada’s anti-racketeering statutes ... are

1 patterned after the federal [RICO] statutes." *Hale v. Burkhardt*, 104 Nev.
2 632, 634, 764 P.2d 866, 867 (1988). However, we have also noted "that
3 Nevada's civil RICO statute differs in some respects from the federal civil
4 RICO statute." *Id.* at 635, 764 P.2d at 868. One critical distinction is found
5 in comparing the language of 18 U.S.C. § 1961(5) with that of NRS
6 207.390. The federal statute provides that a claimant must plead a pattern
7 of racketeering activity and that such a pattern requires at least two
8 predicate acts; Nevada's RICO statute does not speak in terms of a
9 "pattern of racketeering" and provides that racketeering activity means two
10 predicate acts of the type described in NRS 207.390 and NRS 207.360.

11
12 In *Sedima, S.P.R.L. v. Imrex Co.*, the United States Supreme Court
13 noted the critical linguistic distinction between "requires" and "means." 473
14 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). The Court
15 explained:

16 ... [T]he definition of a "pattern of racketeering activity" ... states that
17 a pattern "requires at least two acts of racketeering activity," [18 U.S.C.] §
18 1961(5) (emphasis added), not that it "means" two such acts. The
19 implication is that while two acts are necessary, they may not be sufficient.
20 Indeed, in common parlance two of anything do not generally form a
21 "pattern." *Id.*

22 In *Computer Concepts, Inc. v. Brandt*, 310 Or. 706, 801 P.2d 800
23 (Or.1990), the Oregon Supreme Court distinguished its state RICO statute
24 from the federal RICO statute: Oregon's definitional statute uses the
25 phrase "pattern of racketeering activity means engaging in at least two
26 incidents of racketeering activity," and continues with language similar to
27 that contained in NRS 207.390. 14 *Brandt*, 801 P.2d at 807 (emphasis
28 added). The *Brandt* court concluded that the word "means" (also used in
NRS 207.390) implied that the definition was self-contained and there was
no additional pattern/continuity requirement. *Id.* at 807-08. The Oregon
court concluded that a plaintiff need only allege the elements clearly set
forth in its statute. We interpret our statute in the same manner.

29 In light of the clear distinction between "means" and "requires" noted
30 by both the Supreme Court and other jurisdictions, the district court was
31 incorrect in its assertion that "[a]lthough Nevada's RICO statute does not
32 use the word 'pattern,' the language of 18 U.S.C. § 1961(5) is functionally
33 no different than our requirement." Had the state legislature intended
34 Nevada's RICO provisions to mirror the federal statute in this area, it
35 would have expressly adopted the "requires" language of the federal
36 statute. 15 See *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 667 P.2d
37 1304, 1311 (Ariz.1983) (interpreting Arizona's RICO statutes and noting
38 the differences between the state and federal versions).

Accordingly, we hold that there is no pattern/continuity requirement
as is required under federal law. A state RICO complaint need allege no

1 more than that which is set forth in the Nevada statute. In the instant case,
2 Joanne's complaint sufficiently set forth at least two "not isolated"
3 predicate acts "that have the same or similar pattern, intents, results,
4 accomplices, victims or methods of commission." NRS 207.390.
Therefore, the district court erred in dismissing Joanne's state RICO
claims for failure to sufficiently plead those causes of action.

5 *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801, 810-11 (1998).

6 Based on the foregoing, under Nevada law, racketeering means engaging in at
7 least two crimes related to racketeering as defined in NRS 207.390. Mineau has not
8 denied the predicate acts, nor can he at this point. The predicate acts are listed in NRS
9 207.360 and include: 9. Taking property from another not under circumstances
10 amounting to robbery; 27. Embezzlement of money or property valued at \$650 or more;
11 28. Obtaining possession of money or property valued at \$650 or more, or obtaining a
12 signature by means of false pretense; 29. Perjury or subornation of perjury; 30. Offering
13 false evidence.

14 Mineau obtained a signature from Kvam and obtained money under false
15 pretenses, and subject to multiple misrepresentations, including the representation that
16 the money would be placed in a separate account. Although the construction draws were
17 not paid directly to Mineau, they were paid for the benefit of Property owned by his
18 company, Legion Investments, LLC, and Mineau later obtained possession of the
19 proceeds of sale. The conversion is described above. The false evidence and perjury
20 are now evident. In his verified discovery responses on October 1, 2018, Mineau
21 responded as follows:

22 **INTERROGATORY NO. 6:**

23 Identify all persons who contributed capital or funds for the purchase
24 and improvement of the Property. Include the names, addresses, phone
25 numbers, dates and amounts of the contributions.

26 //

27 //

28 //

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

2 Jay Kvam

3 * * * *

4 Criterion NV LLC

5 7560 Michaela Dr.

6 Reno, NV 89511

7 Contributions: March 26, 2017 \$20,000 (Ex. "42").

8 In opposition to Kvam's Motion for Leave, Mineau submitted a declaration with the
9 vague statement as follows: "5. In 2017, Michael Spinola and I caused Criterion, NV
10 LLC to contribute \$20,000 to the project at 7747 May Street, Chicago, Illinois ("Property")
11 on behalf of Legion." (Trans. # 7067328).

12 Mineau later filed a Reply to his Motion for Protective Order (Trans. # 7134280) in
13 which he provided another declaration which expanded on his prior declaration as
14 follows:

15 9. In Late May, 2017, TNT's owner Derek Cole called me and
16 requested a \$20,000 construction draw for the project at the Property. I
17 was travelling at the time and was unable to promptly make direct
18 payment; however, I had sufficient cash on hand in my personal safe at
19 home to make this payment. At my request, Michael Spinola agreed to
20 arrange to pick up the cash and have it wired to TNT.

21 Mineau changed his story entirely in his most recent Declaration wherein he now
22 testifies that "25. . . However, upon further reflection and consideration in preparing this
23 Declaration and preparing for trial, I believe my previous testimony was mistaken. I now
24 recall that I borrowed \$20,000 from Bradley Tammen . . ." (Mineau's Ex. "1"). Mineau
25 further testifies that he repaid \$28,000, which would be \$8,000 interest. Unfortunately for
26 Mineau, this revelation comes after the close of discovery, he never identified Bradley
27 Tammen as a person with knowledge on the NRCP 16.1 disclosures (Trans. # 6813392)
28 and he has provided no evidence of such a loan. This entire line of testimony appears to
 be false and is part of the continuing fraud in this case.

 11. Eleventh Cause of Action – Derivative Claim

 "A partnership may maintain an action against a partner for a breach of the
 partnership agreement, or for the violation of a duty to the partnership, causing harm to

1 the partnership.” NRS 87.4335(1). Also, “A partner may maintain an action against the
2 partnership or another partner for legal or equitable relief . . .” This is exactly what Kvam
3 has asserted. All of the aforementioned claims are asserted on his own behalf and on
4 behalf of the joint venture. This is to prevent any argument from Mineau that the rights
5 asserted belong to the joint venture, rather than Kvam. Mineau did not raise that
6 argument in this motion for summary judgment.

7 B. Statement of Admitted or Undisputed Facts

8 1. Kvam’s first contact about the Project came from a mutual acquaintance,
9 Michael Spinola, in late December, 2016.

10 2. Spinola introduced Kvam to Mineau at a Starbucks a few days later,
11 possibly January 1, 2017, where the trio drafted an outline of the Project financing as
12 follows: purchase price of \$44,000, construction costs of \$70,000, closing costs of
13 \$13,000 and an estimated sales price of \$169,000. They also estimated that the Project
14 would take 3 months to complete. The money advanced for the project would be repaid
15 at 7% interest before splitting profits into 3 equal shares.

16 3. Mineau already had an estimate from Triple “R” construction with an
17 estimated completion date of 3 months.

18 4. The project outline and estimate were circulated among the parties a few
19 days later.

20 5. The parties agreed that Kvam was to put up the \$44,000 purchase price
21 and there would be three (3) construction draws, one from each of the partners.

22 6. Mineau represented that he had a history of successful projects in Chicago
23 but did not disclose that he had ongoing projects there.

24 7. Mineau did not disclose that he would have to borrow his share of the
25 funding.

26 8. Mineau proceeded to sign a purchase agreement for \$44,000 and closed
27 escrow as planned on February 13, 2017. Kvam provided the purchase price and an
28 additional amount of \$784.31 for miscellaneous escrow costs. Mineau acquired title in

1 the name of Legion Investments, LLC.

2 9. The next day, on February 14, 2017, Kvam signed a document entitled
3 "Terms of Agreement." The Terms of Agreement refers to Kvam as the Initial Funding
4 Member and specifies that "Initial Funder will be due a 7% annual return on any funds
5 provided due from date of disbursement." The Terms of Agreement do not contain any
6 conditions to the obligation repay Kvam.

7 10. The Terms of Agreement also explains that Kvam was to pay Spinola's
8 funding draw, and in exchange, he would receive ½ of the profits that were allocated for
9 Spinola. The Terms of Agreement does not contain an integration clause and does not
10 purport to encapsulate all of the discussions between the parties.

11 11. On February 17, 2017, Kvam texted Mineau to ask for wiring details to
12 forward the first payment. Mineau responded "Not yet, he was getting the wiring info for
13 a separate account so he could keep May Street funds separate from other projects."

14 12. Mineau proceeded to prepare and sign the Contractor Agreement with TNT
15 Complete Facility Care, Inc. on March 20, 2017.

16 13. The Contractor Agreement specifies *inter alia* that the project will be "turn
17 key" complete by June 1, 2017 at a total cost of \$80,000 (See Addendum "A").
18 Addendum A also specified the payment schedule, including:

19 \$20,000 to secure permits, architects, demo;

20 \$15,000 to begin reconstruction April 17th 2017

21 \$15,000 due April 27th 2017

22 \$13,000 due May 8th 2017

23 \$9,000 due May 18th 2017

24 Final payment of \$8,000 due upon punch list completion.

25 The Contractor Agreement also specifies that "The Owner [Legion/Mineau, ed.]
26 will approve the percentage of work at its sole discretion" (Addendum "B") and "IN
27 ORDER TO RECEIVE PAYMENT, CONTRACTOR MUST PROVIDE INVOICES . . ."
28 (Par. 4).

1 14. Mineau never obtained invoices, never verified that work was progressing,
2 never provided the Contractor Agreement to Kvam, and never informed Kvam that the
3 price had increased to \$80,000. Because Kvam did not have the Contractor Agreement,
4 he did not know the payment schedule and had to rely on Mineau.

5 15. On March 23, 2017, Mineau texted that "... we are ready for our first draw
6 on May street 20k. I will email the wiring instructions to you jay and if you have time to get
7 it out some time in the next day or two I would appreciate it." Later that morning, Mineau
8 emailed the wire instructions as an attachment. Kvam wired \$20,000 to TNT that same
9 day.

10 16. On April 13, 2017, Mineau texted that "I spoke with Derek last night and this
11 morning and next Tuesday or Wednesday is good for the next draw if that works for you.
12 He said Easter pushed a few inspections back but we will be done no later than the 16th
13 of May." In reliance on that text message, Kvam sent another \$20,000 on April 14, 2017.
14 Kvam sent another \$9,000 on May 18, 2017.

15 17. Mineau also claims in Paragraph 15 of his Declaration that he sent another
16 \$20,000, borrowed from Bradley Tammen, on May 26, 2017. However, according the
17 Contractor Agreement, the second draw was only supposed to be for \$15,000, and the
18 first draw was to cover all permits and demolition work.

19 18. The Project never proceeded beyond the demolition phase.

20 19. The first permit that was issued on April 21, 2017 was for "Removal of
21 Drywall Only." The permit for "Interior Alteration of a Single Family Residence,
22 Architectural, Mechanical, Plumbing and Electrical Involved" was not issued until June
23 14, 2017 and no inspections took place until "partial pass" of plumbing and electrical on
24 July 11, 2017.

25 20. Although no more funds were paid after May 9, 2017 (or May 26, 2017),
26 Mineau continued to provide inaccurate reports on the status of the Project, including:

27 May 21, 2017: "I did actually he [Derek Cole, Contractor] called me about an hour
28 and a half ago and told me he is installing floors this week and should be finished very

1 soon.”

2 June 26, 2017: “I spoke with him this morning and they are finishing the drywall
3 then the kitchen goes in and finishing touches in the bath room and we are done. He told
4 me this morning if the city can finish their final inspection at two weeks (no inspections
5 next week cause of the holiday) then we are done!”

6 August 12, 2017: “Yes sir. He has gotten everything up and running again and
7 has promised a swift completion. I have a follow up call with him Monday to go over the
8 progress.”

9 August 16, 2017: “[Todd] has assured me we will be able to list the first week of
10 September, willing no other city problems.”

11 September 25, 2017: “Also spoke with Derek this morning and we are finally about
12 to cross the finish line, need two more inspections by the city (one this week) then the
13 other and we are done.”

14 October 12, 2017 “... he said they are doing the final touches then the occupancy
15 inspection then it’s completed.”

16 November 5, 2017: “I spoke to Derek on Friday morning ... and he said some of
17 the plumbing work wasn’t to the inspectors standard / preference and that he didn’t pass.
18 He is correcting the items now and asked if I could send him \$1500 (of the 10k remaining
19 budget on Monday to help correct these items and speed it up. I told him I would. Once
20 they are completed and we have a new date I will let everyone know.”

21 November 19, 2017: “... he [Cole] said they will be done in 14-17 days from
22 tomorrow, ...” and: “... I plan on having an agent come to the property to list no later than
23 the 8th of December and he said it would be done.”

24 December 26, 2017: “... he said it has new windows and a new room and
25 everything is basically complete” and “No one has lost any capital yet nor will they.”

26 21. Kvam ultimately lost patience and requested his money back. After various
27 letters, including letters from the attorneys in this case, Kvam sued on April 11, 2018 after
28 Mineau denied that he owed any duties to Kvam and was unable or unwilling to provide a

1 completion date.

2 22. During this lawsuit, Mineau sold the Property to Thousand Oaks
3 Management, LLC for a loss on November 16, 2018. (See Closing Statement showing
4 sales price of \$40,000 and net proceeds of \$24,473.77). Kvam was left to find out about
5 the sale on his own and moved for a temporary restraining order and preliminary
6 injunction on November 30, 2018 to prevent the loss of the sale proceeds. (#7000744).
7 Facing no other options, Mineau and Legion stipulated to deposit the funds with the clerk
8 of the court (#7021308). Although Defendants' attorney admitted at oral argument that
9 the funds should have been paid to Kvam, he did not explain why that did not happen.

10 C. Statement of Issues of Law

11 Most of the issues of law are included in Part A above. Additional issues of law
12 include:

13 Affirmative Defenses

14 Mineau's primary defense is the unsupported allegation that the contractor is at
15 fault for these problems. That is an inchoate affirmative defense of a supervening cause.
16 "[W]here an unforeseeable supervening cause intervenes between a defendant's
17 negligence and a plaintiff's injury, the defendant is relieved of liability. However, where a
18 third party's intervening intentional act is reasonably foreseeable, a negligent defendant
19 is not relieved of liability. Further, the question of foreseeability is generally one for the
20 jury." *Dakis for Dakis v. Scheffer*, 898 P.2d 116, 111 Nev. 817 (Nev. 1995) citing *El*
21 *Dorado Hotel v. Brown*, 100 Nev. 622, 628-29, 691 P.2d 436, 441 (1984) (citations
22 omitted). As such, the defense of a supervening cause is only a defense to a negligence
23 cause of action. Moreover, any wrongdoing by the contractor was foreseeable in light of
24 Mineau's failure to segregate the project funds and failure to supervise the Project.

25 Mineau likewise tries to blame Kvam for these problems. To the extent
26 Defendants intended to argue comparative negligence, comparative negligence is not a
27 defense to Kvam's breach of contract claims or to the various intentional torts alleged.
28 NRS 41.141.

1 Punitive Damages

2 Many of the causes of action warrant punitive damages, including tortious breach
3 of the covenant of good faith and fair dealing; fraud, concealment and breach of fiduciary
4 duty; and conversion. Punitive damages can be based on "Conscious disregard," fraud,
5 malice or oppression as those terms are used in NRS 42.001.
6

7 **NRS 42.001 Definitions; exceptions.** As used in this chapter,
8 unless the context otherwise requires and except as otherwise provided in
9 subsection 5 of NRS 42.005:

10 1. "Conscious disregard" means the knowledge of the probable
11 harmful consequences of a wrongful act and a willful and deliberate failure
12 to act to avoid those consequences.

13 2. "Fraud" means an intentional misrepresentation, deception or
14 concealment of a material fact known to the person with the intent to
15 deprive another person of his or her rights or property or to otherwise
16 injure another person.

17 3. "Malice, express or implied" means conduct which is intended to
18 injure a person or despicable conduct which is engaged in with a
19 conscious disregard of the rights or safety of others.

20 4. "Oppression" means despicable conduct that subjects a person to
21 cruel and unjust hardship with conscious disregard of the rights of the
22 person.

23 (Added to NRS by 1995, 2668)

24 Attorney's Fees

25 Kvam also claims attorney's fees under NRS 11, 18.010(2)(b), 37 and as special
26 damages pursuant to *Sandy Valley Association v. Sky Ranch Estates Owners*
27 *Association*, 117 Nev. 948, 35 P.3d 964 (2001), *receded from on other grounds by*
28 *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007), *Liu v. Christopher Homes, LLC*,
130 Nev. 147, 321 P.3d 875 (2014) and explained by *Pardee Homes of Nevada v.*
Wolfram et al., 135 Nev. Adv. Op. 22 (July 3, 2019). Although Kvam's attorney is willing
to testify to the amount of attorney's fees, the preferred approach is to file the
memorandum of attorney's fees and costs following the trial.

RICO Damages

Treble damages and attorney's fees are also available under NRS 207.470.

//

1 D. Summaries of Schedules

2 None

3 E. Names and Addresses of Witnesses

4 Jay Kvam
5 c/o Matuska Law Offices, Ltd.
6 2310 S. Carson Street, #6
7 Carson City, NV 89701

8 Brian Mineau
9 c/o Gunderson Law Firm
10 3895 Warren Way
11 Reno, NV 89509

12 Benjamin Charles Steele, CPA
13 Steele & Associates, LLC
14 611 N. Nevada Street
15 Carson City, NV 89703

16 F. Other

17 Kvam's Motion for Reconsideration, discovery sanctions and other relief is pending
18 and needs to be resolved prior to trial. That motion requests an order to show cause why
19 Mineau should not be held in contempt for making false statements and changing his
20 testimony and alleging new facts after the close of discovery.

21 G. A List of Special Questions to be Propounded to Prospective Jurors

22 N/A

23 H. Status of Discovery

24 Discovery has not been completed. See January 10, 2020 Recommendation for
25 Order and January 24, 2020 Motion for Reconsideration.

26 I. Meet and Confer Regarding Settlement

27 Although the parties appeared for a settlement conference on February 24, 2020
28 before Hon. Elliott Sattler, Dept. 10, Judge Sattler advised that he would postpone the
settlement conference until after the resolution of the pending motion for summary
judgment. As such, the parties have not met and conferred in good faith regarding
settlement.

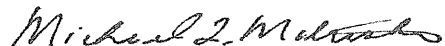
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AFFIRMATION

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

Dated this 26th day of February, 2020.

MATUSKA LAW OFFICES, LTD.



By:

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and
3 that on the 26th day of February, 2020, I served a true and correct copy of the preceding document
4 entitled **PLAINTIFF JAY KVAM'S TRIAL STATEMENT** as follows:

5 Austin K. Sweet, Esq.
6 GUNDERSON LAW FIRM
7 3895 Warren Way
8 Reno, NV 89509
9 asweet@gundersonlaw.com

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

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

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

18 ☐ **BY FACSIMILE:**

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

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

22 /S/ SUZETTE TURLEY
23 SUZETTE TURLEY
24
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