

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of:

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION
INVESTMENTS, LLC,

Respondents.

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Clerk of Supreme Court

Supreme Court Case No. 84443

District Court Case No. CV18-00764

JOINT APPENDIX

VOLUME 14 PART 1

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JAY KVAM

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Code:

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

JAY KVAM,

Plaintiff,

Case No.: CV18-00764

vs.

Dept. No: 6

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

Defendants.

BRIAN MINEAU and LEGION
INVESTMENTS, LLC,

Counterclaimant,

vs,

JAY KVAM,

Counterdefendant

**ORDER GRANTING, IN PART, AND DENYING, IN PART
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;
ORDER GRANTING SUMMARY JUDGMENT
ON CLAIM PURSUANT TO COURT'S NRCP 56 NOTICE**

Before this Court is a *Motion for Summary Judgment* ("Motion") filed by
Defendants/Counterclaimants BRIAN MINEAU ("Mr. Mineau") and LEGION

1 INVESTMENTS, LLC ("Legion") (hereinafter "Mineau/Legion" unless individually
2 referenced), by and through their attorney of record, Gunderson Law Firm.
3 Plaintiff/Counterdefendant JAY KVAM ("Mr. Kvam") filed his *Opposition to Defendants'*
4 *Motion for Summary Judgment; and Cross Motion for Partial Summary Judgment*¹
5 ("Opposition"), by and through his attorney of record, Matuska Law Offices. Mineau and
6 Legion filed a *Reply in Support of Motion for Summary Judgment* ("Reply"). The *Reply*
7 does not address the merits of the countermotion portion of the *Opposition* but does
8 request that the Court strike it. Thereafter, the matter was submitted for decision.
9

10 The Court heard oral arguments on the *Motion* ("Hearing"), requested counsel to
11 provide proposed orders, and the matter was taken under advisement. As a result of oral
12 arguments, this Court conducted further review of the pleadings and papers filed,
13 conducted additional research and gave notice under NRCP 56 of its intention to grant
14 summary judgment on one of Mineau/Legion's claims that was not subject of their *Motion*.
15 The Court heard additional argument in this regard. This Order follows.

16 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

17 This action involves an agreement to purchase, restore, and resell a house in
18 Chicago ("the Property"). *Second Amended Verified Complaint* ("SAC"), ¶ 8. Mr. Kvam
19 provided funding for the Property. SAC, ¶ 8a. Mineau/Legion were designated to manage
20 the operation. SAC, ¶ 8c.

21
22 Mr. Kvam asserts he demanded his money back because he did not receive any
23 interest payments and because renovation activity on the Property ceased. SAC, ¶¶

24
25 ¹The Court admonished counsel in a pretrial conference on January 14, 2020, that cross motions
26 are not allowed under applicable court rules. WDCR 10(3) ("Any motion, opposition, reply, etc.,
27 must be filed as a separate document . . ."). It appears Mr. Kvam has disregarded the Court's
28 admonishment. At the February 11, 2010, hearing on the *Motion* and *Opposition*, the Court
again admonished counsel of the same.

1 8a,17. Mr. Kvam also asserts that he is entitled to receive a return of his investment, plus
2 interest, prior to the sale of the Property. SAC, ¶¶ 12-17. In addition, Mr. Kvam alleges
3 Mineau/Legion sold the Property at a loss and concealed the sale. SAC, ¶ 16.

4 Terms were provided for return on Mr. Kvam's investment if investment was
5 profitable and in the event if was not. Mr. Kvam anticipated an approximate \$13,000
6 profit. When the project failed, Mr. Kvam filed an action.

7
8 The original *Complaint* was filed by Mr. Kvam on April, 2018, asserting claims of
9 relief for: (1) Declaration of Joint Venture; (2) Rescission or Reformation of Agreement;
10 (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied
11 Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of
12 Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and Permanent
13 Injunction; and, (11) Derivative Claim. *Complaint*.

14 The original *Answer and Counterclaim* (filed as one document) was filed on June
15 5, 2018 and alleges eleven claims for relief for: (1) Breach of Contract; (2) Breach of the
16 Covenant of Good Faith and Fair Dealing; (3) Declaratory Relief; (4) Intentional
17 Interference with Prospective Economic Advantage; (5) Deceptive Trade Practices; (6)
18 Abuse of Process; (7) Trespass; (8) Trespass to Chattels; (9) Conversion; (10) Fraud;
19 and (11) Negligence.²

20
21 On September 4, 2018, the Court³ entered its *Order* on Mr. Kvam's *Motion for*
22 *Dissolution*. The Court declined to enter the order requested, finding the record did not
23
24

25 ² The Tenth Claim for Relief (Fraud) and the Eleventh Claim for Relief (Negligence) are
26 identified as "Tenth Claim for Relief."

27 ³ This matter was proceeding in Department 3 before Judge Jerome M. Polaha until June 6,
28 2019.

1 support an adjudication of the issues at that time and was premature due to lack of
2 discovery. *Order*, p. 2.

3 On September 5, 2018, the Court dismissed Mineau/Legion's claims: (8) Trespass
4 to Chattels and (9) Conversion. The Court granted Mr. Kvam's *Motion for a More Definite*
5 *Statement* on claims: (5) Deceptive Trade Practices; (10) Fraud; and (11) Negligence.

6 Mineau/Legion filed their *First Amended Counterclaim* ("FACC") on October 5,
7 2018 (The *Answer* was not restate; the *FACC* was filed as a separate document)
8 asserting the same claims for relief set forth in the original *Answer and Counterclaim* for:
9 (1) Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)
10 Declaratory Relief; (4) Intentional Interference with Prospective Economic Advantage; (5)
11 Deceptive Trade Practices; (6) Abuse of Process; (7) Trespass; (8) Trespass to Chattels;
12 (9) Conversion; (10) Fraud; and (11) Negligence.

13 In response, Mr. Kvam filed his *Motion to Dismiss and for Summary Judgment* on
14 October 25, 2018. Mr. Kvam requested that the Court dismiss the *FACC's* Fifth
15 (Deceptive Trade Practices), Tenth (Fraud), and Eleventh Claims for Relief (Negligence),
16 dismiss any remaining claims dependent on allegations regarding the Atlas Investors
17 Southside LLC, and grant summary judgment on all *FACC* claims for relief. *Motion to*
18 *Dismiss and for Summary Judgment*, p. 1.

19 On January 9, 2019, the Court entered summary judgment in favor of Mr. Kvam on
20 Mineau/Legion's counterclaims for: (1) Breach of Contract; (2) Breach of Covenant of
21 Good Faith and Fair Dealing; (4) Intentional Interference with Prospective Economic
22 Advantage; (5) Deceptive Trade Practice (indicated as dismissed); (6) Abuse of Process;
23 (7) Trespass; (10) Fraud; and (11) Negligence (indicated as dismissed). Mineau/Legion's
24 *FACC* Third Claim for Relief for Declaratory Relief remained viable.

1 Mr. Kvam did not file an answer to the *FACC* Third Claim for Relief for Declaratory
2 Relief and has not done so to date.

3 On January 31, 2019, Mr. Kvam filed his *First Amended Verified Complaint*
4 (*"FAC"*), asserting: (1) Declaration of Joint Venture; (2) Rescission or Reformation of
5 Agreement; (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of
6 Implied Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision
7 of Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and
8 Permanent Injunction; (8) Fraud, Fraudulent Inducement and Fraudulent Concealment;
9 and, (9) Derivative Claim.

10
11 On February 19, 2019, Mineau/Legion filed their *Answer to First Amended Verified*
12 *Complaint*.

13 On September 11, 2019, Mr. Kvam filed his SAC asserting claims of relief for: (1)
14 Declaration of Joint Venture; (2) Rescission or Reformation of Agreement; (3) Breach of
15 Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied Covenant of Good
16 Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of Dissolution and Winding
17 Up, and Appointment of Receiver; (7) Temporary and Permanent Injunction; (8) Fraud,
18 Fraudulent Inducement and Fraudulent Concealment; (9) Conversion; (10) RICO; and,
19 (11) Derivative Claim. SAC, p. 4-10. The SAC is the operative complaint.

20
21 On September 25, 2019, Mineau/Legion filed their *Answer to Second Amended*
22 *Verified Complaint*.

23 The claims that remain viable at this time are Mr. Kvam's First through Eleventh
24 Causes of Action set forth in the SAC and Mineau/Legion's *FACC* Third Claim for Relief
25 for Declaratory Relief.

1 The SAC's First Cause of Action for Declaration of Joint Venture and
2 Mineau/Legion's Third Claim for Relief for Declaratory Relief in the *FACC* compare as
3 follows:

MR. KVAM'S FIRST CAUSE OF ACTION (Declaration of Joint Venture)	MINEAU/LEGION'S THIRD CLAIM FOR RELIEF (Declaratory Relief)
20. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.	32. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.
21. There is an actual, justifiable, present controversy between KVAM, MINEAU, and LEGION on the question of whether the Agreement identified in Par. 8 constitutes a joint venture agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some other type of agreement.	33. A justiciable controversy has arisen between the parties regarding their respective rights, restriction, duties, and obligations pursuant to the Agreement and the House.
22. KVAM therefore requests a declaration on the legal rights created by the Agreement, the status of the unincorporated joint venture referred to herein as 7747 and the respective interests of the joint venturers.	34. Mineau's and Legion's interests in the controversy are adverse to Kvam's.
23. KVAM further requests a declaration on the amount of loans and contributions made to the 7747 by each of the joint venturers.	35. Mineau's and Legion's interests in the controversy are legally protectable.
24. KVAM further requests a declaration that 7747, MINEAU, and LEGION were required to assign the entire interest in the 7747 to KVAM in the event it failed in any way.	36. The controversy is ripe for judicial determination.

25
26 SAC, generally; *FACC*, generally. During argument, Mineau/Legion concurred the
27 legal entity was a joint venture. *Transcript of Proceedings, Oral Arguments (Motion for*

1 *Summary Judgment*), February 11, 2020 (“TOP, MSJ”). The joint venture/partnership
2 was created for acquisition of the Property.

3 At the Pre-trial Conference and Pre-trial Motions hearing, the Court rendered its
4 oral ruling on the *MSJ*, including giving NRCP 56(f) notice that it intended to grant
5 summary judgment on Mineau/Legion’s *FACC* Third Claim for Relief for Declaratory
6 Relief. The Court further rendered its oral ruling on the claims on which it was denying
7 summary judgment, such as SAC’s Fifth Claim for Relief for Accounting and the claims
8 it was holding a ruling in abeyance, i.e. the dissolution claim and request for
9 appointment of a receiver. *Transcript of Proceedings, Pre-trial Conference & Pretrial*
10 *Motions, 2/27/2020 (“Tr.”)*, p. 9-13.

11
12 **A. Motion for Summary Judgment**

13 In their *Motion*, Mineau/Legion seek summary judgment on the SAC’s eleven (11)
14 causes of action. *Motion*, p. 11. Mineau/Legion did not seek summary judgment on
15 *FACC*’s Third Claim for Relief for Declaratory Relief. *Motion*, p. 11.

16 On the SAC’s first claim (Declaration of Joint Venture), Mineau/Legion request a
17 judicial declaration in Mineau/Legion’s favor regarding the parties’ respective rights and
18 interests as there are no genuine dispute of material facts. *Motion*, p. 11-13.

19 On the SAC’s Mr. Kvam’s second claim (Rescission or Reformation of Agreement)
20 Mineau/Legion seek summary judgment on the grounds Mr. Kvam has not produced any
21 evidence to establish that the parties, at the time of contracting, shared a misconception
22 about a vital fact upon which they based their bargain. *Motion*, p. 13-14.

23 On the SAC’s third claim (Breach of Contract – Loan), Mineau/Legion contend the
24 Terms of Agreement establish the terms of a joint venture which lacks critical elements of
25 a loan, including a defined borrower or a maturity date. *Motion*, p. 14-15.

1 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
2 Covenant of Good Faith and Fair Dealing), Mineau/Legion assert they owed Mr. Kvam no
3 affirmative duty to properly manage and complete the renovation, and the duty of loyalty
4 only requires a partner to account to the partnership for any partnership property held by
5 that partner. *Motion*, p. 16-19.

6 On the SAC's fifth claim, (Accounting), Mineau/Legion claim Nevada law only
7 requires a partner to account to the partnership for any partnership property held by that
8 partner which, in this case, was the Property itself, the proceeds from its sale of the
9 Property, and the disposition of those assets which are entirely accounted for and not
10 subject to genuine dispute. *Motion*, 19-20.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mineau/Legion maintain the partnership only has two
13 remaining assets: (1) its claims against TNT and (2) the proceeds from the sale of the
14 Property in the amount of \$26,337.91 which are to be assigned to Mr. Kvam pursuant to
15 the Terms of the Agreement. *Motion*, p. 20.

16 On the SAC's seventh claim (Temporary and Permanent Injunction),
17 Mineau/Legion claim upon dissolution of the partnership and assignment of its assets to
18 Mr. Kvam, the partnership will cease to exist thereby rendering this cause of action moot.
19 *Motion*, p. 20.

20 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
21 Concealment), Mineau/Legion posit Mr. Kvam has not produced any admissible evidence
22 to establish any of the elements of fraud because Mr. Mineau's statements, either
23 personally or on behalf of Legion, were made in good faith and were true to the best of
24 Mr. Mineau's knowledge. *Motion*, p. 21-22.

1 On the SAC's ninth claim, (Conversion), Mineau/Legion assert conversion only
2 applies to personal property, and Mr. Kvam has not produced any admissible evidence to
3 establish any of the other elements of conversion regarding the Property. *Motion*, p. 22.

4 On the SAC's tenth claim (RICO), Mineau/Legion argue Mr. Kvam has not
5 produced any admissible evidence, and none exists, to establish any of the elements of a
6 RICO claim. *Motion*, p. 23.

7 Finally, on the SAC's eleventh claim (Derivative Claim), Mineau/Legion state Mr.
8 Kvam has not produced any admissible evidence to establish the partnership holds any
9 independent claim for relief against Mineau/Legion. *Motion*, p. 24.

10
11 **A. Opposition to Mineau/Legion's Motion for Summary Judgment;
12 and Cross Motion for Partial Summary Judgment⁴.**

13 In his *Opposition*, Mr. Kvam claims, regarding his first claim (Declaration of Joint
14 Venture), Mineau/Legion have changed their position, and conceded the parties formed a
15 partnership pursuant to NRS 87.4322. *Opposition*, p. 16-19.

16 On the SAC's second claim (Rescission or Reformation of Agreement), Mr. Kvam
17 asserts the Terms of Agreement does not purport to be a complete integration of the
18 entire agreement between the parties, and it is not the entire agreement because Mr.
19 Mineau induced Mr. Kvam to believe he was in charge of project, and he proceeded to
20 sign the purchase agreement and escrow papers, procure the contractor, prepare and
21 sign the Contractor Agreement, and instruct Mr. Kvam when to make payments.
22 *Opposition*, p. 19-20.

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27 ⁴It is notable that, although improperly filed, the cross motion contained in the *Opposition*, must
28 assert there are no genuine issues of material fact on the SAC's claims. *Opposition*, generally.

1 On the SAC's third claim (Breach of Contract – Loan), Mr. Kvam contends the
2 Terms of Agreement contain both a profit-sharing agreement and a loan agreement.
3 *Opposition*, p. 20-21.

4 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
5 Covenant of Good Faith and Fair Dealing), Mr. Kvam states Mr. Mineau was in a superior
6 and entrusted position in which Mr. Kvam imposed a special element of reliance due to
7 Mr. Mineau's extensive handling of the Property project. *Opposition*, p. 21-23.

8 On the SAC's fifth claim (Accounting), Mr. Kvam argues Mr. Mineau failed to
9 account, for the loans, capital contributions, and expenses despite holding title to the
10 Property "as trustee." *Opposition*, p. 23-24.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mr. Kvam posits winding up is incomplete because Mr. Mineau
13 refuses to release funds to Mr. Kvam due to other claims to the funds. *Opposition*, p. 24.

14 On the SAC's seventh claim (Temporary and Permanent Injunction), Mr. Kvam
15 maintains once the remaining funds are distributed and the joint venture finally wound up,
16 this cause of action will be complete. *Opposition*, p. 25.

17 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
18 Concealment), Mr. Kvam incorporates broad arguments, but does not identify specific
19 facts, regarding various types of fraud and deceit at issue: (1) fraudulent or intentional
20 misrepresentation; (2) false promise; (3) Concealment; (4) Fraud by Nondisclosure
21 (Silence); (5) Negligent Misrepresentation; and, (6) Constructive Fraud. *Opposition*, p.
22 25-29.

23 On the SAC's ninth claim (Conversion), Mr. Kvam contends the conversion was
24 diverting project funds and holding the proceeds of sale. *Opposition*, p. 29-31.

1 On the SAC's tenth claim (RICO), Mr. Kvam asserts the predicate act, for example,
2 to establish a RICO claim derives from Mr. Mineau obtaining a signature from Mr. Kvam
3 to obtain his money under false pretenses including the misrepresentation the money
4 would be placed in a separate account. *Opposition*, p. 31-34.

5 Lastly, on the SAC's eleventh claim (Derivative Claim), Mr. Kvam stresses all of his
6 claims are asserted on his own behalf and on behalf of the joint venture, which is
7 permissible under applicable law. *Opposition*, p. 34.

8 **A. Reply in Support of Motion for Summary Judgment**

9
10 In their *Reply* on the SAC's first claim (Declaration of Joint Venture),
11 Mineau/Legion assert all parties agree the Court should enter a judicial declaration the
12 parties formed a partnership pursuant to NRS 87.4322; however, Mineau/Legion maintain
13 there is simply no legal or factual basis upon which a jury could decide Mr. Kvam's
14 investment of \$93,784.31 was a loan. *Reply*, p. 5-6.

15 On the SAC's second claim (Rescission or Reformation of Agreement),
16 Mineau/Legion contend Mr. Kvam fails to offer any admissible evidence to establish he
17 believed Mr. Mineau agreed to be "in charge of the project," or that the parties ever
18 agreed upon any terms other than those set forth in the Terms of Agreement. *Reply*, p. 6-
19 7.

20
21 On the SAC's third claim (Breach of Contract – Loan), Mineau/Legion claim Mr.
22 Kvam argues the Property was purchased not with a loan or borrowed funds, but with
23 joint venture funding, which is consistent with the terms of a joint venture, not a loan.
24 *Reply*, p. 7-8.

25 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
26 Covenant of Good Faith and Fair Dealing), Mineau/Legion maintain Mr. Kvam's

1 allegations fall well short of the "grievous and perfidious misconduct" standard as a matter
2 of law. *Reply*, p. 8.

3 On the SAC's fifth claim (Accounting), Mineau/Legion state they prepared
4 spreadsheets and delivered them to Mr. Kvam to provide the requested accounting.
5 *Reply*, p. 9.

6 On the SAC's sixth and seventh claims (Court Supervision of Dissolution and
7 Winding Up, and Appointment of Receiver and Temporary and Permanent Injunction),
8 Mineau/Legion note Mr. Kvam does not appear to dispute the relief sought by
9 Mineau/Legion. *Reply*, p. 9.

10 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
11 Concealment), Mineau/Legion posit Mr. Kvam's incorporated claims are very broadly pled
12 and fail to contain any specific allegations. *Reply*, p. 9-12.

13 On the SAC's ninth claim (Conversion), Mineau/Legion assert Mr. Kvam has not
14 presented evidence they exerted a distinct act of dominion over Mr. Kvam's personal
15 property, rather Mr. Kvam merely alleges Mr. Mineau allowed TNT to commingle project
16 funds with TNT's other funds. *Reply*, p. 12-13.

17 On the SAC's tenth claim (RICO), Mineau/Legion note Mr. Kvam fails his burden of
18 establishing Mineau/Legion violated Nevada's RICO Act. *Reply*, p. 13-14.

19 On the SAC's eleventh claim (Derivative Claim), Mineau/Legion claim Mr. Kvam
20 has conceded the partnership does not hold any independent claim for relief against
21 Mineau/Legion other than the claims discussed above. *Reply*, p. 14.

22 Finally, Mineau/Legion request this Court strike Mr. Kvam's cross-motion contained
23 within his *Opposition*. *Reply*, p. 15.

1 The Court finds it appropriate to strike the relief requested in the cross-motion and
2 considers the document filed as an opposition only.

3 **II. STANDARD OF REVIEW.**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law."
8 Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134
9 (2007). A factual dispute is genuine when the evidence is such that a rational trier of fact
10 could return a verdict for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724,
11 731, 121 P.3d 1026, 1031 (2005). Further, a fact is material if the fact "might affect the
12 outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S.
13 242, 248, 106 S.Ct. 2505, 2510 (1986). The pleadings and other proof "must be
14 construed in a light most favorable to the nonmoving party," who bears the burden to "do
15 more than simply show that there is some metaphysical doubt as to the operative facts in
16 order to avoid summary judgment" in favor of the moving party. Id., 121 Nev. at 732, 121
17 P.3d at 1031. The substantive law controls which factual disputes are material and will
18 preclude summary judgment; other factual disputes are irrelevant. Id., 121 Nev. at 731,
19 121 P.3d at 1031.
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22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze,
24 123 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion
25 (Mineau/Legion on FACC), that party must present evidence that would entitle it to a
26 judgment as a matter of law in the absence of contrary evidence. Id. If the nonmoving
27
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1 party will bear the burden of persuasion at trial (Mr. Kvam on SAC), the party moving for
2 summary judgment (Mineau/Legion) may satisfy the burden of production in two ways: (1)
3 the moving party may submit evidence which negates an essential element of the
4 nonmoving party's claim, or (2) the moving party may merely point out the absence of
5 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in
6 order to defeat summary judgment, the nonmoving party must transcend the pleadings
7 and, by affidavit or other admissible evidence, **introduce specific facts** that show a
8 genuine issue of material fact. Id. "The non-moving party must not simply rely on the
9 pleadings and must do more than make 'conclusory allegations [in] an affidavit.'" Choi v.
10 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan
11 v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex
12 Corp. v. Catreet, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment
13 must be granted for the moving party if the nonmoving party 'fails to make showing
14 sufficient to establish an element essential to that party's case, and on which that party
15 bears the burden of proof at trial.'" Choi v. 8th Bridge Capital, 2020 WL1446700, Slip
16 Copy, March 25, 2020 (citing same).

17
18 "Effect of Failing to Deny. An allegation—other than one relating to the amount
19 of damages — is admitted if a responsive pleading is required and the allegation is not
20 denied." NRCP 8(b)(6). An answer to counterclaim is a required responsive pleading.
21 Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783, 785 (1963).

22
23 By way of the stricken cross-motion relief, Mr. Kvam on the one hand asserts
24 there is no genuine issue of fact but in argument contends there is. The *Opposition*
25 without citation to specific facts and after admitting facts by failing to file an answer to
26 the FACC. He also attaches forty (48) exhibits without pointing to specific facts even
27
28

1 upon inquiry at the hearing. *TOP, MSJ*, passim. Even Mr. Kvam's Declaration offered in
2 support of the *Opposition* and his purported cross motion includes conclusionary facts
3 with regard to material facts asserted by Mineau/Legion as not in dispute or claims for
4 which Mineau/Legion assert there is no evidence.

5 This Court is not obligated to search for facts. "[A] district court is not obligated
6 to wade through and search the entire record for some facts which might support the
7 nonmoving party's claim." Jaurequi v. Carter Mfg. Co., Inc., 173 F.3d 1076, 1084 (8th
8 Cir. 1999) (quotation omitted). "[R]equiring the district court to search the entire record,
9 even though the adverse party's response does not set out the specific facts or disclose
10 where in the record the evidence for them can be found, is unfair. Carmen v. San
11 Francisco Unified School Dist., 237 F. 3d 1026, 1031 (9th Cir. 2001). "We refuse to do
12 this work for it. See Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir.
13 2003) ('[J]udges are not like pigs, hunting for truffles.') (quoting United States v. Dunkel,
14 927 F.2d 955, 956 (7th Cir. 1991))." Freeman Inv. Mgmt. Co., LLC v. Frank Russell
15 Co., 729 F. App'x 590, 591 (9th Cir. 2018) (considering summary judgment).

16
17 This Court has considered the properly filed papers and the other papers and
18 pleadings on file and makes the following findings of undisputed material facts and
19 conclusions of law.

20 21 **III. STATEMENT OF UNDISPUTED MATERIAL FACTS.**

22 The Court finds the following material facts are undisputed:

23 1. In early 2017, Mr. Mineau, Mr. Kvam, and Michael J. Spinola ("Mr.
24 Spinola") began formulating a plan to purchase the property located at 7747 S. May
25 Street, Chicago, Illinois ("Property"), renovate it, and sell it for a profit. *Motion*, Ex. 1,
26
27
28

¶ 5; *Opposition*, Ex. 1, ¶ 2; *FACC* allegations deemed admitted due to failure to answer⁵ ("DA").

2. Mr. Mineau serves as sole member/manager of Legion Investments, LLC ("Legion"), a Nevada limited liability company. *SAC*, ¶ 2, ¶ 13; *Answer to SAC*, ¶ 1, ¶ 8.

3. On January 3, 2017, Legion entered into a *Residential Real Estate Purchase and Sale Contract* to purchase the Property for \$44,000.00. *Motion*, Ex. 1, ¶ 6; *DA* ¶ 4.

4. On February 13, 2017, Mr. Kvam wired \$44,000.00 to Citywide Title Corp, Escrow No. 719630, for the purchase of the Property. *Motion*, Ex. 3; *Opposition*, Ex. 7; *DA* ¶ 5 ("paid the seller directly").

5. Mr. Kvam later wired an additional \$784.31 to the title company to cover the buyer's portions of the closing costs. *Motion*, Ex. 4; *Opposition*, Ex. 8.

6. Legion took title to the Property on February 13, 2017. *Motion*, Ex. 1, ¶ 10; *Opposition*, Ex. 10.

7. On February 13, 2017, Mr. Mineau, and Mr. Spinola executed a document entitled "*Terms of Agreement between Legion Investments LLC (its Members) And Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street, Chicago Illinois*" ("Terms of Agreement"). *Motion*, Ex. 2; *Opposition*, Ex. 11; *DA*, ¶ 2.

8. Mr. Kvam drafted the Terms of Agreement. *DA*, ¶ 3.

9. On February 14, 2017, Mr. Kvam executed the Terms of Agreement with Mr. Mineau and Mr. Spinola. *Motion*, Ex. 2; *Opposition*, Ex. 11; *DA* ¶ 2.

⁵ As discussed herein, Mr. Kvam did not file an answer to the *FACC*. The Court identifies the allegations deemed admitted as "DA" in addition to its other citations to the record.

1 10. The Terms of Agreement reads, in its entirety, as follows:

2 Terms of Agreement between Legion Investments LLC (its Members)

3 And Jay Kvam (Initial Funding Member of Same)

4 RE:

5 7747 S. May Street, Chicago, Illinois

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

18 *Motion*, Ex. 2; *Opposition*, Ex. 11.⁶

19 11. Mr. Kvam admits the Terms of Agreement constitutes a binding legal
20 contract. DA ¶ 27.

21 12. All parties to the Terms of Agreement knew this was a high-risk
22 investment. DA ¶ 9.

23 13. The Property was located the south side of Chicago. DA ¶ 10.

24 14. Mr. Kvam acceded to Mr. Spinola's interest. SAC, ¶ 11; *Motion*, p. 4,
25 n. 1.⁷

26 ⁶ The Terms of Agreement can cause confusion on the actual name of the joint
27 venture/partnership discussed herein. It does not change the legal conclusions and is referred
28 to herein generically rather than by name.

⁷ The specific interest Mr. Kvam acceded to is not a material fact as the remedy is the same.

1 15. On March 16, 2017, Colleen Burke, Legion's property manager in
2 Chicago, texted to Mr. Mineau stating, "I have the other contractor I told you about
3 going to May Street. I'm really liking this guy. He seems very fair and hard worker. I
4 would like to set up a conference call with him this weekend." *Motion*, Ex. 5;
5 *Opposition*, Ex. 13.

6 16. Ms. Burke identified the subject contractor as TNT Complete Facility Care
7 Inc. ("TNT"). *Motion*, Ex. 1, ¶ 11; *Opposition*, Ex. 1, ¶ 9.

8 17. On March 19, 2017, Ms. Burke emailed Mr. Mineau the contact
9 information for TNT's principals, Derek Cole and Todd Hartwell, along with TNT's
10 references and Certificate of Insurance. *Motion*, Ex. 6; *Opposition*, Ex. 14-15.

11 18. On March 23, 2017, Mr. Mineau, on behalf of Legion, entered into a
12 Contractor Agreement with TNT ("Contractor Agreement"). *Motion*, Ex. 7; *Opposition*,
13 Ex. 17-18.

14 19. Mr. Kvam paid TNT directly to fund the renovations. DA ¶ 7.

15 20. Mr. Kvam knew TNT was the contractor.

16 21. The Contractor Agreement identified Todd Hartwell as TNT's CEO and
17 Derek Cole as TNT's Field Operations VP. *Motion*, Ex. 7, p. LEG0012; *Opposition*, Ex.
18 17-18.

19 22. Pursuant to the Contractor Agreement, TNT agreed to fully renovate the
20 Property for a flat fee of \$80,000.00. *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶
21 10, Ex. 24.

22 23. Progress payments were to be made pursuant to a defined schedule.
23 *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶ 10.

1 24. TNT agreed to complete the project by June 1, 2017. *Motion*, Ex. 7, p.
2 LEG0013; *Opposition*, Ex. 1, ¶ 10.

3 25. On February 17, 2017, Mr. Kvam texted Mr. Mineau to ask for wiring
4 details to forward the first payment. *Opposition*, Ex. 12.

5 26. Mr. Mineau responded, "Not yet, he was getting the wiring info for a
6 separate account so he could keep May Street funds separate from other projects."
7 *Opposition*, Ex. 1, ¶ 9, Ex. 12.

8 27. On March 23, 2017, Mr. Kvam wired \$20,000.00 directly to TNT with the
9 reference "7747 South May Street – Legion Investments – Jay Kvam." *Motion*, Ex. 8;
10 *Opposition*, Ex. 18.

11 28. On April 9, 2017, TNT emailed proposed floor plans to Mr. Mineau, who
12 forwarded them to Mr. Kvam and Mr. Spinola for review and input. *Motion*, Ex. 9-10.

13 29. On April 14, 2017, Kvam emailed Todd Hartwell (TNT's CEO) to inquire
14 whether Legion had an assigned account number with TNT and the preferred way for
15 Mr. Kvam to send TNT the next progress payment. *Motion*, Ex. 11.

16 30. Mr. Kvam wrote Todd Hartwell again, indicating that he had just spoken
17 with Mr. Hartwell and he was "heading to the bank now to set up the wire." *Motion*, Ex.
18 11.

19 31. Mr. Kvam wired another \$20,000.00 directly to TNT with the reference
20 "Second Draw Legion Investments Jay Kvam." *Motion*, Ex. 12; *Opposition*, Ex. 20.

21 32. On and around May 5, 2017, Derek Cole (TNT's Field Operations VP)
22 came to Reno to visit with Mr. Mineau, Mr. Kvam, and others. *Motion*, Ex. 13.

33. Mr. Kvam's notes indicate Mr. Kvam and Mr. Cole specifically discussed the renovation of the Property, and Mr. Cole represented to Mr. Kvam that the project would be "done in early June." *Motion*, Ex. 13, p. KHAM0423.

34. On May 9, 2017, Mr. Mineau texted Mr. Kvam and Mr. Spinola approximately nine (9) photographs of the Property which he had received from Mr. Cole. *Motion*, Ex. 14.

35. Mr. Mineau informed Mr. Kvam and Mr. Spinola that he “just got this from Derek [Cole] roof is all done at May street.” *Motion*, Ex. 14.

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

Motion, Ex. 15.

37. Mr. Cole responded by sending Mr. Kvam forty-six (46) photographs of the interior and exterior of the Property, purportedly showing the work TNT had completed to date and the current status of the project. *Motion*, Ex. 15.

38. Mr. Cole's pictures included the nine (9) pictures of the roof which Mr. Mineau had forwarded to Mr. Kvam on May 9, 2017. Compare Motion, Ex. 14, with Motion, Ex. 15.

39. On May 17, 2017, Mr. Kvam sent Mr. Cole a message on Slack indicating, “first half of the third draw on May to go out tomorrow.” *Motion*, Ex. 16.

40. On May 18, 2017, Mr. Kvam wired \$9,000.00 directly to TNT with the reference "Half of Third Installment." *Motion*, Ex. 17; *Opposition*, Ex. 21.

41. On May 21, 2017, Mr. Cole informed Mr. Mineau that TNT would be “installing floors this week and should be finishing very soon.” *Motion*, Ex. 1, ¶ 24, Ex. 18; *Opposition*, Ex. 22.

1 42. Mr. Mineau forwarded this information on to Mr. Kvam. *Motion*, Ex. 18;
2 *Opposition*, Ex. 22.

3 43. On May 26, 2017, Criterion NV LLC, acting on Mr. Mineau's behalf, wired
4 \$20,000.00 directly to TNT with the reference "May Street." *Motion*, Ex. 1, ¶ 25, Ex. 19.

5 44. Over the course of the next month, Mr. Kvam and Mr. Cole texted
6 regularly concerning the Property. *Motion*, Ex. 20, Ex. 22.

7 45. Mr. Cole sent Mr. Kvam and Mr. Mineau dozens of pictures of the work
8 being performed at the Property. *Motion*, Ex. 22, p. KVAM0106-KVAM0123.
9

10 46. Mr. Cole also notified Mr. Kvam that "I got all the permits and paperwork
11 back from the city last week file from [sic] my inspections as soon as they come do
12 those I'm two weeks after that." *Motion*, Ex. 22, p. KVAM0129.

13 47. In response to Mr. Kvam's inquiry, Mr. Cole explained that the
14 inspections were "for the rough plumbing and electrical." *Motion*, Ex. 22, p.
15 KVAM0129.

16 48. Mr. Kvam had independent and direct communications with TNT. *Motion*,
17 Ex. 20, Ex. 22. 38.

18 49. Mr. Kvam acquired information directly from TNT and did not rely on Mr.
19 Mineau's representations.
20

21 50. After June 20, 2017, TNT started becoming increasingly unresponsive.
22 *Motion*, Ex. 1, ¶ 29.

23 51. Mr. Mineau stayed in contact with Mr. Cole and Mr. Hartwell in an effort to
24 compel TNT to finish the project. *Motion*, Ex. 1, ¶ 29.
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1 52. TNT communicated inconsistently. TNT did respond with excuses for
2 delays and promised that the project would be completed within a matter of days or
3 weeks. *Motion*, Ex. 1, ¶ 29.

4 53. Mr. Hartwell confirmed that TNT was working to replace Mr. Cole and that
5 TNT would finish the project as soon as possible. *Motion*, Ex. 1, ¶ 29.

6 54. In late August 2017, TNT explained Mr. Cole had been absent because
7 he had suffered a heart attack but recovered and was returning to work. *Motion*, Ex.
8 1, ¶ 29.

9 55. In late September 2017, Mr. Cole informed Mr. Mineau the Property
10 needed a few more inspections but was nearly complete. *Motion*, Ex. 1, ¶ 29.

11 56. In mid-October 2017, Mr. Cole informed Mr. Mineau that TNT was "doing
12 the final touches" and would then be ready for occupancy inspections. *Motion*, Ex. 1, ¶
13 29.

14 57. In early November 2017, Mr. Cole advised some of the plumbing work did
15 not pass inspection and would need more work. *Motion*, Ex. 1, ¶ 29.

16 58. In mid-November 2017, Mr. Cole represented to Mr. Mineau that the
17 project would be done in 14-17 days and would cost an additional \$2,000.00, but that
18 TNT would "eat that cost" due to the delay. *Motion*, Ex. 1, ¶ 29.

19 59. Mr. Mineau relayed each status update from TNT to Mr. Kvam.
20
21 *Opposition*, Ex. 25-31.

22 60. By December 2017, Mr. Kvam had become frustrated with TNT's excuses
23 and delays and indicated his fear that TNT had defrauded them. *Motion*, Ex. 24

24 61. Mr. Mineau notified Mr. Kvam that he had asked his attorney in Chicago
25 to draft a demand letter to TNT. *Motion*, Ex. 24
26

62. Alternatively, Mr. Mineau offered to "sign the property over." *Motion*, Ex. 24.

63. On December 31, 2017, Mr. Kvam delivered a letter to Mr. Mineau concerning the Property. *Motion*, Ex. 25

64. In his letter, Mr. Kvam expressly rejected Mr. Mineau's offer to transfer the Property, stating he did not want to assume the role of managing the project and expressing concern that TNT had done little construction work for the money it had been paid. *Motion*, Ex. 25

65. For reasons beyond any of the parties' knowledge, control or expectation, the contractor hired to perform the renovations did not or was not able to complete the job. DA ¶ 11.

66. Mr. Kvam stated, "...I deem the project a failure...." *Motion*, Ex. 25.

67. On November 16, 2018, Legion sold the Property for \$41,000.00. *Motion*, Ex. 30; *Opposition*, Ex. 35.

68. Legion's share of prorated property taxes, closing costs, and the commission owed to the real estate brokers equaled \$16,526.23. *Motion*, Ex. 30; *Opposition*, Ex. 35.

69. The net proceeds from the closing were \$24,473.77. *Motion*, Ex. 30; *Opposition*, Ex. 35.

70. On December 19, 2018, Legion received an additional \$1,864.14 from the sale of the Property as a result of a refund on a tax bill and a water bill. *Motion*, Ex. 1. ¶ 39.

71. The total net proceeds from the sale of the Property are \$26,337.91. *Motion*, Ex. 1. ¶ 39.

1 72. Mineau and Legion fulfilled all of their obligations under the Terms of
2 Agreement. DA ¶ 22.

3 73. The assets remaining after the project failed are claims against TNT and
4 \$26,337.91.

5 74. To the extent any of the contents in Sections I and II, supra, and/or the
6 following conclusions of law contain or constitute, or may be construed to contain or
7 constitute findings of fact, they are incorporated here.

8 **IV. CONCLUSIONS OF LAW.**
9

10 1. To the extent any of the contents of Sections I, II and III, supra, contain or
11 constitute, or may be construed to contain or constitute conclusions of law, they are
12 incorporated here.

13 **A. Declaratory Relief.**

14 2. The SAC's First Cause of Action is for Declaration of Joint Venture,
15 thereby seeking declaratory relief.

16 3. The FACC's Third Cause of Action is for Declaratory Relief.

17 4. The Court gave reasonable proper notice under NRCP 56 that it intended
18 to grant Declaratory Relief on Mineau/Legions FACC Third Cause of Action for
19 Declaratory Relief and was not granting summary judgment the SAC's First Cause of
20 Action is Declaration of Joint Venture.
21

22 5. "A statement in a pleading may be adopted by reference elsewhere in the
23 same pleading or in any other pleading or motion." NRCP 10(c). The FACC's Third
24 Claim for Relief for Declaratory Relief includes Paragraph 32, "Mineau and Legion
25 reallege the allegations contained in the other paragraphs of this Counterclaim and
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1 incorporate them by reference as if fully set forth here.” *FACC*, p.4. The incorporation
2 of the allegations contained in other paragraphs was appropriate under applicable law.

3 6. Mr. Kvam failed to file an answer to the *FACC* Third Claim for Relief for
4 Declaratory Relief.

5 7. As stated, “*Effect of Failing to Deny*. An allegation—other than one
6 relating to the amount of damages – is admitted if a responsive pleading is required
7 and the allegation is not denied.” NRCP 8(b)(6). An answer to counterclaim is a
8 required responsive pleading. Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783,
9 785 (1963).

10 8. The effect of Mr. Kvam’s failure to answer the allegations of the *FACC*
11 Third Claim for Relief for Declaratory relief is the allegations, including the incorporated
12 allegations, were admitted. Id. (citing NRCP 8(d) (NRCP 8(d), which, as enacted at the
13 time the *FACC*, was filed provided, “[a]verments in a pleading to which a responsive
14 pleading is required ... are admitted when not denied in the responsive pleading.”).
15 NRCP 8(d) was deleted by amendment effective March 1, 2019); Breliant v. Preferred
16 Equities Corp., 109 Nev. 842, 848–49, 858 P.2d 1258, 1262 (1993) (holding plaintiff
17 stated sufficient facts to assert a claim, in part, because defendant admitted to
18 allegations in complaint when it did not deny the allegations in plaintiff’s amended
19 complaint that made averments in its pleading where a responsive pleading was
20 required by defendant).

21 9. A party must meet four elements before declaratory relief can be granted:
22 (1) there must exist a justiciable controversy; that is to say, a controversy in which a
23 claim of right is asserted against one who has an interest in contesting it; (2) the
24 controversy must be between persons whose interests are adverse; (3) the party
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1 seeking declaratory relief must have a legal interest in the controversy, that is to say, a
2 legally protectable interest; and (4) the issue involved in the controversy must be ripe
3 for judicial determination. MB Am., Inc. v. Alaska Pac. Leasing, 132 Nev. Adv. Op. 8,
4 367 P.3d 1286, 1291 (2016).

5 10. A justiciable controversy initially existed in this case regarding whether
6 there was a joint venture/partnership.

7 11. Any person whose rights, status, or other legal relations "are affected by
8 a statute . . . may have determined any question of construction" of that statute. NRS
9 30.040(1); Prudential Ins. Co. of Am. v. Ins. Comm'r, 82 Nev. 1, 5, 409 P.2d 248, 250
10 (1966) (declaratory relief is available when a controversy concerning the meaning of a
11 statute arises).

12 12. Formation of joint ventures is governed by NRS 87.4322 which states, in
13 part, "the association of two or more persons to carry on as co-owners of a business
14 for profit forms a partnership, whether or not the persons intend to form a partnership."

15 13. Mr. Kvam, Mr. Meneau and Mr. Spinola formed a joint
16 venture/partnership pursuant to NRS 87.4322. *Motion*, Ex. 2; *Opposition*, Ex. 11.

17 14. The justiciable controversy regarding creation of a joint
18 venture/partnership was resolved during the litigation and the parties agree a joint
19 venture/partnership was created.

20 15. A justiciable controversy exists regarding the parties' rights under the
21 Terms of Agreement.

22 16. Mr. Kvam's and Mineau/Legion's interests are adverse.

23 17. Mr. Kvam, Mr. Mineau and Legion have a legal interest in the
24 controversy.
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1 18. For declaratory relief, "Person" is "construed to mean any person,
2 partnership . . . or other corporation of any character whatsoever." NRS 30.020.

3 19. "Whether a determination is proper in an action for declaratory relief is a
4 matter within the trial judge's discretion that will not be disturbed on appeal unless
5 abused." El Capitan Club v. Fireman's Fund Ins. Co., 89 Nev. 65, 68, 506 P.2d 426,
6 428 (1973).

7 20. Declaratory relief should be granted on Mineau/Legion's *FACC* Third
8 Claim for Relief for Declaratory Relief.

9 21. The Court should declare with respect to the parties' respective rights
10 and interests:

11 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
12 for the acquisition of the Property, 7747 S. May Street, Chicago, Illinois.

13 b. Mr. Kvam was the initial funding member.

14 c. The parties formed a joint venture/partnership pursuant to NRS
15 87.4322.

16 d. The Terms of Agreement and NRS Chapter 87 governed the
17 partnership.

18 e. The Terms of Agreement did not constitute a loan agreement.

19 f. There was no meeting of the minds regarding any other provisions
20 to the Terms of the Agreement except those written and contained in the Terms
21 of Agreement.

22 g. Mr. Kvam acceded to Mr. Spinola's interest.

23 h. No party made any loans to the partnership.

24 i. Mr. Kvam acceded to Mr. Spinola interest.

1 j. Mr. Spinola's does not have an interest adverse to the interests of
2 Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's interest
3 to Mr. Kvam and the remedy of assignment, Mr. Spinola has no legal interest in
4 the Terms of Agreement. Only those who enjoy a legal interest in the Terms of
5 Agreement should be joined in this action. Wells v. Bank of Nevada, 90 Nev.
6 192, 198, 522 P.2d 1014, 1018 (1974).

7 k. The project failed.

8 l. All remedies due to the partnership are assigned to Kvam because
9 the project failed.

10 m. The parties agreed all interests in the partnership and any
11 remedies due to the partnership, including the proceeds from the sale of the
12 Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the
13 partnership dissolved. *Motion*, Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to*
14 *Deposit Funds*, December 12, 2018.

15 22. Based on the Court's findings and conclusions on Mineau/Legion's *FACC*
16 Third Claim for Relief and its findings and conclusions on the SAC's remaining claims
17 for relief, *infra*, summary judgment is denied on the SAC's First Claim for Declaration of
18 Joint Venture.

19 **B. Rescission or Reformation of Agreement.**

20 23. The SAC's Second Cause of Action is for Recission or Reformation of
21 Agreement.

22 24. "A contract may be rescinded on the basis of mutual mistake when both
23 parties, at the time of contracting, share a misconception about a vital fact upon which
24 they based their bargain." Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686,
25

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.

25. 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).

26. "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).

27. The parties accounted for the risks inherent in the investment by agreeing all remedies in the partnership would be assigned to Mr. Kvam if the joint venture failed in any way. *Motion*, Ex. 2; *Opposition*, Ex. 11.

28. Even viewing all evidence raised by Mineau/Legion in a light most favorable to Mr. Kvam, Mr. Kvam has failed to bring forth specific evidence that the parties, at the time of contracting, shared a misconception about a vital fact upon which they based their bargain, or that the Terms of Agreement fail to conform to the true intention of the parties or the parties' previous understanding or agreement.

29. Mr. Kvam fails to make a showing sufficient to establish an element essential to his claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on this claim.

1 **C. Breach of Contract - Loan.**

2 30. Mr. Kvam's Third Cause of Action in his SAC is for Breach of Contract –
3 Loan (breach of the Terms of Agreement's loan agreement).

4 31. The elements of a breach of contract claim are (1) existence of a valid
5 contract, (2) breach, and (3) damages. See Contrearras v. Am. Family Mut. Ins. Co.,
6 135 F.Supp.3dc 1208, 1227 (D. Nev. 2015)

7 32. Generally, when a contract is clear on its face, it will be construed from
8 the written language and enforced as written. Canfora v. Coast Hotels & Casinos, Inc.,
9 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The court has no authority to alter the
10 terms of an unambiguous contract. Id. Furthermore, the court cannot force upon
11 parties contractual obligations, terms or conditions which are not contained in the
12 contract. McCall v. Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946); Harrison v.
13 Harrison, 132 Nev. 564, 376 P.3d 173 (2016); Golden Rd. Motor Inn, Inc. v. Islam, 132
14 Nev. 476, 376 P.3d 151 (2016); Reno Club, Inc. v. Young Inv. Co., 64 Nev. 312, 323,
15 182 P.2d 1011, 1016 (1947).
16

17 33. A loan is the delivery of a sum of money to another under a contract to
18 return at some future time an equivalent amount with or without an additional sum
19 agreed upon for its use; and if such be the intent of the parties the transaction will be
20 deemed a loan regardless of its form. Kline v. Robinson, 83 Nev. 244, 249, 428 P.2d
21 190, 194 (1967), *overruled in part by* Pease v. Taylor, 88 Nev. 287, 496 P.2d 757
22 (1972).
23

24 34. Kvam has not identified any evidence of a loan agreement and thus
25 cannot establish a breach.
26

35. The Terms of Agreement provide Mr. Kvam will receive 7% annual return on any funds provided if the project was profitable. The project failed. Mr. Kvam's remedy is assignment of all interests and remedies of the partnership to him. *Motion*, Ex. 2; *Opposition*, Ex. 11.

36. Based on the Court's findings and conclusions on the *FACC's* Third Claim for Relief for Declaratory Relief, even viewing all evidence raised by Mineau/Legion in a light most favorable to Mr. Kvam, Mr. Kvam has not established that a loan agreement existed and cannot establish a breach.

37. Mr. Kvam has not identified with specificity evidence to establish all elements of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on the SAC's Third Cause of Action for Breach of Contract -Loan.

D. Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing.

37. The SAC's Fourth Cause of Action is for Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing.

38. Every contract imposes upon the contracting parties the duty of good faith and fair dealing. See A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914, 784 P.2d 9, 9-10 (1984).

39. The remedy for breach of the implied covenant of good faith and fair dealing generally is on the contract itself. In certain circumstances breach of contract, including breach of the covenant of good faith and fair dealing, may provide the basis for a tort claim. Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043, 1046-47, 862 P.2d 1207, 1209 (1993) (citations omitted).

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

11 41. Summary judgment has been affirmed on claims involving a partnership
12 and claims for breach of contract and breach of the implied covenant of good faith and
13 fair dealing. See e.g. Phelps v. Frampton, 170 P.3d 474 (Mont. 2007) (not tortious
14 claim).

15 42. "The only fiduciary duties a partner owes to the partnership and the other
16 partners are the duty of loyalty and the duty of care." NRS 87.4336(1).

17 43. The statutory duty of loyalty requires each partner to, *inter alia*, "to
18 account to the partnership and hold as trustee for it any property, profit or benefit
19 derived by the partner in the conduct and winding up of the partnership business or
20 derived from a use by the partner of partnership property, including the appropriation of
21 a partnership opportunity." NRS 87.4336(2)(a).

23 44. The statutory duty of care is limited to "refraining from engaging in grossly
24 negligent or reckless conduct, egregious or perfidious conduct, intentional misconduct
25 or a knowing violation of law by Mr. Mineau or Mr. Mineau on behalf of Legion. To the
26 contrary, the evidence supports that the contractor delayed the work, Mr. Kvam

1 conveyed information he received about the progress of the project and/or Mr. Kvam
2 communicated about the project.

3 45. Mineau/Legion kept Mr. Kvam reasonably informed of the Project with the
4 information available to Mineau/Legion and Mr. Kvam had independent
5 communications with the contractor, thereby negating the fourth element required to
6 establish summary judgment on this claim. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

7 46. Even viewing all evidence raised by Mineau/Legion in a light most
8 favorable to Mr. Kvam, Mr. Kvam has failed to set forth evidence supporting each
9 element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
10 Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

11 47. Accordingly , Mineau/Legion are entitled to judgment as a matter of law
12 on the SAC's Fourth Cause of Action for Breach of Contract and Tortious Breach of
13 Implied Covenant of Good Faith and Fair Dealing.

14
15 **E. Accounting.**

16 48. The SAC's Fifth Cause of Action is for Accounting.

17 49. As state, pursuant to NRS 87.4336(2)(a), a partner must account to the
18 partnership for any property, profit or benefit derived by the partner from a use by the
19 partner of partnership property, including the appropriation of a partnership opportunity.

20 50. The only partnership property over which Mineau/Legion had custody
21 was the Property itself, and the proceeds from the sale of the Property. *Motion*, Ex. 1,
22 ¶ 10, ¶ 37-40, Ex. 2; *Opposition*, Ex. 10, Ex. 11.

23 51. Mineau/Legion contends they provided Mr. Kvam with all information
24 necessary for an accounting.
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52. Mr. Kvam asserts Mineau/Legon have not provided a complete accounting.

53. An accounting will verify the accuracy of the amount net proceeds.

54. A genuine issue of material fact exists regarding whether the accounting provided by Mineau/Legion is factually and legally sufficient under applicable law.

55. Accordingly, summary judgment on the SAC's Fifth Cause of Action is not warranted under NRCP 56.

F. Court Supervision of Dissolution and Winding Up, and Appointment of Receiver.

56. The SAC's Sixth Cause of Action is for Court Supervision of Dissolution and Winding up, and Appointment of Receiver.

57. A partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed. NRS 87.4352(1).

58. A receiver may be appointed by the court in which an action is pending, or by the judge thereof between partners or others jointly owning or interested in any property or fund. NRS 32.010.

59. The winding up by the partners themselves or by a receiver does not affect the personal liability of the partners for unsatisfied claims, absent specific agreement. NRS 87.360.

60. The parties agreed all interests in the partnership and any remedies due to the partnership, including the proceeds from the sale of the Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the partnership dissolved. *Motion*, Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to Deposit Funds*, Dec. 12, 2018.

1 61. A ruling on this claim is held in abeyance pending resolution of the SAC's
2 Fifth Cause of Action for Accounting.

3 62. **Temporary and Permanent Injunction.**

4 63. The SAC's Seventh Cause of Action is for Temporary and Permanent
5 Injunction.

6 64. Based on the findings and conclusions on the SAC's Second, Third,
7 Fourth, Fifth and Sixth Causes of Action, and on the FACC's Third Claim for Relief for
8 Declaratory Relief, and the deposit of the funds with the Court, the SAC's Seventh
9 Cause of Action for Temporary and Permanent Injunction is legally ineffectual and
10 summary judgment should be denied.
11

12 **H. Fraud, Fraudulent Inducement, and Fraudulent Concealment.**

13 65. The SAC's Eighth Cause of Action is for Fraud, Fraudulent Inducement,
14 and Fraudulent Concealment.

15 **i. Fraud.**

16 66. Under Nevada law, the elements of a fraud claim are as follows: (1) a
17 false representation made by the defendant; (2) defendant's knowledge or belief that
18 the representation is false or insufficient basis for making the representation; (3)
19 defendant's intention to induce the plaintiff to act or to refrain from acting in reliance
20 upon the misrepresentation; (4) plaintiff's justifiable reliance upon the
21 misrepresentation; and (5) damage to the plaintiff resulting from such reliance. Starr
22 Indem. & Liab. Co. v. Young, 379 F. Supp. 3d 1103, 1110 (D. Nev. 2019) (citing
23 Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 825 P.2d 588, 592 (1992)).
24

25 67. To establish a claim for intentional misrepresentation, a plaintiff must
26 show that the defendant supplied plaintiff with false information, and summary
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judgment is appropriate if plaintiff has not provided evidence of this essential element. Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686, 695-96, 356 P.3d 511, 518 (2015); Moore v. Prudential Residential Services Ltd. Partnership, 849 So.2d 914, 926 (Ala. 2002) (affirming summary judgment in favor of defendants because plaintiffs presented no evidence indicating that defendants knew real estate had any defects, or evidence demonstrating reliance on misrepresentations.)

ii. Fraudulent Inducement.

68. To prove fraudulent inducement, plaintiff must show: (1) defendant's false representation; (2) that defendant knew or believed statement was false, or defendant had an insufficient basis for making statement; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) plaintiff was damaged as a result of relying on the misrepresentation. Hernandez v. Creative Concepts, Inc., 862 F. Supp. 2d 1073, 1092–93 (D. Nev. 2012).

69. Where a plaintiff fails to provide any evidence of defendant's intent when defendant entered into agreement, summary judgment is appropriate. Argonaut Development Group, Inc. v. SWH Funding Corp., 150 F.Supp.2d 1357, 1364 (S.D. Fla. 2001).

iii. Fraudulent Concealment.

70. To establish fraudulent concealment, a plaintiff must prove five elements: (1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would have acted differently if she had known of the concealed or suppressed fact; and (5) the plaintiff sustained damages as a result of the

1 concealment or suppression. Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406,
2 1415 (D. Nev. 1995).

3 71. Mr. Mineau conveyed the information he was provided and kept Mr.
4 Kvam reasonably informed of the Project with the information available to
5 Mineau/Legion. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

6 72. Mr. Kvam had independent and direct communications with the
7 contractor and therefore was aware of the progress on the project.

8 73. Mr. Kvam did not rely upon Mineau/Legion's representations as Mr. Kvam
9 communicated directly with TNT concerning the status of the project. *Motion*, Ex. 9-11,
10 Ex. 13-16, Ex. 20.

11 74. Mr. Kvam identifies no specific evidence that Mr. Mineau made any
12 affirmative misrepresentations during the Project.

13 75. Mr. Kvam cites not evidence that Mr. Mineau supplied false information to
14 him.

15 76. Mr. Kvam has not established that he relied on any false information to his
16 detriment.

17 77. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated that Mr. Kvam has failed to
19 identify specific evidence for all of the elements of this claim. Cuzze, 123 Nev. at 602,
20 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25,
21 2020.

22 78. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
23 the SAC's Eighth Cause of Action for Fraud, Fraudulent Inducement, and Fraudulent
24 Concealment.

1 **I. Conversion.**

2 79. The SAC's Ninth Cause of Action is for Conversion.

3 80. "Conversion is a distinct act of dominion wrongfully exerted over
4 another's personal property in denial of, or inconsistent with his title or rights therein or
5 in derogation, exclusion, or defiance of such title or rights." M.C. Multi-Family Dev.,
6 L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910, 193 P.3d 536, 542 (2008).

7 81. "Conversion generally is limited to those severe, major, and important
8 interferences with the right to control personal property that justify requiring the actor to
9 pay the property's full value." Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328–
10 29, 130 P.3d 1280, 1287 (2006).

11 82. Mr. Kvam has not identified disputed facts regarding any distinct act of
12 dominion that Mineau or Legion wrongfully exerted over Kvam's personal property, or
13 the funds delivered to the title company and TNT.

14 83. Mr. Kvam delivered all project funds either directly to the title company to
15 purchase the Property or directly to TNT to fund the renovation. *Motion*, Ex. 3-4, Ex. 8,
16 Ex. 12; *Opposition*, Ex. 7-8, Ex. 18, Ex. 20.

17 84. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated Mr. Kvam has failed to
19 identify evidence for each element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at
20 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

21 85. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
22 the SAC's Ninth Cause of Action for Conversion.
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J. RICO.

86. The SAC's Tenth Cause of Action SAC is for civil RICO.

87. In Nevada, the elements for a claim of civil RICO violations (Racketeering Influenced and Corrupt Organizations Act) are: (a) defendants engaged in racketeering activities as defined in NRS 207.390 and a racketeering enterprise as is defined in NRS 207.380; (b) defendants acting directly, and in conspiracy with one another or through their syndicate, participated directly in racketeering activity by engaging in at least two crimes related to racketeering; (c) defendants' activities have the same or similar pattern, intent, results, accomplices, victims, or methods of commission, or otherwise interrelated by distinguishing characteristics and are not isolated events; (d) defendants acquired or maintained directly or indirectly an interest in, or control of, any enterprise, or defendants are employed by or associated with any enterprise to conduct or participate directly or indirectly in the affairs of the enterprise through a racketeering activity; (e) plaintiff's injuries flow from the defendants' violation of a predicate Nevada RICO act; (f) plaintiff's injury was be proximately caused by the defendants' violation of the predicate act; (g) plaintiff did not participate in the commission of the predicate act; and, plaintiff is entitled to institute a civil action for recovery of treble damages proximately caused by the RICO violations. NRS 207.470(1). NRS 207.470; Stoddart v. Miller, 2008 WL 6070835 (Nev. 2008); Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801 (1999); Gordon v. Eighth Judicial Dist. Ct., 12 Nev. 216, 231, 913 P.2d 240, 250-51 (1996); Cummings v. Charter Hosp. of Las Vegas, Inc., 111 Nev. 639, 896 P.2d 1137 (1995); Allum v. Valley Bank of Nevada, 109 Nev. 280, 849 P.2d 297 (1993); Hale v. Burkhardt, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988).

1 88. Any person who is injured in his business or property by reason of any
2 violation of NRS 207.400 has a cause of action against a person causing such injury for
3 three times the actual damages sustained. NRS 207.470

4 89. "'Racketeering activity' means engaging in at least two crimes related to
5 racketeering that have the same or similar pattern, intents, results, accomplices,
6 victims, or methods of commission, or are otherwise interrelated by distinguishing
7 characteristics and are not isolated incidents...." NRS 207.390.

8 90. Criminal syndicate means any combination of persons, so structured that
9 the organization will continue its operation even if individual members enter or leave
10 the organization, which engages in or has the purpose of engaging in racketeering
11 activity. NRS 207.370.

12 91. Mr. Kvam has not identified specific evidence of racketeering activity, or
13 any activities between Mineau/Legion that resemble the type of activities required to
14 support the elements of this claim.

15 92. Summary judgment has been affirmed on civil RICO claims. See e.g.,
16 Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 107 S.Ct. 2759
17 (1987); In re Southwest Exchange, Inc., 128 Nev. 907, 381 P.3d 626 (2012).

18 93. Even viewing the evidence in a light most favorable to Mr. Kvam, Mr.
19 Kvam has not identified with specificity evidence to establish any of the elements of a
20 civil RICO claim which warrants entry of summary judgment on this claim. Cuzze, 123
21 Nev. at 602, 172 P.3d at 134; Knutson v. County of Barnes, 642 N.W.2d 910 (N.D.
22 2002) (holding defendants were entitled to summary judgment on RICO claim because
23 plaintiffs failed to plead with specificity as required, and failed to present any evidence
24 to support their claim).

1 94. Mineau/Legion are entitled to judgment as a matter of law on the SAC's
2 Tenth Cause of Action for RICO.

3 **K. Derivative Claim.**

4 95. The SAC's Eleventh Cause of Action is a Derivative claim on behalf of
5 the joint venture.

6 96. Mr. Kvam conceded the partnership does not hold any independent
7 claims for relief against Mineau/Legion.

8 97. Based on the Courts findings and conclusions on the SAC's Second,
9 Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, and Mr.
10 Kvam's concession, the Court finds and concludes no genuine issue of material fact
11 exists for trial on the SAC's Eleventh Cause of Action for a Derivative Claim and
12 Mineau/Legion are entitled to judgment as a matter of law.
13

14 **V. ORDER.**

15 Based on the foregoing findings of undisputed facts and conclusions of law, and
16 good cause appearing therefor,

17 **IT IS HEREBY ORDERED SUMMARY ADJUDICATION IS GRANTED,**
18 **DENIED, AND HELD IN ABEYANCE AS FOLLOWS:**

19 1. Notice was reasonably given to the parties of the Court's intent to grant
20 summary judgment on Mineau/Legion's *FACC* Third Cause of Action for Declaratory
21 Relief.
22

23 2. Summary adjudication is granted on Mineau/Legion's *FACC* Third Cause
24 of Action for Declaratory Relief and the Court declares:

25 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
26 in Legion for the acquisition of 7747 S. May Street, Chicago, Illinois.
27
28

- b. Mr. Kvam was the initial funding member.
- c. The parties formed a joint venture/partnership pursuant to NRS 87.4322.
- d. The Terms of Agreement and NRS Chapter 87 governed the partnership.
- e. The Terms of Agreement did not constitute a loan agreement.
- f. There was no meeting of the minds regarding any other provisions to the Terms of the Agreement except those written and contained in the Terms of Agreement.
- g. Mr. Kvam acceded to Mr. Spinola's interest.
- h. No party made any loans to the partnership.
- i. Mr. Kvam acceded to Mr. Spinola interest.
- j. Mr. Spinola's does not have an interest adverse to the interests of Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's interest to Mr. Kvam and the remedy of assignment, Mr. Spinola has no legal interest in the Terms of Agreement.
- k. The project failed.
- l. All remedies due to the partnership are assigned to Kvam because the project failed.
- m. The parties stipulated all interests in the partnership and any remedies due to the partnership, including the proceeds from the sale of the Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the partnership dissolved.

3. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Second Cause of Action for Rescission or Reformation of Agreement.

4. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Third Cause of Action for Breach of Contract - Loan.

5. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Fourth Cause of Action for Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing.

6. Summary adjudication is DENIED on the SAC's Fifth Cause of Action for Accounting.

7. The Court's ruling on Motion is held in abeyance on the SAC's Sixth Cause of Action for Court Supervision of Dissolution and Winding up, and Appointment of Receiver until resolution of Mr. Kvam's Fifth Cause of Action

8. Based on the Court's foregoing findings of fact and conclusions of law, summary adjudication is DENIED on the SAC's Seventh Cause of Action for Temporary and Permanent Injunction as the claim is legally ineffectual based on the deposit of the funds.

9. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Eighth Cause of Action for Fraud, Fraudulent Inducement, and Fraudulent Concealment.

10. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Ninth Cause of Action for Conversion.

11. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Tenth Cause of Action for civil RICO.

12. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Eleventh Cause of Action for Derivative Claim.

13. Based on the Court's foregoing findings of fact and conclusions of law, summary adjudication is DENIED on the SAC's First Claim for Relief for Declaration of Joint Venture.

14. The claims remaining at issue in this action for is Mr. Kvam's Fifth Cause of Action and Sixth Cause of Action, and any declaratory relief requested under Mr. Kvam's First Cause of Action which was not resolved by the declarations or findings of fact and conclusions of law made herein, and claims remaining against Defendant 7747 S. May Street, if any.

15. The parties are directed to contact the Judicial Assistant in Department 6 within thirty (30) days to set this matter for trial on these claims.

16. The parties are further directed to resubmit any motions previously submitted which are not made moot by reason of this Order.

DATED this 4th day of June, 2020.

LYNNE K. SIMONS
DISTRICT JUDGE

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MICHAEL MATUSKA, ESQ.
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1 **CODE 2540**

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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 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that an *Order Granting, in Part, and Denying, in Part Defendants'*
26 *Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court's*
27 *NRCP 56 Notice*, was entered on June 5, 2020, a copy of which is attached as Exhibit "1."

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DATED this 5th day of June, 2020.

By: /s/ Austin Sweet
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Nevada State Bar No. 2134
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Attorney for Jay Kvam

/s/ Kelly Gunderson
Kelly Gunderson

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EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "I"	Order Granting, in Part, and Denying, in Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court's NRCP 56 Notice	45

FILED
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CV18-00764
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Jacqueline Bryant
Clerk of the Court
Transaction # 7911496

Exhibit “1”

Exhibit “1”

1 Code:

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8
9 JAY KVAM,

10 Plaintiff,

Case No.: CV18-00764

11 vs.

Dept. No: 6

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

14 Defendants.
15 _____/

16 BRIAN MINEAU and LEGION
INVESTMENTS, LLC,

17 Counterclaimant,

18 vs,
19

20 JAY KVAM,

21 Counterdefendant
22 _____/

23 ORDER GRANTING, IN PART, AND DENYING, IN PART
24 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;
ORDER GRANTING SUMMARY JUDGMENT
ON CLAIM PURSUANT TO COURT'S NRCP 56 NOTICE

25 Before this Court is a *Motion for Summary Judgment* ("Motion") filed by
26 Defendants/Counterclaimants BRIAN MINEAU ("Mr. Mineau") and LEGION

1 INVESTMENTS, LLC ("Legion") (hereinafter "Mineau/Legion" unless individually
2 referenced), by and through their attorney of record, Gunderson Law Firm.
3 Plaintiff/Counterdefendant JAY KVAM ("Mr. Kvam") filed his *Opposition to Defendants'*
4 *Motion for Summary Judgment; and Cross Motion for Partial Summary Judgment*¹
5 ("Opposition"), by and through his attorney of record, Matuska Law Offices. Mineau and
6 Legion filed a *Reply in Support of Motion for Summary Judgment* ("Reply"). The *Reply*
7 does not address the merits of the countermotion portion of the *Opposition* but does
8 request that the Court strike it. Thereafter, the matter was submitted for decision.
9

10 The Court heard oral arguments on the *Motion* ("Hearing"), requested counsel to
11 provide proposed orders, and the matter was taken under advisement. As a result of oral
12 arguments, this Court conducted further review of the pleadings and papers filed,
13 conducted additional research and gave notice under NRCP 56 of its intention to grant
14 summary judgment on one of Mineau/Legion's claims that was not subject of their *Motion*.
15 The Court heard additional argument in this regard. This Order follows.

16 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

17 This action involves an agreement to purchase, restore, and resell a house in
18 Chicago ("the Property"). *Second Amended Verified Complaint* ("SAC"), ¶ 8. Mr. Kvam
19 provided funding for the Property. SAC, ¶ 8a. Mineau/Legion were designated to manage
20 the operation. SAC, ¶ 8c.
21

22 Mr. Kvam asserts he demanded his money back because he did not receive any
23 interest payments and because renovation activity on the Property ceased. SAC, ¶¶
24

25 ¹The Court admonished counsel in a pretrial conference on January 14, 2020, that cross motions
26 are not allowed under applicable court rules. WDCR 10(3) ("Any motion, opposition, reply, etc.,
must be filed as a separate document . . ."). It appears Mr. Kvam has disregarded the Court's
admonishment. At the February 11, 2010, hearing on the *Motion* and *Opposition*, the Court
again admonished counsel of the same.

1 8a,17. Mr. Kvam also asserts that he is entitled to receive a return of his investment, plus
2 interest, prior to the sale of the Property. SAC, ¶¶ 12-17. In addition, Mr. Kvam alleges
3 Mineau/Legion sold the Property at a loss and concealed the sale. SAC, ¶ 16.

4 Terms were provided for return on Mr. Kvam's investment if investment was
5 profitable and in the event if was not. Mr. Kvam anticipated an approximate \$13,000
6 profit. When the project failed, Mr. Kvam filed an action.

7
8 The original *Complaint* was filed by Mr. Kvam on April, 2018, asserting claims of
9 relief for: (1) Declaration of Joint Venture; (2) Rescission or Reformation of Agreement;
10 (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied
11 Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of
12 Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and Permanent
13 Injunction; and, (11) Derivative Claim. *Complaint*.

14 The original *Answer and Counterclaim* (filed as one document) was filed on June
15 5, 2018 and alleges eleven claims for relief for: (1) Breach of Contract; (2) Breach of the
16 Covenant of Good Faith and Fair Dealing; (3) Declaratory Relief; (4) Intentional
17 Interference with Prospective Economic Advantage; (5) Deceptive Trade Practices; (6)
18 Abuse of Process; (7) Trespass; (8) Trespass to Chattels; (9) Conversion; (10) Fraud;
19 and (11) Negligence.²

20
21 On September 4, 2018, the Court³ entered its *Order* on Mr. Kvam's *Motion for*
22 *Dissolution*. The Court declined to enter the order requested, finding the record did not

23
24
25 ² The Tenth Claim for Relief (Fraud) and the Eleventh Claim for Relief (Negligence) are
identified as "Tenth Claim for Relief."

26 ³ This matter was proceeding in Department 3 before Judge Jerome M. Polaha until June 6,
2019.

1 support an adjudication of the issues at that time and was premature due to lack of
2 discovery. *Order*, p. 2.

3 On September 5, 2018, the Court dismissed Mineau/Legion's claims: (8) Trespass
4 to Chattels and (9) Conversion. The Court granted Mr. Kvam's *Motion for a More Definite*
5 *Statement* on claims: (5) Deceptive Trade Practices; (10) Fraud; and (11) Negligence.

6 Mineau/Legion filed their *First Amended Counterclaim* ("FACC") on October 5,
7 2018 (The *Answer* was not restate; the FACC was filed as a separate document)
8 asserting the same claims for relief set forth in the original *Answer and Counterclaim* for:
9 (1) Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)
10 Declaratory Relief; (4) Intentional Interference with Prospective Economic Advantage; (5)
11 Deceptive Trade Practices; (6) Abuse of Process; (7) Trespass; (8) Trespass to Chattels;
12 (9) Conversion; (10) Fraud; and (11) Negligence.

13 In response, Mr. Kvam filed his *Motion to Dismiss and for Summary Judgment* on
14 October 25, 2018. Mr. Kvam requested that the Court dismiss the FACC's Fifth
15 (Deceptive Trade Practices), Tenth (Fraud), and Eleventh Claims for Relief (Negligence),
16 dismiss any remaining claims dependent on allegations regarding the Atlas Investors
17 Southside LLC, and grant summary judgment on all FACC claims for relief. *Motion to*
18 *Dismiss and for Summary Judgment*, p. 1.

19 On January 9, 2019, the Court entered summary judgment in favor of Mr. Kvam on
20 Mineau/Legion's counterclaims for: (1) Breach of Contract; (2) Breach of Covenant of
21 Good Faith and Fair Dealing; (4) Intentional Interference with Prospective Economic
22 Advantage; (5) Deceptive Trade Practice (indicated as dismissed); (6) Abuse of Process;
23 (7) Trespass; (10) Fraud; and (11) Negligence (indicated as dismissed). Mineau/Legion's
24 FACC Third Claim for Relief for Declaratory Relief remained viable.
25
26

1 Mr. Kvam did not file an answer to the *FACC Third Claim for Relief for Declaratory*
2 *Relief* and has not done so to date.

3 On January 31, 2019, Mr. Kvam filed his *First Amended Verified Complaint*
4 (*"FAC"*), asserting: (1) Declaration of Joint Venture; (2) Rescission or Reformation of
5 Agreement; (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of
6 Implied Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision
7 of Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and
8 Permanent Injunction; (8) Fraud, Fraudulent Inducement and Fraudulent Concealment;
9 and, (9) Derivative Claim.

10 On February 19, 2019, Mineau/Legion filed their *Answer to First Amended Verified*
11 *Complaint*.

12 On September 11, 2019, Mr. Kvam filed his SAC asserting claims of relief for: (1)
13 Declaration of Joint Venture; (2) Rescission or Reformation of Agreement; (3) Breach of
14 Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied Covenant of Good
15 Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of Dissolution and Winding
16 Up, and Appointment of Receiver; (7) Temporary and Permanent Injunction; (8) Fraud,
17 Fraudulent Inducement and Fraudulent Concealment; (9) Conversion; (10) RICO; and,
18 (11) Derivative Claim. SAC, p. 4-10. The SAC is the operative complaint.

19 On September 25, 2019, Mineau/Legion filed their *Answer to Second Amended*
20 *Verified Complaint*.

21 The claims that remain viable at this time are Mr. Kvam's First through Eleventh
22 Causes of Action set forth in the SAC and Mineau/Legion's *FACC Third Claim for Relief*
23 for Declaratory Relief.

1 The SAC's First Cause of Action for Declaration of Joint Venture and
2 Mineau/Legion's Third Claim for Relief for Declaratory Relief in the FACC compare as
3 follows:

<u>MR. KVAM'S FIRST CAUSE OF ACTION</u> (Declaration of Joint Venture)	<u>MINEAU/LEGION'S THIRD CLAIM FOR RELIEF</u> (Declaratory Relief)
20. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.	32. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.
21. There is an actual, justifiable, present controversy between KVAM, MINEAU, and LEGION on the question of whether the Agreement identified in Par. 8 constitutes a joint venture agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some other type of agreement.	33. A justiciable controversy has arisen between the parties regarding their respective rights, restriction, duties, and obligations pursuant to the Agreement and the House.
22. KVAM therefore requests a declaration on the legal rights created by the Agreement, the status of the unincorporated joint venture referred to herein as 7747 and the respective interests of the joint venturers.	34. Mineau's and Legion's interests in the controversy are adverse to Kvam's.
23. KVAM further requests a declaration on the amount of loans and contributions made to the 7747 by each of the joint venturers.	35. Mineau's and Legion's interests in the controversy are legally protectable.
24. KVAM further requests a declaration that 7747, MINEAU, and LEGION were required to assign the entire interest in the 7747 to KVAM in the event it failed in any way.	36. The controversy is ripe for judicial determination.

25 SAC, generally; FACC, generally. During argument, Mineau/Legion concurred the
26 legal entity was a joint venture. *Transcript of Proceedings, Oral Arguments (Motion for*

1 *Summary Judgment*), February 11, 2020 ("TOP, MSJ"). The joint venture/partnership
2 was created for acquisition of the Property.

3 At the Pre-trial Conference and Pre-trial Motions hearing, the Court rendered its
4 oral ruling on the *MSJ*, including giving NRCP 56(f) notice that it intended to grant
5 summary judgment on Mineau/Legion's *FACC* Third Claim for Relief for Declaratory
6 Relief. The Court further rendered its oral ruling on the claims on which it was denying
7 summary judgment, such as SAC's Fifth Claim for Relief for Accounting and the claims
8 it was holding a ruling in abeyance, i.e. the dissolution claim and request for
9 appointment of a receiver. *Transcript of Proceedings, Pre-trial Conference & Pretrial*
10 *Motions, 2/27/2020 ("Tr.")*, p. 9-13.

12 **A. Motion for Summary Judgment**

13 In their *Motion*, Mineau/Legion seek summary judgment on the SAC's eleven (11)
14 causes of action. *Motion*, p. 11. Mineau/Legion did not seek summary judgment on
15 *FACC's* Third Claim for Relief for Declaratory Relief. *Motion*, p. 11.

16 On the SAC's first claim (Declaration of Joint Venture), Mineau/Legion request a
17 judicial declaration in Mineau/Legion's favor regarding the parties' respective rights and
18 interests as there are no genuine dispute of material facts. *Motion*, p. 11-13.

19 On the SAC's Mr. Kvam's second claim (Rescission or Reformation of Agreement)
20 Mineau/Legion seek summary judgment on the grounds Mr. Kvam has not produced any
21 evidence to establish that the parties, at the time of contracting, shared a misconception
22 about a vital fact upon which they based their bargain. *Motion*, p. 13-14.

23 On the SAC's third claim (Breach of Contract – Loan), Mineau/Legion contend the
24 Terms of Agreement establish the terms of a joint venture which lacks critical elements of
25 a loan, including a defined borrower or a maturity date. *Motion*, p. 14-15.
26

1 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
2 Covenant of Good Faith and Fair Dealing), Mineau/Legion assert they owed Mr. Kvam no
3 affirmative duty to properly manage and complete the renovation, and the duty of loyalty
4 only requires a partner to account to the partnership for any partnership property held by
5 that partner. *Motion*, p. 16-19.

6 On the SAC's fifth claim, (Accounting), Mineau/Legion claim Nevada law only
7 requires a partner to account to the partnership for any partnership property held by that
8 partner which, in this case, was the Property itself, the proceeds from its sale of the
9 Property, and the disposition of those assets which are entirely accounted for and not
10 subject to genuine dispute. *Motion*, 19-20.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mineau/Legion maintain the partnership only has two
13 remaining assets: (1) its claims against TNT and (2) the proceeds from the sale of the
14 Property in the amount of \$26,337.91 which are to be assigned to Mr. Kvam pursuant to
15 the Terms of the Agreement. *Motion*, p. 20.

16 On the SAC's seventh claim (Temporary and Permanent Injunction),
17 Mineau/Legion claim upon dissolution of the partnership and assignment of its assets to
18 Mr. Kvam, the partnership will cease to exist thereby rendering this cause of action moot.
19 *Motion*, p. 20.

20 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
21 Concealment), Mineau/Legion posit Mr. Kvam has not produced any admissible evidence
22 to establish any of the elements of fraud because Mr. Mineau's statements, either
23 personally or on behalf of Legion, were made in good faith and were true to the best of
24 Mr. Mineau's knowledge. *Motion*, p. 21-22.

1 On the SAC's ninth claim, (Conversion), Mineau/Legion assert conversion only
2 applies to personal property, and Mr. Kvam has not produced any admissible evidence to
3 establish any of the other elements of conversion regarding the Property. *Motion*, p. 22.

4 On the SAC's tenth claim (RICO), Mineau/Legion argue Mr. Kvam has not
5 produced any admissible evidence, and none exists, to establish any of the elements of a
6 RICO claim. *Motion*, p. 23.

7 Finally, on the SAC's eleventh claim (Derivative Claim), Mineau/Legion state Mr.
8 Kvam has not produced any admissible evidence to establish the partnership holds any
9 independent claim for relief against Mineau/Legion. *Motion*, p. 24.

10
11 **A. Opposition to Mineau/Legion's Motion for Summary Judgment;
12 and Cross Motion for Partial Summary Judgment⁴.**

13 In his *Opposition*, Mr. Kvam claims, regarding his first claim (Declaration of Joint
14 Venture), Mineau/Legion have changed their position, and conceded the parties formed a
15 partnership pursuant to NRS 87.4322. *Opposition*, p. 16-19.

16 On the SAC's second claim (Rescission or Reformation of Agreement), Mr. Kvam
17 asserts the Terms of Agreement does not purport to be a complete integration of the
18 entire agreement between the parties, and it is not the entire agreement because Mr.
19 Mineau induced Mr. Kvam to believe he was in charge of project, and he proceeded to
20 sign the purchase agreement and escrow papers, procure the contractor, prepare and
21 sign the Contractor Agreement, and instruct Mr. Kvam when to make payments.
22 *Opposition*, p. 19-20.

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⁴It is notable that, although improperly filed, the cross motion contained in the *Opposition*, must
assert there are no genuine issues of material fact on the SAC's claims. *Opposition*, generally.

1 On the SAC's third claim (Breach of Contract – Loan), Mr. Kvam contends the
2 Terms of Agreement contain both a profit-sharing agreement and a loan agreement.
3 *Opposition*, p. 20-21.

4 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
5 Covenant of Good Faith and Fair Dealing), Mr. Kvam states Mr. Mineau was in a superior
6 and entrusted position in which Mr. Kvam imposed a special element of reliance due to
7 Mr. Mineau's extensive handling of the Property project. *Opposition*, p. 21-23.

8 On the SAC's fifth claim (Accounting), Mr. Kvam argues Mr. Mineau failed to
9 account, for the loans, capital contributions, and expenses despite holding title to the
10 Property "as trustee." *Opposition*, p. 23-24.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mr. Kvam posits winding up is incomplete because Mr. Mineau
13 refuses to release funds to Mr. Kvam due to other claims to the funds. *Opposition*, p. 24.

14 On the SAC's seventh claim (Temporary and Permanent Injunction), Mr. Kvam
15 maintains once the remaining funds are distributed and the joint venture finally wound up,
16 this cause of action will be complete. *Opposition*, p. 25.

17 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
18 Concealment), Mr. Kvam incorporates broad arguments, but does not identify specific
19 facts, regarding various types of fraud and deceit at issue: (1) fraudulent or intentional
20 misrepresentation; (2) false promise; (3) Concealment; (4) Fraud by Nondisclosure
21 (Silence); (5) Negligent Misrepresentation; and, (6) Constructive Fraud. *Opposition*, p.
22 25-29.

23 On the SAC's ninth claim (Conversion), Mr. Kvam contends the conversion was
24 diverting project funds and holding the proceeds of sale. *Opposition*, p. 29-31.

1 On the SAC's tenth claim (RICO), Mr. Kvam asserts the predicate act, for example,
2 to establish a RICO claim derives from Mr. Mineau obtaining a signature from Mr. Kvam
3 to obtain his money under false pretenses including the misrepresentation the money
4 would be placed in a separate account. *Opposition*, p. 31-34.

5 Lastly, on the SAC's eleventh claim (Derivative Claim), Mr. Kvam stresses all of his
6 claims are asserted on his own behalf and on behalf of the joint venture, which is
7 permissible under applicable law. *Opposition*, p. 34.

8 **A. Reply in Support of Motion for Summary Judgment**

9
10 In their *Reply* on the SAC's first claim (Declaration of Joint Venture),
11 Mineau/Legion assert all parties agree the Court should enter a judicial declaration the
12 parties formed a partnership pursuant to NRS 87.4322; however, Mineau/Legion maintain
13 there is simply no legal or factual basis upon which a jury could decide Mr. Kvam's
14 investment of \$93,784.31 was a loan. *Reply*, p. 5-6.

15 On the SAC's second claim (Rescission or Reformation of Agreement),
16 Mineau/Legion contend Mr. Kvam fails to offer any admissible evidence to establish he
17 believed Mr. Mineau agreed to be "in charge of the project," or that the parties ever
18 agreed upon any terms other than those set forth in the Terms of Agreement. *Reply*, p. 6-
19 7.

20
21 On the SAC's third claim (Breach of Contract – Loan), Mineau/Legion claim Mr.
22 Kvam argues the Property was purchased not with a loan or borrowed funds, but with
23 joint venture funding, which is consistent with the terms of a joint venture, not a loan.
24 *Reply*, p. 7-8.

25 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
26 Covenant of Good Faith and Fair Dealing), Mineau/Legion maintain Mr. Kvam's

1 allegations fall well short of the "grievous and perfidious misconduct" standard as a matter
2 of law. *Reply*, p. 8.

3 On the SAC's fifth claim (Accounting), Mineau/Legion state they prepared
4 spreadsheets and delivered them to Mr. Kvam to provide the requested accounting.
5 *Reply*, p. 9.

6 On the SAC's sixth and seventh claims (Court Supervision of Dissolution and
7 Winding Up, and Appointment of Receiver and Temporary and Permanent Injunction),
8 Mineau/Legion note Mr. Kvam does not appear to dispute the relief sought by
9 Mineau/Legion. *Reply*, p. 9.

10 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
11 Concealment), Mineau/Legion posit Mr. Kvam's incorporated claims are very broadly pled
12 and fail to contain any specific allegations. *Reply*, p. 9-12.

13 On the SAC's ninth claim (Conversion), Mineau/Legion assert Mr. Kvam has not
14 presented evidence they exerted a distinct act of dominion over Mr. Kvam's personal
15 property, rather Mr. Kvam merely alleges Mr. Mineau allowed TNT to commingle project
16 funds with TNT's other funds. *Reply*, p. 12-13.

17 On the SAC's tenth claim (RICO), Mineau/Legion note Mr. Kvam fails his burden of
18 establishing Mineau/Legion violated Nevada's RICO Act. *Reply*, p. 13-14.

19 On the SAC's eleventh claim (Derivative Claim), Mineau/Legion claim Mr. Kvam
20 has conceded the partnership does not hold any independent claim for relief against
21 Mineau/Legion other than the claims discussed above. *Reply*, p. 14.

22 Finally, Mineau/Legion request this Court strike Mr. Kvam's cross-motion contained
23 within his *Opposition*. *Reply*, p. 15.

1 The Court finds it appropriate to strike the relief requested in the cross-motion and
2 considers the document filed as an opposition only.

3 **II. STANDARD OF REVIEW.**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law."
8 Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134
9 (2007). A factual dispute is genuine when the evidence is such that a rational trier of fact
10 could return a verdict for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724,
11 731, 121 P.3d 1026, 1031 (2005). Further, a fact is material if the fact "might affect the
12 outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S.
13 242, 248, 106 S.Ct. 2505, 2510 (1986). The pleadings and other proof "must be
14 construed in a light most favorable to the nonmoving party," who bears the burden to "do
15 more than simply show that there is some metaphysical doubt as to the operative facts in
16 order to avoid summary judgment" in favor of the moving party. Id., 121 Nev. at 732, 121
17 P.3d at 1031. The substantive law controls which factual disputes are material and will
18 preclude summary judgment; other factual disputes are irrelevant. Id., 121 Nev. at 731,
19 121 P.3d at 1031.

20
21
22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze,
24 123 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion
25 (Mineau/Legion on FACC), that party must present evidence that would entitle it to a
26 judgment as a matter of law in the absence of contrary evidence. Id. If the nonmoving

1 party will bear the burden of persuasion at trial (Mr. Kvam on SAC), the party moving for
2 summary judgment (Mineau/Legion) may satisfy the burden of production in two ways: (1)
3 the moving party may submit evidence which negates an essential element of the
4 nonmoving party's claim, or (2) the moving party may merely point out the absence of
5 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in
6 order to defeat summary judgment, the nonmoving party must transcend the pleadings
7 and, by affidavit or other admissible evidence, **introduce specific facts** that show a
8 genuine issue of material fact. Id. "The non-moving party must not simply rely on the
9 pleadings and must do more than make 'conclusory allegations [in] an affidavit.'" Choi v.
10 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan
11 v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex
12 Corp. v. Catreet, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment
13 must be granted for the moving party if the nonmoving party 'fails to make showing
14 sufficient to establish an element essential to that party's case, and on which that party
15 bears the burden of proof at trial.'" Choi v. 8th Bridge Capital, 2020 WL1446700, Slip
16 Copy, March 25, 2020 (citing same).

17
18 "Effect of Failing to Deny. An allegation—other than one relating to the amount
19 of damages – is admitted if a responsive pleading is required and the allegation is not
20 denied." NRCP 8(b)(6). An answer to counterclaim is a required responsive pleading.
21 Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783, 785 (1963).
22

23 By way of the stricken cross-motion relief, Mr. Kvam on the one hand asserts
24 there is no genuine issue of fact but in argument contends there is. The *Opposition*
25 without citation to specific facts and after admitting facts by failing to file an answer to
26 the FACC. He also attaches forty (48) exhibits without pointing to specific facts even

1 upon inquiry at the hearing. *TOP, MSJ*, passim. Even Mr. Kvam's Declaration offered in
2 support of the *Opposition* and his purported cross motion includes conclusionary facts
3 with regard to material facts asserted by Mineau/Legion as not in dispute or claims for
4 which Mineau/Legion assert there is no evidence.

5 This Court is not obligated to search for facts. "[A] district court is not obligated
6 to wade through and search the entire record for some facts which might support the
7 nonmoving party's claim." Jaurequi v. Carter Mfg. Co., Inc., 173 F.3d 1076, 1084 (8th
8 Cir. 1999) (quotation omitted). "[R]equiring the district court to search the entire record,
9 even though the adverse party's response does not set out the specific facts or disclose
10 where in the record the evidence for them can be found, is unfair. Carmen v. San
11 Francisco Unified School Dist., 237 F. 3d 1026, 1031 (9th Cir. 2001). "We refuse to do
12 this work for it. See Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir.
13 2003) ('[J]udges are not like pigs, hunting for truffles.') (quoting United States v. Dunkel,
14 927 F.2d 955, 956 (7th Cir. 1991))." Freeman Inv. Mgmt. Co., LLC v. Frank Russell
15 Co., 729 F. App'x 590, 591 (9th Cir. 2018) (considering summary judgment).

16
17 This Court has considered the properly filed papers and the other papers and
18 pleadings on file and makes the following findings of undisputed material facts and
19 conclusions of law.

20
21 **III. STATEMENT OF UNDISPUTED MATERIAL FACTS.**

22 The Court finds the following material facts are undisputed:

23 1. In early 2017, Mr. Mineau, Mr. Kvam, and Michael J. Spinola ("Mr.
24 Spinola") began formulating a plan to purchase the property located at 7747 S. May
25 Street, Chicago, Illinois ("Property"), renovate it, and sell it for a profit. *Motion*, Ex. 1,
26

1 ¶ 5; *Opposition*, Ex. 1, ¶ 2; *FACC* allegations deemed admitted due to failure to
2 answer⁵ ("DA").

3 2. Mr. Mineau serves as sole member/manager of Legion Investments, LLC
4 ("Legion"), a Nevada limited liability company. *SAC*, ¶ 2, ¶ 13; *Answer to SAC*, ¶ 1, ¶
5 8.

6 3. On January 3, 2017, Legion entered into a *Residential Real Estate*
7 *Purchase and Sale Contract* to purchase the Property for \$44,000.00. *Motion*, Ex. 1, ¶
8 6; *DA* ¶ 4.

9 4. On February 13, 2017, Mr. Kvam wired \$44,000.00 to Citywide Title
10 Corp, Escrow No. 719630, for the purchase of the Property. *Motion*, Ex. 3; *Opposition*,
11 Ex. 7; *DA* ¶ 5 ("paid the seller directly").

12 5. Mr. Kvam later wired an additional \$784.31 to the title company to cover
13 the buyer's portions of the closing costs. *Motion*, Ex. 4; *Opposition*, Ex. 8.

14 6. Legion took title to the Property on February 13, 2017. *Motion*, Ex. 1, ¶
15 10; *Opposition*, Ex. 10.

16 7. On February 13, 2017, Mr. Mineau, and Mr. Spinola executed a
17 document entitled "*Terms of Agreement between Legion Investments LLC (its*
18 *Members) And Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street,*
19 *Chicago Illinois*" ("Terms of Agreement"). *Motion*, Ex. 2; *Opposition*, Ex. 11; *DA*, ¶ 2.

20 8. Mr. Kvam drafted the Terms of Agreement. *DA*, ¶ 3.

21 9. On February 14, 2017, Mr. Kvam executed the Terms of Agreement with
22 Mr. Mineau and Mr. Spinola. *Motion*, Ex. 2; *Opposition*, Ex. 11; *DA* ¶ 2.

23
24
25
26 ⁵ As discussed herein, Mr. Kvam did not file an answer to the *FACC*. The Court identifies the
allegations deemed admitted as "DA" in addition to its other citations to the record.

1 10. The Terms of Agreement reads, in its entirety, as follows:

2 Terms of Agreement between Legion Investments LLC (its Members)

3 And Jay Kvam (Initial Funding Member of Same)

4 RE:

5 7747 S. May Street, Chicago, Illinois

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

18 *Motion, Ex. 2; Opposition, Ex. 11.*⁶

19 11. Mr. Kvam admits the Terms of Agreement constitutes a binding legal
20 contract. DA ¶ 27.

21 12. All parties to the Terms of Agreement knew this was a high-risk
22 investment. DA ¶ 9.

23 13. The Property was located the south side of Chicago. DA ¶ 10.

24 14. Mr. Kvam acceded to Mr. Spinola's interest. SAC, ¶ 11; *Motion*, p. 4,
25 n. 1.⁷

26 ⁶ The Terms of Agreement can cause confusion on the actual name of the joint
venture/partnership discussed herein. It does not change the legal conclusions and is referred
to herein generically rather than by name.

⁷ The specific interest Mr. Kvam acceded to is not a material fact as the remedy is the same.

1 15. On March 16, 2017, Colleen Burke, Legion's property manager in
2 Chicago, texted to Mr. Mineau stating, "I have the other contractor I told you about
3 going to May Street. I'm really liking this guy. He seems very fair and hard worker. I
4 would like to set up a conference call with him this weekend." *Motion*, Ex. 5;
5 *Opposition*, Ex. 13.

6 16. Ms. Burke identified the subject contractor as TNT Complete Facility Care
7 Inc. ("TNT"). *Motion*, Ex. 1, ¶ 11; *Opposition*, Ex. 1, ¶ 9.

8 17. On March 19, 2017, Ms. Burke emailed Mr. Mineau the contact
9 information for TNT's principals, Derek Cole and Todd Hartwell, along with TNT's
10 references and Certificate of Insurance. *Motion*, Ex. 6; *Opposition*, Ex. 14-15.

11 18. On March 23, 2017, Mr. Mineau, on behalf of Legion, entered into a
12 Contractor Agreement with TNT ("Contractor Agreement"). *Motion*, Ex. 7; *Opposition*,
13 Ex. 17-18.

14 19. Mr. Kvam paid TNT directly to fund the renovations. DA ¶ 7.

15 20. Mr. Kvam knew TNT was the contractor.

16 21. The Contractor Agreement identified Todd Hartwell as TNT's CEO and
17 Derek Cole as TNT's Field Operations VP. *Motion*, Ex. 7, p. LEG0012; *Opposition*, Ex.
18 17-18.

19 22. Pursuant to the Contractor Agreement, TNT agreed to fully renovate the
20 Property for a flat fee of \$80,000.00. *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶
21 10, Ex. 24.

22 23. Progress payments were to be made pursuant to a defined schedule.
23 *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶ 10.

1 24. TNT agreed to complete the project by June 1, 2017. *Motion*, Ex. 7, p.
2 LEG0013; *Opposition*, Ex. 1, ¶ 10.

3 25. On February 17, 2017, Mr. Kvam texted Mr. Mineau to ask for wiring
4 details to forward the first payment. *Opposition*, Ex. 12.

5 26. Mr. Mineau responded, "Not yet, he was getting the wiring info for a
6 separate account so he could keep May Street funds separate from other projects."
7 *Opposition*, Ex. 1, ¶ 9, Ex. 12.

8 27. On March 23, 2017, Mr. Kvam wired \$20,000.00 directly to TNT with the
9 reference "7747 South May Street – Legion Investments – Jay Kvam." *Motion*, Ex. 8;
10 *Opposition*, Ex. 18.

11 28. On April 9, 2017, TNT emailed proposed floor plans to Mr. Mineau, who
12 forwarded them to Mr. Kvam and Mr. Spinola for review and input. *Motion*, Ex. 9-10.

13 29. On April 14, 2017, Kvam emailed Todd Hartwell (TNT's CEO) to inquire
14 whether Legion had an assigned account number with TNT and the preferred way for
15 Mr. Kvam to send TNT the next progress payment. *Motion*, Ex. 11.

16 30. Mr. Kvam wrote Todd Hartwell again, indicating that he had just spoken
17 with Mr. Hartwell and he was "heading to the bank now to set up the wire." *Motion*, Ex.
18 11.

19 31. Mr. Kvam wired another \$20,000.00 directly to TNT with the reference
20 "Second Draw Legion Investments Jay Kvam." *Motion*, Ex. 12; *Opposition*, Ex. 20.

21 32. On and around May 5, 2017, Derek Cole (TNT's Field Operations VP)
22 came to Reno to visit with Mr. Mineau, Mr. Kvam, and others. *Motion*, Ex. 13.

1 33. Mr. Kvam's notes indicate Mr. Kvam and Mr. Cole specifically discussed
2 the renovation of the Property, and Mr. Cole represented to Mr. Kvam that the project
3 would be "done in early June." *Motion*, Ex. 13, p. KVAM0423.

4 34. On May 9, 2017, Mr. Mineau texted Mr. Kvam and Mr. Spinola
5 approximately nine (9) photographs of the Property which he had received from Mr.
6 Cole. *Motion*, Ex. 14.

7 35. Mr. Mineau informed Mr. Kvam and Mr. Spinola that he "just got this from
8 Derek [Cole] roof is all done at May street." *Motion*, Ex. 14.

9 36. On May 15, 2017, Mr. Kvam texted Derek Cole to check on him after an
10 apparent car accident and to give Mr. Kvam's mobile telephone number to Mr. Cole.
11 *Motion*, Ex. 15.

12 37. Mr. Cole responded by sending Mr. Kvam forty-six (46) photographs of
13 the interior and exterior of the Property, purportedly showing the work TNT had
14 completed to date and the current status of the project. *Motion*, Ex. 15.

15 38. Mr. Cole's pictures included the nine (9) pictures of the roof which Mr.
16 Mineau had forwarded to Mr. Kvam on May 9, 2017. Compare *Motion*, Ex. 14, with
17 *Motion*, Ex. 15.

18 39. On May 17, 2017, Mr. Kvam sent Mr. Cole a message on Slack
19 indicating, "first half of the third draw on May to go out tomorrow." *Motion*, Ex. 16.

20 40. On May 18, 2017, Mr. Kvam wired \$9,000.00 directly to TNT with the
21 reference "Half of Third Installment." *Motion*, Ex. 17; *Opposition*, Ex. 21.

22 41. On May 21, 2017, Mr. Cole informed Mr. Mineau that TNT would be
23 "installing floors this week and should be finishing very soon." *Motion*, Ex. 1, ¶ 24, Ex.
24 18; *Opposition*, Ex. 22.

1 42. Mr. Mineau forwarded this information on to Mr. Kvam. *Motion*, Ex. 18;
2 *Opposition*, Ex. 22.

3 43. On May 26, 2017, Criterion NV LLC, acting on Mr. Mineau's behalf, wired
4 \$20,000.00 directly to TNT with the reference "May Street." *Motion*, Ex. 1, ¶ 25, Ex. 19.

5 44. Over the course of the next month, Mr. Kvam and Mr. Cole texted
6 regularly concerning the Property. *Motion*, Ex. 20, Ex. 22.

7 45. Mr. Cole sent Mr. Kvam and Mr. Mineau dozens of pictures of the work
8 being performed at the Property. *Motion*, Ex. 22, p. KVAM0106-KVAM0123.

9 46. Mr. Cole also notified Mr. Kvam that "I got all the permits and paperwork
10 back from the city last week file from [sic] my inspections as soon as they come do
11 those I'm two weeks after that." *Motion*, Ex. 22, p. KVAM0129.

12 47. In response to Mr. Kvam's inquiry, Mr. Cole explained that the
13 inspections were "for the rough plumbing and electrical." *Motion*, Ex. 22, p.
14 KVAM0129.

15 48. Mr. Kvam had independent and direct communications with TNT. *Motion*,
16 Ex. 20, Ex. 22. 38.

17 49. Mr. Kvam acquired information directly from TNT and did not rely on Mr.
18 Mineau's representations.

19 50. After June 20, 2017, TNT started becoming increasingly unresponsive.
20 *Motion*, Ex. 1, ¶ 29.

21 51. Mr. Mineau stayed in contact with Mr. Cole and Mr. Hartwell in an effort to
22 compel TNT to finish the project. *Motion*, Ex. 1, ¶ 29.

1 52. TNT communicated inconsistently. TNT did respond with excuses for
2 delays and promised that the project would be completed within a matter of days or
3 weeks. *Motion*, Ex. 1, ¶ 29.

4 53. Mr. Hartwell confirmed that TNT was working to replace Mr. Cole and that
5 TNT would finish the project as soon as possible. *Motion*, Ex. 1, ¶ 29.

6 54. In late August 2017, TNT explained Mr. Cole had been absent because
7 he had suffered a heart attack but recovered and was returning to work. *Motion*, Ex.
8 1, ¶ 29.

9 55. In late September 2017, Mr. Cole informed Mr. Mineau the Property
10 needed a few more inspections but was nearly complete. *Motion*, Ex. 1, ¶ 29.

11 56. In mid-October 2017, Mr. Cole informed Mr. Mineau that TNT was "doing
12 the final touches" and would then be ready for occupancy inspections. *Motion*, Ex. 1, ¶
13 29.

14 57. In early November 2017, Mr. Cole advised some of the plumbing work did
15 not pass inspection and would need more work. *Motion*, Ex. 1, ¶ 29.

16 58. In mid-November 2017, Mr. Cole represented to Mr. Mineau that the
17 project would be done in 14-17 days and would cost an additional \$2,000.00, but that
18 TNT would "eat that cost" due to the delay. *Motion*, Ex. 1, ¶ 29.

19 59. Mr. Mineau relayed each status update from TNT to Mr. Kvam.
20 *Opposition*, Ex. 25-31.

21 60. By December 2017, Mr. Kvam had become frustrated with TNT's excuses
22 and delays and indicated his fear that TNT had defrauded them. *Motion*, Ex. 24

23 61. Mr. Mineau notified Mr. Kvam that he had asked his attorney in Chicago
24 to draft a demand letter to TNT. *Motion*, Ex. 24

1 62. Alternatively, Mr. Mineau offered to "sign the property over." *Motion*, Ex.
2 24.

3 63. On December 31, 2017, Mr. Kvam delivered a letter to Mr. Mineau
4 concerning the Property. *Motion*, Ex. 25

5 64. In his letter, Mr. Kvam expressly rejected Mr. Mineau's offer to transfer
6 the Property, stating he did not want to assume the role of managing the project and
7 expressing concern that TNT had done little construction work for the money it had
8 been paid. *Motion*, Ex. 25

9 65. For reasons beyond any of the parties' knowledge, control or expectation,
10 the contractor hired to perform the renovations did not or was not able to complete the
11 job. DA ¶ 11.

12 66. Mr. Kvam stated, "...I deem the project a failure...." *Motion*, Ex. 25.

13 67. On November 16, 2018, Legion sold the Property for \$41,000.00. *Motion*,
14 Ex. 30; *Opposition*, Ex. 35.

15 68. Legion's share of prorated property taxes, closing costs, and the
16 commission owed to the real estate brokers equaled \$16,526.23. *Motion*, Ex. 30;
17 *Opposition*, Ex. 35.

18 69. The net proceeds from the closing were \$24,473.77. *Motion*, Ex. 30;
19 *Opposition*, Ex. 35.

20 70. On December 19, 2018, Legion received an additional \$1,864.14 from
21 the sale of the Property as a result of a refund on a tax bill and a water bill. *Motion*, Ex.
22 1. ¶ 39.

23 71. The total net proceeds from the sale of the Property are \$26,337.91.
24 *Motion*, Ex. 1. ¶ 39.

1 72. Mineau and Legion fulfilled all of their obligations under the Terms of
2 Agreement. DA ¶ 22.

3 73. The assets remaining after the project failed are claims against TNT and
4 \$26,337.91.

5 74. To the extent any of the contents in Sections I and II, supra, and/or the
6 following conclusions of law contain or constitute, or may be construed to contain or
7 constitute findings of fact, they are incorporated here.

8
9 **IV. CONCLUSIONS OF LAW.**

10 1. To the extent any of the contents of Sections I, II and III, supra, contain or
11 constitute, or may be construed to contain or constitute conclusions of law, they are
12 incorporated here.

13 **A. Declaratory Relief.**

14 2. The SAC's First Cause of Action is for Declaration of Joint Venture,
15 thereby seeking declaratory relief.

16 3. The FACC's Third Cause of Action is for Declaratory Relief.

17 4. The Court gave reasonable proper notice under NRCP 56 that it intended
18 to grant Declaratory Relief on Mineau/Legions FACC Third Cause of Action for
19 Declaratory Relief and was not granting summary judgment the SAC's First Cause of
20 Action is Declaration of Joint Venture.

21
22 5. "A statement in a pleading may be adopted by reference elsewhere in the
23 same pleading or in any other pleading or motion." NRCP 10(c). The FACC's Third
24 Claim for Relief for Declaratory Relief includes Paragraph 32, "Mineau and Legion
25 reallege the allegations contained in the other paragraphs of this Counterclaim and
26

1 incorporate them by reference as if fully set forth here." *FACC*, p.4. The incorporation
2 of the allegations contained in other paragraphs was appropriate under applicable law.

3 6. Mr. Kvam failed to file an answer to the *FACC* Third Claim for Relief for
4 Declaratory Relief.

5 7. As stated, "*Effect of Failing to Deny*. An allegation—other than one
6 relating to the amount of damages – is admitted if a responsive pleading is required
7 and the allegation is not denied." NRCP 8(b)(6). An answer to counterclaim is a
8 required responsive pleading. Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783,
9 785 (1963).

10 8. The effect of Mr. Kvam's failure to answer the allegations of the *FACC*
11 Third Claim for Relief for Declaratory relief is the allegations, including the incorporated
12 allegations, were admitted. *Id.* (citing NRCP 8(d) (NRCP 8(d), which, as enacted at the
13 time the *FACC*, was filed provided, "[a]verments in a pleading to which a responsive
14 pleading is required ... are admitted when not denied in the responsive pleading.")).
15 NRCP 8(d) was deleted by amendment effective March 1, 2019); Breliant v. Preferred
16 Equities Corp., 109 Nev. 842, 848–49, 858 P.2d 1258, 1262 (1993) (holding plaintiff
17 stated sufficient facts to assert a claim, in part, because defendant admitted to
18 allegations in complaint when it did not deny the allegations in plaintiff's amended
19 complaint that made averments in its pleading where a responsive pleading was
20 required by defendant).

21 9. A party must meet four elements before declaratory relief can be granted:
22 (1) there must exist a justiciable controversy; that is to say, a controversy in which a
23 claim of right is asserted against one who has an interest in contesting it; (2) the
24 controversy must be between persons whose interests are adverse; (3) the party
25
26

1 seeking declaratory relief must have a legal interest in the controversy, that is to say, a
2 legally protectable interest; and (4) the issue involved in the controversy must be ripe
3 for judicial determination. MB Am., Inc. v. Alaska Pac. Leasing, 132 Nev. Adv. Op. 8,
4 367 P.3d 1286, 1291 (2016).

5 10. A justiciable controversy initially existed in this case regarding whether
6 there was a joint venture/partnership.

7 11. Any person whose rights, status, or other legal relations "are affected by
8 a statute . . . may have determined any question of construction" of that statute. NRS
9 30.040(1); Prudential Ins. Co. of Am. v. Ins. Comm'r, 82 Nev. 1, 5, 409 P.2d 248, 250
10 (1966) (declaratory relief is available when a controversy concerning the meaning of a
11 statute arises).

12 12. Formation of joint ventures is governed by NRS 87.4322 which states, in
13 part, "the association of two or more persons to carry on as co-owners of a business
14 for profit forms a partnership, whether or not the persons intend to form a partnership."

15 13. Mr. Kvam, Mr. Meneau and Mr. Spinola formed a joint
16 venture/partnership pursuant to NRS 87.4322. *Motion*, Ex. 2; *Opposition*, Ex. 11.

17 14. The justiciable controversy regarding creation of a joint
18 venture/partnership was resolved during the litigation and the parties agree a joint
19 venture/partnership was created.

20 15. A justiciable controversy exists regarding the parties' rights under the
21 Terms of Agreement.

22 16. Mr. Kvam's and Mineau/Legion's interests are adverse.

23 17. Mr. Kvam, Mr. Mineau and Legion have a legal interest in the
24 controversy.
25
26

1 18. For declaratory relief, "Person" is "construed to mean any person,
2 partnership . . . or other corporation of any character whatsoever." NRS 30.020.

3 19. "Whether a determination is proper in an action for declaratory relief is a
4 matter within the trial judge's discretion that will not be disturbed on appeal unless
5 abused." El Capitan Club v. Fireman's Fund Ins. Co., 89 Nev. 65, 68, 506 P.2d 426,
6 428 (1973).

7 20. Declaratory relief should be granted on Mineau/Legion's *FACC* Third
8 Claim for Relief for Declaratory Relief.

9 21. The Court should declare with respect to the parties' respective rights
10 and interests:

11 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
12 for the acquisition of the Property, 7747 S. May Street, Chicago, Illinois.

13 b. Mr. Kvam was the initial funding member.

14 c. The parties formed a joint venture/partnership pursuant to NRS
15 87.4322.

16 d. The Terms of Agreement and NRS Chapter 87 governed the
17 partnership.

18 e. The Terms of Agreement did not constitute a loan agreement.

19 f. There was no meeting of the minds regarding any other provisions
20 to the Terms of the Agreement except those written and contained in the Terms
21 of Agreement.

22 g. Mr. Kvam acceded to Mr. Spinola's interest.

23 h. No party made any loans to the partnership.

24 i. Mr. Kvam acceded to Mr. Spinola interest.
25
26

1 j. Mr. Spinola's does not have an interest adverse to the interests of
2 Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's interest
3 to Mr. Kvam and the remedy of assignment, Mr. Spinola has no legal interest in
4 the Terms of Agreement. Only those who enjoy a legal interest in the Terms of
5 Agreement should be joined in this action. Wells v. Bank of Nevada, 90 Nev.
6 192, 198, 522 P.2d 1014, 1018 (1974).

7 k. The project failed.

8 l. All remedies due to the partnership are assigned to Kvam because
9 the project failed.

10 m. The parties agreed all interests in the partnership and any
11 remedies due to the partnership, including the proceeds from the sale of the
12 Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the
13 partnership dissolved. *Motion*, Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to*
14 *Deposit Funds*, December 12, 2018.

15 22. Based on the Court's findings and conclusions on Mineau/Legion's *FACC*
16 Third Claim for Relief and its findings and conclusions on the SAC's remaining claims
17 for relief, *infra*, summary judgment is denied on the SAC's First Claim for Declaration of
18 Joint Venture.

19 **B. Rescission or Reformation of Agreement.**

20 23. The SAC's Second Cause of Action is for Recission or Reformation of
21 Agreement.

22 24. "A contract may be rescinded on the basis of mutual mistake when both
23 parties, at the time of contracting, share a misconception about a vital fact upon which
24 they based their bargain." Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686,
25 26

1 694, 356 P.3d 511, 517 (2015) (internal citations omitted). "However, mutual mistake
2 will not provide grounds for rescission where a party bears the risk of mistake." Id.
3 (citing Restatement (Second) of Contracts §§ 152(1), 154(b), (c) (1981)). "[I]f the risk
4 is reasonably foreseeable and yet the contract fails to account for that risk, a court may
5 infer that the party assumed that risk." Id.

6 25. Alternatively, "courts in this state will reform contracts ... in accordance
7 with the true intention of the parties when their intentions have been frustrated by a
8 mutual mistake." Seyden v. Frade, 88 Nev. 174, 178, 494 P.2d 1281, 1284 (1972).

9 26. "Reformation is based upon equitable principles, applied when a written
10 instrument fails to conform to the parties' previous understanding or agreement."
11 Grappo v. Mauch, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994).

12 27. The parties accounted for the risks inherent in the investment by agreeing
13 all remedies in the partnership would be assigned to Mr. Kvam if the joint venture failed
14 in any way. *Motion*, Ex. 2; *Opposition*, Ex. 11.

15 28. Even viewing all evidence raised by Mineau/Legion in a light most
16 favorable to Mr. Kvam, Mr. Kvam has failed to bring forth specific evidence that the
17 parties, at the time of contracting, shared a misconception about a vital fact upon which
18 they based their bargain, or that the Terms of Agreement fail to conform to the true
19 intention of the parties or the parties' previous understanding or agreement.

20 29. Mr. Kvam fails to make a showing sufficient to establish an element
21 essential to his claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
22 Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion
23 are entitled to judgment as a matter of law on this claim.
24
25
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1 **C. Breach of Contract - Loan.**

2 30. Mr. Kvam's Third Cause of Action in his SAC is for Breach of Contract –
3 Loan (breach of the Terms of Agreement's loan agreement).

4 31. The elements of a breach of contract claim are (1) existence of a valid
5 contract, (2) breach, and (3) damages. See Contrearras v. Am. Family Mut. Ins. Co.,
6 135 F.Supp.3dc 1208, 1227 (D. Nev. 2015)

7 32. Generally, when a contract is clear on its face, it will be construed from
8 the written language and enforced as written. Canfora v. Coast Hotels & Casinos, Inc.,
9 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The court has no authority to alter the
10 terms of an unambiguous contract. Id. Furthermore, the court cannot force upon
11 parties contractual obligations, terms or conditions which are not contained in the
12 contract. McCall v. Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946); Harrison v.
13 Harrison, 132 Nev. 564, 376 P.3d 173 (2016); Golden Rd. Motor Inn, Inc. v. Islam, 132
14 Nev. 476, 376 P.3d 151 (2016); Reno Club, Inc. v. Young Inv. Co., 64 Nev. 312, 323,
15 182 P.2d 1011, 1016 (1947).

16 33. A loan is the delivery of a sum of money to another under a contract to
17 return at some future time an equivalent amount with or without an additional sum
18 agreed upon for its use; and if such be the intent of the parties the transaction will be
19 deemed a loan regardless of its form. Kline v. Robinson, 83 Nev. 244, 249, 428 P.2d
20 190, 194 (1967), *overruled in part by* Pease v. Taylor, 88 Nev. 287, 496 P.2d 757
21 (1972).

22 34. Kvam has not identified any evidence of a loan agreement and thus
23 cannot establish a breach.
24
25
26

1 35. The Terms of Agreement provide Mr. Kvam will receive 7% annual return
2 on any funds provided if the project was profitable. The project failed. Mr. Kvam's
3 remedy is assignment of all interests and remedies of the partnership to him. *Motion*,
4 Ex. 2; *Opposition*, Ex. 11.

5 36. Based on the Court's findings and conclusions on the *FACC's* Third
6 Claim for Relief for Declaratory Relief, even viewing all evidence raised by
7 Mineau/Legion in a light most favorable to Mr. Kvam, Mr. Kvam has not established
8 that a loan agreement existed and cannot establish a breach.
9

10 37. Mr. Kvam has not identified with specificity evidence to establish all
11 elements of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
12 Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion
13 are entitled to judgment as a matter of law on the SAC's Third Cause of Action for
14 Breach of Contract -Loan.

15 **D. Breach of Contract and Tortious Breach of Implied Covenant of**
16 **Good Faith and Fair Dealing.**

17 37. The SAC's Fourth Cause of Action is for Breach of Contract and Tortious
18 Breach of Implied Covenant of Good Faith and Fair Dealing.

19 38. Every contract imposes upon the contracting parties the duty of good faith
20 and fair dealing. See A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914,
21 784 P.2d 9, 9-10 (1984).

22 39. The remedy for breach of the implied covenant of good faith and fair
23 dealing generally is on the contract itself. In certain circumstances breach of contract,
24 including breach of the covenant of good faith and fair dealing, may provide the basis
25 for a tort claim. Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043,
26 1046-47, 862 P.2d 1207, 1209 (1993) (citations omitted).

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

10
11 41. Summary judgment has been affirmed on claims involving a partnership
12 and claims for breach of contract and breach of the implied covenant of good faith and
13 fair dealing. See e.g. Phelps v. Frampton, 170 P.3d 474 (Mont. 2007) (not tortious
14 claim).

15 42. "The only fiduciary duties a partner owes to the partnership and the other
16 partners are the duty of loyalty and the duty of care." NRS 87.4336(1).

17 43. The statutory duty of loyalty requires each partner to, *inter alia*, "to
18 account to the partnership and hold as trustee for it any property, profit or benefit
19 derived by the partner in the conduct and winding up of the partnership business or
20 derived from a use by the partner of partnership property, including the appropriation of
21 a partnership opportunity." NRS 87.4336(2)(a).

22
23 44. The statutory duty of care is limited to "refraining from engaging in grossly
24 negligent or reckless conduct, egregious or perfidious conduct, intentional misconduct
25 or a knowing violation of law by Mr. Mineau or Mr. Mineau on behalf of Legion. To the
26 contrary, the evidence supports that the contractor delayed the work, Mr. Kvam

1 conveyed information he received about the progress of the project and/or Mr. Kvam
2 communicated about the project.

3 45. Mineau/Legion kept Mr. Kvam reasonably informed of the Project with the
4 information available to Mineau/Legion and Mr. Kvam had independent
5 communications with the contractor, thereby negating the fourth element required to
6 establish summary judgment on this claim. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

7 46. Even viewing all evidence raised by Mineau/Legion in a light most
8 favorable to Mr. Kvam, Mr. Kvam has failed to set forth evidence supporting each
9 element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
10 Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

11 47. Accordingly, Mineau/Legion are entitled to judgment as a matter of law
12 on the SAC's Fourth Cause of Action for Breach of Contract and Tortious Breach of
13 Implied Covenant of Good Faith and Fair Dealing.

14
15 **E. Accounting.**

16 48. The SAC's Fifth Cause of Action is for Accounting.

17 49. As state, pursuant to NRS 87.4336(2)(a), a partner must account to the
18 partnership for any property, profit or benefit derived by the partner from a use by the
19 partner of partnership property, including the appropriation of a partnership opportunity.

20 50. The only partnership property over which Mineau/Legion had custody
21 was the Property itself, and the proceeds from the sale of the Property. *Motion*, Ex. 1,
22 ¶ 10, ¶ 37-40, Ex. 2; *Opposition*, Ex. 10, Ex. 11.

23 51. Mineau/Legion contends they provided Mr. Kvam with all information
24 necessary for an accounting.
25
26

1 52. Mr. Kvam asserts Mineau/Legon have not provided a complete
2 accounting.

3 53. An accounting will verify the accuracy of the amount net proceeds.

4 54. A genuine issue of material fact exists regarding whether the accounting
5 provided by Mineau/Legion is factually and legally sufficient under applicable law.

6 55. Accordingly, summary judgment on the SAC's Fifth Cause of Action is not
7 warranted under NRCP 56.

8
9 **F. Court Supervision of Dissolution and Winding Up, and Appointment
10 of Receiver.**

11 56. The SAC's Sixth Cause of Action is for Court Supervision of Dissolution
12 and Winding up, and Appointment of Receiver.

13 57. A partnership continues after dissolution only for the purpose of winding
14 up its business. The partnership is terminated when the winding up of its business is
15 completed. NRS 87.4352(1).

16 58. A receiver may be appointed by the court in which an action is pending,
17 or by the judge thereof between partners or others jointly owning or interested in any
18 property or fund. NRS 32.010.

19 59. The winding up by the partners themselves or by a receiver does not
20 affect the personal liability of the partners for unsatisfied claims, absent specific
21 agreement. NRS 87.360.

22 60. The parties agreed all interests in the partnership and any remedies due
23 to the partnership, including the proceeds from the sale of the Property in the amount
24 of \$26,337.71, should be assigned to Mr. Kvam and the partnership dissolved. *Motion*,
25 Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to Deposit Funds*, Dec. 12, 2018.
26

1 61. A ruling on this claim is held in abeyance pending resolution of the SAC's
2 Fifth Cause of Action for Accounting.

3 62. **Temporary and Permanent Injunction.**

4 63. The SAC's Seventh Cause of Action is for Temporary and Permanent
5 Injunction.

6 64. Based on the findings and conclusions on the SAC's Second, Third,
7 Fourth, Fifth and Sixth Causes of Action, and on the *FACC's* Third Claim for Relief for
8 Declaratory Relief, and the deposit of the funds with the Court, the SAC's Seventh
9 Cause of Action for Temporary and Permanent Injunction is legally ineffectual and
10 summary judgment should be denied.
11

12 **H. Fraud, Fraudulent Inducement, and Fraudulent Concealment.**

13 65. The SAC's Eighth Cause of Action is for Fraud, Fraudulent Inducement,
14 and Fraudulent Concealment.

15 **i. Fraud.**

16 66. Under Nevada law, the elements of a fraud claim are as follows: (1) a
17 false representation made by the defendant; (2) defendant's knowledge or belief that
18 the representation is false or insufficient basis for making the representation; (3)
19 defendant's intention to induce the plaintiff to act or to refrain from acting in reliance
20 upon the misrepresentation; (4) plaintiff's justifiable reliance upon the
21 misrepresentation; and (5) damage to the plaintiff resulting from such reliance. Starr
22 Indem. & Liab. Co. v. Young, 379 F. Supp. 3d 1103, 1110 (D. Nev. 2019) (citing
23 Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 825 P.2d 588, 592 (1992)).
24

25 67. To establish a claim for intentional misrepresentation, a plaintiff must
26 show that the defendant supplied plaintiff with false information, and summary

1 judgment is appropriate if plaintiff has not provided evidence of this essential element.
2 Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686, 695-96, 356 P.3d 511,
3 518 (2015); Moore v. Prudential Residential Services Ltd. Partnership, 849 So.2d
4 914, 926 (Ala. 2002) (affirming summary judgment in favor of defendants because
5 plaintiffs presented no evidence indicating that defendants knew real estate had any
6 defects, or evidence demonstrating reliance on misrepresentations.)

7
8 **ii. Fraudulent Inducement.**

9 68. To prove fraudulent inducement, plaintiff must show: (1) defendant's false
10 representation; (2) that defendant knew or believed statement was false, or defendant
11 had an insufficient basis for making statement; (3) defendant intended to induce
12 plaintiff to act or refrain from acting upon the misrepresentation; and (4) plaintiff was
13 damaged as a result of relying on the misrepresentation. Hernandez v. Creative
14 Concepts, Inc., 862 F. Supp. 2d 1073, 1092–93 (D. Nev. 2012).

15 69. Where a plaintiff fails to provide any evidence of defendant's intent when
16 defendant entered into agreement, summary judgment is appropriate. Argonaut
17 Development Group, Inc. v. SWH Funding Corp., 150 F.Supp.2d 1357, 1364 (S.D. Fla.
18 2001).

19
20 **iii. Fraudulent Concealment.**

21 70. To establish fraudulent concealment, a plaintiff must prove five elements:
22 (1) the defendant concealed or suppressed a material fact; (2) the defendant was
23 under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally
24 concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff
25 was unaware of the fact and would have acted differently if she had known of the
26 concealed or suppressed fact; and (5) the plaintiff sustained damages as a result of the

1 concealment or suppression. Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406,
2 1415 (D. Nev. 1995).

3 71. Mr. Mineau conveyed the information he was provided and kept Mr.
4 Kvam reasonably informed of the Project with the information available to
5 Mineau/Legion. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

6 72. Mr. Kvam had independent and direct communications with the
7 contractor and therefore was aware of the progress on the project.

8 73. Mr. Kvam did not rely upon Mineau/Legion's representations as Mr. Kvam
9 communicated directly with TNT concerning the status of the project. *Motion*, Ex. 9-11,
10 Ex. 13-16, Ex. 20.

11 74. Mr. Kvam identifies no specific evidence that Mr. Mineau made any
12 affirmative misrepresentations during the Project.

13 75. Mr. Kvam cites not evidence that Mr. Mineau supplied false information to
14 him.

15 76. Mr. Kvam has not established that he relied on any false information to his
16 detriment.

17 77. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated that Mr. Kvam has failed to
19 identify specific evidence for all of the elements of this claim. Cuzze, 123 Nev. at 602,
20 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25,
21 2020.

22 78. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
23 the SAC's Eighth Cause of Action for Fraud, Fraudulent Inducement, and Fraudulent
24 Concealment.
25
26

1 **I. Conversion.**

2 79. The SAC's Ninth Cause of Action is for Conversion.

3 80. "Conversion is a distinct act of dominion wrongfully exerted over
4 another's personal property in denial of, or inconsistent with his title or rights therein or
5 in derogation, exclusion, or defiance of such title or rights." M.C. Multi-Family Dev.,
6 L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910, 193 P.3d 536, 542 (2008).

7 81. "Conversion generally is limited to those severe, major, and important
8 interferences with the right to control personal property that justify requiring the actor to
9 pay the property's full value." Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328--
10 29, 130 P.3d 1280, 1287 (2006).

11 82. Mr. Kvam has not identified disputed facts regarding any distinct act of
12 dominion that Mineau or Legion wrongfully exerted over Kvam's personal property, or
13 the funds delivered to the title company and TNT.

14 83. Mr. Kvam delivered all project funds either directly to the title company to
15 purchase the Property or directly to TNT to fund the renovation. *Motion*, Ex. 3-4, Ex. 8,
16 Ex. 12; *Opposition*, Ex. 7-8, Ex. 18, Ex. 20.

17 84. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated Mr. Kvam has failed to
19 identify evidence for each element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at
20 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

21 85. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
22 the SAC's Ninth Cause of Action for Conversion.
23
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1 **J. RICO.**

2 86. The SAC's Tenth Cause of Action SAC is for civil RICO.

3 87. In Nevada, the elements for a claim of civil RICO violations (Racketeering
4 Influenced and Corrupt Organizations Act) are: (a) defendants engaged in racketeering
5 activities as defined in NRS 207.390 and a racketeering enterprise as is defined in
6 NRS 207.380; (b) defendants acting directly, and in conspiracy with one another or
7 through their syndicate, participated directly in racketeering activity by engaging in at
8 least two crimes related to racketeering; (c) defendants' activities have the same or
9 similar pattern, intent, results, accomplices, victims, or methods of commission, or
10 otherwise interrelated by distinguishing characteristics and are not isolated events; (d)
11 defendants acquired or maintained directly or indirectly an interest in, or control of, any
12 enterprise, or defendants are employed by or associated with any enterprise to conduct
13 or participate directly or indirectly in the affairs of the enterprise through a racketeering
14 activity; (e) plaintiff's injuries flow from the defendants' violation of a predicate Nevada
15 RICO act; (f) plaintiff's injury was be proximately caused by the defendants' violation of
16 the predicate act; (g) plaintiff did not participate in the commission of the predicate act;
17 and, plaintiff is entitled to institute a civil action for recovery of treble damages
18 proximately caused by the RICO violations. NRS 207.470(1). NRS 207.470; Stoddart
19 v. Miller, 2008 WL 6070835 (Nev. 2008); Siragusa v. Brown, 114 Nev. 1384, 971 P.2d
20 801 (1999); Gordon v. Eighth Judicial Dist. Ct., 12 Nev. 216, 231, 913 P.2d 240, 250-
21 51 (1996); Cummings v. Charter Hosp. of Las Vegas, Inc., 111 Nev. 639, 896 P.2d
22 1137 (1995); Allum v. Valley Bank of Nevada, 109 Nev. 280, 849 P.2d 297
23 (1993); Hale v. Burkhardt, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988).
24
25
26

1 88. Any person who is injured in his business or property by reason of any
2 violation of NRS 207.400 has a cause of action against a person causing such injury for
3 three times the actual damages sustained. NRS 207.470

4 89. "'Racketeering activity' means engaging in at least two crimes related to
5 racketeering that have the same or similar pattern, intents, results, accomplices,
6 victims, or methods of commission, or are otherwise interrelated by distinguishing
7 characteristics and are not isolated incidents...." NRS 207.390.

8 90. Criminal syndicate means any combination of persons, so structured that
9 the organization will continue its operation even if individual members enter or leave
10 the organization, which engages in or has the purpose of engaging in racketeering
11 activity. NRS 207.370.

12 91. Mr. Kvam has not identified specific evidence of racketeering activity, or
13 any activities between Mineau/Legion that resemble the type of activities required to
14 support the elements of this claim.

15 92. Summary judgment has been affirmed on civil RICO claims. See e.g.,
16 Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 107 S.Ct. 2759
17 (1987); In re Southwest Exchange, Inc., 128 Nev. 907, 381 P.3d 626 (2012).

18 93. Even viewing the evidence in a light most favorable to Mr. Kvam, Mr.
19 Kvam has not identified with specificity evidence to establish any of the elements of a
20 civil RICO claim which warrants entry of summary judgment on this claim. Cuzze, 123
21 Nev. at 602, 172 P.3d at 134; Knutson v. County of Barnes, 642 N.W.2d 910 (N.D.
22 2002) (holding defendants were entitled to summary judgment on RICO claim because
23 plaintiffs failed to plead with specificity as required, and failed to present any evidence
24 to support their claim).

1 94. Mineau/Legion are entitled to judgment as a matter of law on the SAC's
2 Tenth Cause of Action for RICO.

3 **K. Derivative Claim.**

4 95. The SAC's Eleventh Cause of Action is a Derivative claim on behalf of
5 the joint venture.

6 96. Mr. Kvam conceded the partnership does not hold any independent
7 claims for relief against Mineau/Legion.

8 97. Based on the Courts findings and conclusions on the SAC's Second,
9 Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, and Mr.
10 Kvam's concession, the Court finds and concludes no genuine issue of material fact
11 exists for trial on the SAC's Eleventh Cause of Action for a Derivative Claim and
12 Mineau/Legion are entitled to judgment as a matter of law.

13 **V. ORDER.**

14 Based on the foregoing findings of undisputed facts and conclusions of law, and
15 good cause appearing therefor,
16

17 **IT IS HEREBY ORDERED SUMMARY ADJUDICATION IS GRANTED,**
18 **DENIED, AND HELD IN ABEYANCE AS FOLLOWS:**

19 1. Notice was reasonably given to the parties of the Court's intent to grant
20 summary judgment on Mineau/Legion's *FACC* Third Cause of Action for Declaratory
21 Relief.

22 2. Summary adjudication is granted on Mineau/Legion's *FACC* Third Cause
23 of Action for Declaratory Relief and the Court declares:
24

25 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
26 in Legion for the acquisition of 7747 S. May Street, Chicago, Illinois.

- 1 b. Mr. Kvam was the initial funding member.
- 2 c. The parties formed a joint venture/partnership pursuant to NRS
- 3 87.4322.
- 4 d. The Terms of Agreement and NRS Chapter 87 governed the
- 5 partnership.
- 6 e. The Terms of Agreement did not constitute a loan agreement.
- 7 f. There was no meeting of the minds regarding any other provisions
- 8 to the Terms of the Agreement except those written and contained in the
- 9 Terms of Agreement.
- 10
- 11 g. Mr. Kvam acceded to Mr. Spinola's interest.
- 12 h. No party made any loans to the partnership.
- 13 i. Mr. Kvam acceded to Mr. Spinola interest.
- 14 j. Mr. Spinola's does not have an interest adverse to the interests of
- 15 Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's
- 16 interest to Mr. Kvam and the remedy of assignment, Mr. Spinola has no
- 17 legal interest in the Terms of Agreement.
- 18
- 19 k. The project failed.
- 20 l. All remedies due to the partnership are assigned to Kvam because
- 21 the project failed.
- 22 m. The parties stipulated all interests in the partnership and any
- 23 remedies due to the partnership, including the proceeds from the
- 24 sale of the Property in the amount of \$26,337.71, should be
- 25 assigned to Mr. Kvam and the partnership dissolved.
- 26

1 3. Summary adjudication is GRANTED in favor of Mineau/Legion and
2 against Mr. Kvam on the SAC's Second Cause of Action for Rescission or Reformation
3 of Agreement.

4 4. Summary adjudication is GRANTED in favor of Mineau/Legion and
5 against Mr. Kvam on the SAC's Third Cause of Action for Breach of Contract - Loan.

6 5. Summary adjudication is GRANTED in favor of Mineau/Legion and
7 against Mr. Kvam on the SAC's Fourth Cause of Action for Breach of Contract and
8 Tortious Breach of Implied Covenant of Good Faith and Fair Dealing.

9 6. Summary adjudication is DENIED on the SAC's Fifth Cause of Action for
10 Accounting.

11 7. The Court's ruling on Motion is held in abeyance on the SAC's Sixth
12 Cause of Action for Court Supervision of Dissolution and Winding up, and Appointment
13 of Receiver until resolution of Mr. Kvam's Fifth Cause of Action

14 8. Based on the Court's foregoing findings of fact and conclusions of law,
15 summary adjudication is DENIED on the SAC's Seventh Cause of Action for
16 Temporary and Permanent Injunction as the claim is legally ineffectual based on the
17 deposit of the funds.

18 9. Summary adjudication is GRANTED in favor of Mineau/Legion and
19 against Mr. Kvam on the SAC's Eighth Cause of Action for Fraud, Fraudulent
20 Inducement, and Fraudulent Concealment.

21 10. Summary adjudication is GRANTED in favor of Mineau/Legion and
22 against Mr. Kvam on the SAC's Ninth Cause of Action for Conversion.

23 11. Summary adjudication is GRANTED in favor of Mineau/Legion and
24 against Mr. Kvam on the SAC's Tenth Cause of Action for civil RICO.

1 12. Summary adjudication is GRANTED in favor of Mineau/Legion and
2 against Mr. Kvam on the SAC's Eleventh Cause of Action for Derivative Claim.

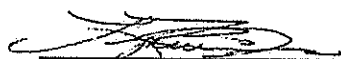
3 13. Based on the Court's foregoing findings of fact and conclusions of law,
4 summary adjudication is DENIED on the SAC's First Claim for Relief for Declaration of
5 Joint Venture.

6 14. The claims remaining at issue in this action for is Mr. Kvam's Fifth Cause
7 of Action and Sixth Cause of Action, and any declaratory relief requested under Mr.
8 Kvam's First Cause of Action which was not resolved by the declarations or findings of
9 fact and conclusions of law made herein, and claims remaining against Defendant
10 7747 S. May Street, if any.
11

12 15. The parties are directed to contact the Judicial Assistant in Department 6
13 within thirty (30) days to set this matter for trial on these claims.

14 16. The parties are further directed to resubmit any motions previously
15 submitted which are not made moot by reason of this Order.

16 DATED this 4th day of June, 2020.
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20 LYNNE K. SIMONS
21 DISTRICT JUDGE
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MICHAEL MATUSKA, ESQ.
AUSTIN SWEET, ESQ.
MARK GUNDESON, ESQ.

Heidi Bre

CODE: \$2515
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2310 South Carson Street, Suite 6
Carson City, NV 89701
Attorneys for Plaintiff

**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

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, JAY KVAM, hereby appeals to the Supreme Court of Nevada from the *Order Granting, In Part, and Denying, In Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice* entered in this action on the 5th day of June, 2020.

AFFIRMATION

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

Respectfully submitted,

Dated this 29th day of June, 2020.

MATUSKA LAW OFFICES, LTD.



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 29th day of June, 2020, I served a true and correct copy of the preceding document entitled **NOTICE OF APPEAL** 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

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

JAY KVAM,
Appellant,
vs.
BRIAN MINEAU; AND LEGION
INVESTMENTS, LLC,
Respondents.

Supreme Court No. 81422
District Court Case No. CV1800764

NOTICE OF TRANSFER TO COURT OF APPEALS

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: April 05, 2021

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

Notification List

Electronic

Matuska Law Offices, Ltd. \ Michael L. Matuska
Gunderson Law Firm \ Austin K. Sweet\ Mark H. Gunderson

Paper

Hon. Lynne K. Simons, District Judge
Jacqueline Bryant, Washoe District Court Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAY KVAM,
Appellant,
vs.
BRIAN MINEAU; AND LEGION
INVESTMENTS, LLC,
Respondents.

No. 81422-COA

FILED

JUN 16 2021

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Jay Kvam appeals from a district court order denying injunctive relief in a contract action. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Michael Spinola contacted Kvam, a real estate agent and investor, about an investment project, where they would purchase real property in Chicago and bid for a contractor to renovate the property.¹ Spinola introduced Kvam to Brian Mineau, the manager and sole member of Legion Investments, LLC (Mineau), to break down the costs and potential profit for the investment project.

Mineau, Kvam, and Spinola contracted with TNT Complete Facility Care, Inc. (TNT) to renovate the property. However, TNT failed to complete the project by the agreed upon deadline, and it became increasingly unresponsive to Kvam and Mineau. Months after TNT was supposed to complete the project, it became apparent to Kvam that TNT likely abandoned the project.

Kvam sued Mineau, alleging several claims based on allegations that Mineau misrepresented his expertise and relationship with TNT, and

¹We do not recount the facts except as necessary to our disposition.

that he conspired with TNT to defraud Kvam of his investment. The district court heard Kvam's request for injunctive relief and found that it was legally ineffectual based on an order that granted Kvam all interest in the joint venture.²

Kvam claims the district court erred when it denied his request for injunctive relief because the district court thought that he sought injunctive relief to prevent Mineau from absconding with the proceeds of sale from the Chicago property after the investment project failed. Kvam claims he asked for injunctive relief to instead "prevent Mineau from conducting any further business on behalf of the joint venture."³

Here, the district court assigned all interest in the joint venture to Kvam, thus Mineau had already been prevented from conducting any further business on behalf of the joint venture. Therefore, we affirm the district court's denial of Kvam's claim for injunctive relief as Mineau no longer holds an interest in the joint venture, making the injunctive relief requested by Kvam moot.

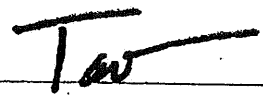
²On appeal, the Nevada Supreme Court has limited our review to Kvam's claim for injunctive relief. *Kvam v. Mineau*, Docket No. 81422 (Order Regarding Motions, October 14, 2020). To the extent that Kvam raised additional arguments that we have not addressed, we have considered them and conclude that they are procedurally barred pursuant to the Nevada Supreme Court's order, and thus, we need not reach them.

³Kvam also claims that he needs the option to pursue a second motion for injunctive relief for an amount that was refunded to Mineau, but nothing prevents Kvam from making such a motion below.

Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Janet Chubb, Settlement Judge
Matuska Law Offices, Ltd.
Gunderson Law Firm
Washoe District Court Clerk

CODE: \$2200
Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
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.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW Plaintiff, JAY KVAM by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby moves for summary judgment on the following causes of action stated in his *Second Amended Complaint* ("SAC") as follows:

1. First Cause of Action (Declaration of Joint Venture);
2. Fifth Cause of Action (Accounting); and
3. Sixth Cause of Action (Court Supervision of Winding Up, and Appointment of Receiver).

This motion is made and based on the following points and authorities, the June 5, 2020 *Order Granting, in Part, and Denying, in Part, Defendants' Motion for Summary Judgment*; *Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice* ("Summary Judgment Order"), the June 16, 2021 *Order of Affirmance* from Case

No. 81422-COA, the Declarations of Michael L. Matuska, Esq. and Jay Kvam and the other exhibits submitted herewith, and all other pleadings, exhibits and documents of record.

I. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff JAY KVAM (hereafter, "Kvam") filed his *Complaint (Verified)* in this case on April 11, 2018. Kvam named as defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC (hereafter collectively referred to as "Mineau/Legion"). [Court Docket].

2. Kvam filed his *First Amended Verified Complaint ("FAC")* on October 5, 2018. [Court Docket].

3. Kvam filed his *Second Amended Verified Complaint ("SAC")* on September 11, 2019. [Court Docket].

4. Mineau/Legion filed their *Answer to Second Amended Verified Complaint ("Answer")* on September 25, 2019. [Court Docket].

5. Kvam requested an accounting from Mineau/Legion prior to filing the *Complaint* in this case. [Ex. "1" (Declaration of Michael L. Matuska, Esq. ("Matuska Dec.")). On February 16, 2018, Kvam's counsel wrote:

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 the lender and joint venturer, and you as the project manager and managing member of Legion Investments, LLC.

[Ex. "3"].

6. On March 8, 2018, Mineau/Legion's counsel responded in pertinent part as follows:

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.

[Ex. "4"]

7. The Terms of Agreement referenced above reads, in its entirety, as follows:

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

Re:

7747 May Street, Chicago, Illinois.

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

[*Summary Judgment Order* at Finding of Fact #10].

8. On November 16, 2018, Legion sold the property for \$41,000. [See closing statement, Ex. "5"; *Summary Judgment Order* at Finding of Fact #67].

9. Legion's share of prorated property taxes, closing costs and the commission owed to the real estate brokers equaled \$16,526.23, and the net proceeds from the closing were \$24,473.77. [*Summary Judgment Order* at Finding of Fact #68-69].

10. Mineau/Legion did not inform Kvam about the sale or pay the foregoing amount (\$24,473.77) to Kvam; rather, Kvam was left to find out about the sale on his own. [Ex. "2", Declaration of Jay Kvam ("Kvam Dec.")].

11. Kvam moved for a temporary restraining order and preliminary injunction on November 30, 2018 to prevent the loss of the sale proceeds. [Court Docket #7000744; Kvam Dec.] Facing no other options, Mineau and Legion stipulated to deposit the funds with the clerk of the court [Court Docket #7021308].

12. On December 19, 2018, Legion received an additional \$1,864.14 from the sale of the Property as a result of a refund on a tax bill and a water bill. [*Summary*

1 *Judgment Order* at Finding of Fact #70].

2 13. Kvam filed his *Motion for Dissolution* on July 11, 2018 in which he argued,
3 inter alia, that:

4 Rather, the Agreement is more reasonably construed as a joint venture
5 agreement between Kvam on one hand, and Mineau and Legion on the
6 other hand. This interpretation is supported by Uniform Partnership Act.

7 [Motion for Dissolution, Court Docket, at 3:4-6].

8 14. In their Opposition to Motion for Dissolution, Mineau/Legion argued that:

9 The theory underlying Kvam's lawsuit is that the Terms of Agreement
10 created an unincorporated partnership, which Kvam now seeks to
11 dissolve. Mineau and Legion dispute that a partnership was ever formed
12 and deny owing Kvam the various duties and obligation which Kvam
13 seeks to enforce through this lawsuit.

14 [Opposition to Motion for Dissolution, Court Docket, at 2:1-4].

15 15. Mineau/Legion filed their *Motion for Summary Judgment* on January 6,
16 2020, in which they moved for summary judgment on all causes of action stated in
17 Kvam's SAC. [Court Docket].

18 16. Although Mineau/Legion purported to move for summary judgment on
19 Kvam's First Cause of Action (Declaration of Joint Venture), Mineau/Legion conceded, for
20 the first time, that the relationship between the parties should be characterized as a
21 partnership that is governed by NRS Chapter 87. [Motion for Summary Judgment 12:3]
22 ("As such, the parties formed a partnership pursuant to NRS 87.4322").

23 17. The Court proceeded to deny Mineau/Legion's *Motion for Summary*
24 *Judgment* on Kvam's First Cause of Action (Declaration of Joint Venture) and Fifth Cause
25 of Action (Accounting) and held in abeyance a decision on Kvam's Sixth Cause of Action
26 (Court Supervision of Winding Up, and Appointment of Receiver). [Summary Judgment
27 Order].

28 18. The Court granted Mineau/Legion's *Motion for Summary Judgment* on
Kvam's other causes of action; and granted summary judgment on Mineau/Legion's prior
counterclaim for declaratory relief. [Summary Judgment Order].

19. In so doing, the Court entered the following pertinent Conclusions of Law:

1 c. The parties formed a joint venture/partnership pursuant to
2 NRS 87.4322.

3 d. The Terms of Agreement and NRS Chapter 87 governed the
4 partnership.

5 [Summary Judgment Order at 27:15-19].

6 20. Kvam appealed the Summary Judgment Order on June 29, 2020 [Court
7 Docket].

8 21. The Nevada Court of Appeals entered its *Order of Affirmance* on June 16,
9 2021. [Court Docket].

10 22. The Court of Appeals limited its review to Kvam's claim for injunctive relief
11 [Order of Affirmance, fn.2].

12 23. The Court of Appeals also explained that:
13 Here, the district court assigned all interest in the joint venture to Kvam,
14 thus Mineau had already been prevented from conducting any further
15 business on behalf of the joint venture. Therefore, we affirm the district
16 court's denial of Kvam's claim for injunctive relief as **Mineau no longer**
17 **holds an interest in the joint venture**, making the injunctive relief
18 requested by Kvam moot.

19 [Order of Affirmance, p. 2] (emphasis added).

20 II. STANDARD OF REVIEW

21 The *Summary Judgment Order* sets forth the standard of review which applies to a
22 summary judgment motion. The standard for summary judgment is set forth in NRCP
23 56(c), which provides in relevant part:

24 The judgment sought shall be rendered forthwith if the
25 pleadings, depositions, answers to interrogatories, and
26 admissions on file, together with the affidavits, if any, show
27 that there is no genuine issue as to any material fact and that
28 the moving party is entitled to judgment as a matter of law.
(NRCP 56(c)).

Not all issues of fact are sufficient to warrant a trial. "[T]he issue of fact must be
'genuine.' If the record taken as a whole cannot lead a rational trier of fact to find for the
non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v.*
Zenith Radio, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed. 2d 538 (1986). A

genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Oehler v. Humana, Inc.*, 105 Nev. 348, 351, 775 P.2d 1271 (1989); *Bulbman v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588 (1992). In order for the defendants' allegations to create a "genuine" issue of fact, there must be adequate substantiation in the record, including the presentation of specific facts. *Matsushita* at 587, 1356; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed 2d 202 (1986). This standard requires more than a "scintilla" of evidence. *Anderson* at 251, 2511. The party opposing the summary judgment "is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *Collins v. Union Fed. Savings and Loan*, 99 Nev. 284, 302, 662 P.2d 610 (1983) (quoting *Hahn v. Sargent*, 523 F.2d 461 (1st Cir. 1975), *cert denied*, 425 U.S. 904 (1976)).

"Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031, 121 Nev. 724, 731 (2005). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Id.* "The nonmoving party 'must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" *Id.*

In addition, the Nevada Court of Appeal ruled that "*Mineau no longer holds an interest in the joint venture.*" That ruling constitutes "law of the case" which must be applied on remand to the District Court. "The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case." *Dictor v. Creative Mgmt. Servs., LLC*, 126, Nev. 41, 44, 223 P.3d 332, 334 (2010) citing *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 173 P.3d 724, 728, 173 P.3d 724, 728 (2007); *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003).

1 **III. ARGUMENT**

2 A. KVAM'S FIRST CAUSE OF ACTION (Declaration of Joint Venture)

3 In his First Cause of Action (Declaration of Joint Venture), Kvam requests as
4 follows:

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

7 21. *There is an actual, justifiable, present controversy between*
8 *KVAM, MINEAU, and LEGION on the question of whether the Agreement*
9 *identified in Par. 8 constitutes a joint venture agreement, an agreement for*
10 *MINEAU to transfer his membership interest in LEGION, or some other*
11 *type of agreement.*

12 22. *KVAM therefore requests a declaration on the legal rights*
13 *created by the Agreement, the status of the unincorporated joint venture*
14 *referred to herein as 7747 and the respective interests of the joint*
15 *venturers.*

16 23. *KVAM further requests a declaration on the amount of loans*
17 *and contributions made to the 7747 by each of the joint venturers.*

18 24. *KVAM further requests a declaration that 7747, MINEAU,*
19 *and LEGION were required to assign the entire interest in the 7747 to*
20 *KVAM in the event it failed in any way.*

21 [SAC p. 4]

22 The conclusions of law in the *Summary Judgment Order* explain that a justiciable
23 controversy exists regarding the parties' rights under the Terms of Agreement and
24 whether the parties created a joint venture/partnership. [Summary Judgment Order at
25 Conclusions of Law at 9-22]. Some of the findings most relevant to Kvam's First Cause of
26 Action (Declaratory Relief) include the following:

27 21. *The Court should declare with respect to the parties'*
28 *respective rights and interests:*

* * * *

c. The parties formed a joint venture/partnership pursuant to NRS 87.4322.

d. The Terms of Agreement and NRS Chapter 87 governed the partnership.

* * * *

l. All remedies due to the partnership are assigned to Kvam because the project failed.

m. The parties agreed all interests in the partnership and any remedies due to the partnership, **including the proceeds from the sale of the Property in the amount of \$26,337.71, should be assigned to Mr. Kvam** and the partnership dissolved. Motion, Ex. 1, ¶ 38-39; Opposition, p. 20, Stipulation to Deposit Funds, December 12, 2018.

[Summary Judgment Order at Conclusions of Law 21, p. 27-28] (emphasis added).

In other words, the Court has already ruled that the parties created a joint venture/partnership that should be governed by NRS Chapter 87 and that Kvam is entitled to the proceeds from the sale of the Property. The Court of Appeals also explained that “**Mineau no longer holds an interest in the joint venture.**” [Order of Affirmance, p. 2] (emphasis added). This ruling is the law of the case.

Based on the foregoing, there is no reason to delay judgment in favor of Kvam on his First Cause of Action (Declaration of Joint Venture).

B. KVAM'S FIFTH CAUSE OF ACTION (Accounting)

In his Fifth Cause of Action (Accounting), Kvam alleged as follows:

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

40. As a joint venturer in 7747, MINEAU and LEGION have the

1 duty to account to KVAM and KVAM has the right to examine the books
2 and records of the joint venture.

3 41. The exact amount owing KVAM is yet unknown and KVAM is
4 entitled to an equitable accounting in order to determine the same.

5 [SAC at p. 6].

6 In the Summary Judgment Order, this Court already ruled in pertinent party as follows:

7 49. As state [sic], pursuant to NRS 87.4336(2)(a), a partner must
8 account to the partnership for any property, profit or benefit derived by the
9 partner from a use by the partner of partnership property, including the
10 appropriation of a partnership opportunity.

11 [Summary Judgment Order at Conclusion of Law 49].

12 Based on the foregoing, and as set forth above, this Court also concluded that the
13 proceeds from the sale of the Property in the amount of \$26,337.71, should be
14 assigned to Mr. Kvam. There was no reason for Mineau/Legion to deposit those funds
15 with the Court and they should be paid to Kvam, immediately. The refund from escrow in
16 the amount of \$1,864.14 also belongs to Kvam at this point.¹

17
18 ¹ Once those amounts are paid to Kvam, the only issue that remains for the accounting is the amount of
19 money diverted to Mineau's other projects. That issue was addressed in the Discovery Commissioner's
20 January 10, 2020 *Recommendation for Order*. The *Recommendation for Order* has not yet been affirmed
21 as the order of the Court.

22 Also, Mineau/Legion's *Motion For Summary Judgment* was supported by a Declaration from Brian
23 Mineau in which he alleged, for the first time, as follows:

24 25. On or about May 26, 2017, Mr. Cole called me and requested the next
25 \$20,000.00 progress payment for the project. I was travelling at the time and was unable to
26 promptly make direct payment; however, at my request, Spinola agreed to arrange to have
the funds wired to TNT on my behalf. I have previously testified in this action that Spinola
retrieved these funds from my personal safe. However, upon further reflection and
consideration in preparing this Declaration 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).

27 [Mineau/Legion's *Motion for Summary Judgment* at Ex. "1"] (emphasis added). That Declaration prompted
28 Kvam to file *Plaintiff's Motion For Reconsideration Of Order Affirming Discovery Commissioner's*
Recommendation, Entered May 16, 2019; For Discovery Sanctions; And For Other Relief ("Motion for
Reconsideration"). The *Motion for Reconsideration* is still pending and may impact the accounting and

1 C. KVAM'S SIXTH CAUSE OF ACTION (Court Supervision of
2 Dissolution and Winding Up, and Appointment of a Receiver).

3 A detailed discussion of Kvam's Sixth Cause of Action (Court Supervision of
4 Dissolution and Winding Up, and Appointment of a Receiver). In the *Summary Judgment*
5 *Order*, this Court already explained as follows:

6 *57. A partnership continues after dissolution only for the purpose of*
7 *winding up its business. The partnership is terminated when the winding*
8 *up of its business is completed. NRS 87.4352(1).*

9 *58. A receiver may be appointed by the court in which an action is*
10 *pending, or by the judge thereof between partners or others jointly owning*
11 *or interested in any property or fund. NRS 32.010.*

12 *59. The winding up by the partners themselves or by a receiver*
13 *does not affect the personal liability of the partners for unsatisfied claims,*
14 *absent specific agreement. NRS 87.360.*

15 *60. The parties agreed all interests in the partnership and any*
16 *remedies due to the partnership, including the proceeds from the sale of*
17 *the Property in the amount of \$26,337.71, should be assigned to Mr.*
18 *Kvam and the partnership dissolved. Motion, Ex. 1, ¶ 38-39; Opposition, p.*
19 *20; Stipulation to Deposit Funds, Dec. 12, 2018.*

20 *61. A ruling on this claim is held in abeyance pending resolution of*
21 *the SAC's Fifth Cause of Action for Accounting.*

22 [*Summary Judgment Order at Conclusions of Law 57-61*].

23 As such, the final dissolution and winding up will likely follow the payment of the
24 funds to Kvam and the final accounting as set forth above.

25
26
27
28 winding up.

1 **IV. CONCLUSION**

2 Based on the foregoing, Kvam prays for relief as follows:

3 1. For summary judgment on his First Cause of Action (Declaratory Relief) and
4 Fifth Cause of Action (Accounting).

5 2. For an order directing that all funds held on deposit with the Clerk of Court
6 should be released to Kvam.

7 3. For an order directing that Mineau also pay to Kvam \$1,864.14 that was
8 refunded from escrow.

9 4. For an order directing that Mineau also pay to Kvam interest on the
10 foregoing amounts at the rate set forth in NRS 99.040 from the date of the sale,
11 November 16, 2018 until paid.

12 5. For on order allowing Kvam to complete discovery necessary for the Fifth
13 Cause of Action (Accounting) and the Sixth Cause of Action (Court Supervision of
14 Dissolution and Winding Up, and Appointment of a Receiver). This will require an order
15 adopting the Discovery Commissioner's January 10, 2020 *Recommendation for Order*
16 and allowing additional discovery as set forth in Kvam's *Motion for Reconsideration*.

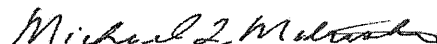
17 **AFFIRMATION**

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

20 Respectfully submitted.

21 Dated this 25 day June, 2021.

22 MATUSKA LAW OFFICES, LTD.

23 

24 By:

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 25th day of June, 2021, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** 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 PARTIAL SUMMARY JUDGMENT

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Declaration of Michael L. Matuska	2
2	Declaration of Jay Kvam	2
3	Letter dated February 16, 2018 from Michael L. Matuska to Brian Mineau	3
4	Letter dated March 8, 2018 from Austin K. Sweet to Michael L. Matuska	1
5	Closing Statement dated November 16, 2018	3

Exhibit 1
DECLARATION OF MICHAEL L. MATUSKA
(Plaintiff's Motion for Partial Summary Judgment)

Exhibit 1
DECLARATION OF MICHAEL L. MATUSKA
(Plaintiff's Motion for Partial Summary Judgment)

CODE: 1520

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

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.

DECLARATION OF MICHAEL L. MATUSKA, ESQ.

IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I, MICHAEL L. MATUSKA, do hereby make this Declaration in Support of Plaintiff Jay Kvam's *Motion for Partial Summary Judgment* as follows:

1. That I am now and at times mentioned herein have been the attorney of record in this case for the Plaintiff, Jay Kvam.

2. That attached hereto as Exhibit "2" is a true and correct copy of the letter that I sent to Defendant Brian Mineau on February 16, 2018.

3. That attached hereto as Exhibit "3" is a true and correct copy of the letter that I received from Brian Mineau's attorney, Austin Sweet, on March 8, 2018.

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

AFFIRMATION

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

Executed this 25th day of June, 2021, at Carson City, Nevada.

Respectfully submitted,

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 May Street

Exhibit 2
DECLARATION OF JAY KVAM
(Plaintiff's Motion for Partial Summary Judgment)

Exhibit 2
DECLARATION OF JAY KVAM
(Plaintiff's Motion for Partial Summary Judgment)

CODE: 1520

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

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.

**DECLARATION OF JAY KVAM IN SUPPORT OF PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I, JAY KVAM, do hereby make this Declaration in Support of Plaintiff's *Motion for Partial Summary Judgment* as follows:

1. Mineau sold the Property to Thousand Oaks Management, LLC for a loss on November 16, 2018. (See Closing Statement Ex. "5", showing net proceeds of \$24,473.77).

2. I was left to find out about the sale on my own and moved for a temporary restraining order and preliminary injunction on November 30, 2018 to prevent the loss of the sale proceeds. (#7000744).

3. On December 12, 2018, Mineau and Legion stipulated to deposit the funds with the clerk of the court (#7021308).

I declare under penalty of perjury under the laws of the State of Nevada that the

1 foregoing is true and correct.

2 **AFFIRMATION**

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

5 Executed this 25 day of June, 2021, at Carson City, Nevada.

7 Respectfully submitted,

8
9 By:

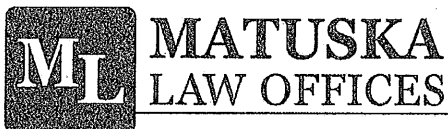
JAY KVAM

Exhibit 3

LETTER DATED FEBRUARY 16, 2018 FROM
MICHAEL L. MATUSKA TO BRIAN MINEAU
(Plaintiff's Motion for Partial Summary Judgment)

Exhibit 3

LETTER DATED FEBRUARY 16, 2018 FROM
MICHAEL L. MATUSKA TO BRIAN MINEAU
(Plaintiff's Motion for Partial Summary Judgment)



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

Licensed in Nevada and California

2310 South Carson Street, #6

775-350-7222 Fax

Carson City, NV 89701

mlm@matuskalawoffices.com

www.matuskalawoffices.com

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)

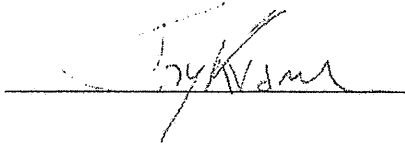
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

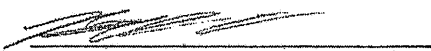
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest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



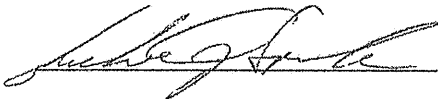
Date 2017-02-14

Brian Mineau



Date 2/13/2017

Michael J. Spinola



Date 2/13/17

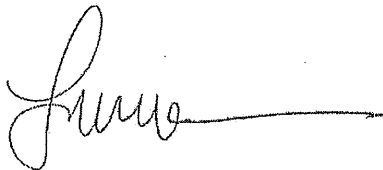
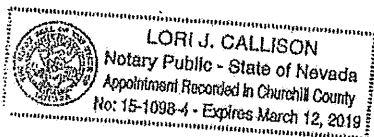
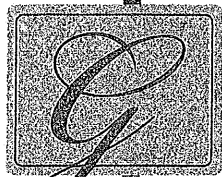


Exhibit 4
LETTER DATED MARCH 8, 2018 FROM AUSTIN K. SWEET TO
MICHAEL L. MATUSKA
(Plaintiff's Motion for Partial Summary Judgment)

Exhibit 4
LETTER DATED MARCH 8, 2018 FROM AUSTIN K. SWEET TO
MICHAEL L. MATUSKA
(Plaintiff's Motion for Partial Summary Judgment)



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.

AKS/kg

Exhibit 5

CLOSING STATEMENT DATED NOVEMBER 16, 2018
(Plaintiff's Motion for Partial Summary Judgment)

Exhibit 5

CLOSING STATEMENT DATED NOVEMBER 16, 2018
(Plaintiff's Motion for Partial Summary Judgment)

American Land Title Association

ALTA Settlement Statement - Cash
Adopted 05-01-2015

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

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

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

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

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

Acknowledgement

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

Buyer/Borrower:

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

Seller:

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

[Signature]
Escrow Officer

Michael B. Brown

11/16/2018
Date

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 PARTIAL 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., submit this Opposition to the *Motion For Partial Summary Judgment*
28 ("Motion") filed by Plaintiff / Counterdefendant JAY KVAM ("Kvam"). This Opposition is made
and based upon NRCP 56, the following memorandum of points and authorities, the pleadings on file
in this case, the *Motion for Summary Judgment* filed concurrently with this Opposition by Mineau
and Legion, and any oral argument this court wishes to entertain.

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The relief sought in Kvam's Motion is confounding. Kvam argues that all aspects of his First
4 Cause of Action were resolved in this Court's *Order Granting, In Part, and Denying, In Part*
5 *Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant*
6 *to Court's NRCP 56 Notice* ("Order"), yet he simultaneously seeks entry of judgment in his favor on
7 this claim without any explanation as to what declaratory relief should be entered. Similarly, Kvam
8 seeks entry of judgment in his favor on his Fifth and Sixth Claims for Relief while simultaneously
9 requesting additional discovery related to these claims. Kvam's conflicting positions cannot be
10 reconciled.

11 It is clear that Kvam is not seeking any additional substantive relief through its remaining
12 claims, that there are no genuine disputes as to any material facts to be resolved through trial, and
13 that summary judgment is appropriate. However, Kvam is not entitled to the relief he seeks in the
14 Motion. The Motion must be denied, and judgment entered in Mineau and Legion's favor as a matter
15 of law as set forth in their concurrently filed *Motion for Summary Judgment*.

16 **II. ARGUMENT**

17 A party may move for summary judgment, identifying each claim or the party of each claim
18 on which summary judgment is sought. NRCP 56(a). The court shall grant summary judgment if the
19 movant shows that there is no genuine dispute as to any material fact and the movant is entitled to
20 judgment as a matter of law. *Id.* While there appears to be no genuine dispute as to any material
21 fact, Kvam is not entitled to judgment as a matter of law, nor is he entitled to the relief requested in
22 the Motion.

23 **A. Kvam's First Cause Of Action (Declaration of Joint Venture).**

24 In its Order, this Court denied summary judgment on Kvam's First Cause of Action to the
25 extent that Kvam sought any declaratory relief which was not resolved by the declarations or findings
26 of fact and conclusions of law made in the Order. Order p. 44 ¶ 14. Kvam has now made clear that
27 he seeks no such additional relief.

28 ///

1 In his Motion, Kvam explains that “the Court has already ruled that the parties created a joint
2 venture/partnership that should be governed by NRS Chapter 87 and that Kvam is entitled to the
3 proceeds from the sale of the Property. The Court of Appeals also explained that ‘Mineau no longer
4 holds an interest in the joint venture.” Motion p. 8 (emphasis in original). Kvam seeks no additional
5 declaratory relief whatsoever, nor does Kvam articulate precisely what entering judgment in his favor
6 on this claim would entail. No justiciable issues remain to be resolved by way of Kvam’s First Cause
7 of Action, rendering the claim legally ineffectual.

8 The Motion must be denied as to Kvam’s First Cause of Action. Instead, Kvam’s First Cause
9 of Action should be denied as moot as set forth in Mineau’s and Legion’s concurrently filed *Motion*
10 *for Summary Judgment*.

11 ***B. Kvam’s Fifth Cause Of Action (Accounting).***

12 In its Order, this Court determined that a genuine issue of material fact exists regarding
13 whether the accounting provided by Mineau/Legion is factually and legally sufficient to verify the
14 accuracy of the amount of net proceeds received from the sale of the Property. Order pp. 33-34.
15 Kvam has now made it clear that he does not seek further accounting in this regard. Indeed, Kvam
16 even sets forth the accounting from the sale of the Property as an undisputed material fact. See
17 *Motion* p. 3. No further accounting is necessary.

18 Rather than seeking any further accounting in this regard, Kvam asks this Court for an order
19 directing that all funds held on deposit with the Clerk of Court be released to him and for a further
20 order that Mineau pay Kvam the additional proceeds of \$1,864.14, plus interest on the proceeds at
21 the legal rate. *Motion* pp. 9 & 11. While Mineau and Legion acknowledge that the benefit of these
22 proceeds has been assigned to Kvam, they adamantly maintain their position that these funds should
23 not be released until this Court has had the opportunity to consider Mineau and Legion’s claims for
24 attorneys’ fees and/or costs, which Mineau and Legion intend to file upon entry of final judgment.
25 Kvam has further failed to present any authority, evidence, or argument supporting his demand that
26 *Mineau* should pay Kvam any proceeds from the sale, that Kvam is entitled to interest on any
27 amounts, or that *Mineau* should pay any such interest due. On the contrary, if Kvam wanted the

28 ///

1 proceeds from the sale to bear interest, he should have requested that this Court place the funds in an
2 interest-bearing account. Likewise, if Kvam felt he was entitled to a release of these proceeds sooner,
3 he should have filed a motion with this Court seeking disbursement of the funds (which Mineau and
4 Legion would have strenuously opposed).

5 Kvam goes on to assert in a footnote that, once he receives the proceeds from the sale of the
6 Property, “the only issue that remains for the accounting is the amount of money diverted to Mineau’s
7 other projects,” which may be impacted by this Court’s ruling on the outstanding *Objection to*
8 *Recommendation for Order and Motion for Reconsideration of Order Affirming Discovery*
9 *Commissioner’s Recommendation, Entered May 16, 2019; for Discovery Sanctions; and for Other*
10 *Relief*.¹ Motion p. 9 FN 1. It is unclear why Kvam is seeking summary judgment on his Fifth Cause
11 of Action if he believes that outstanding issues remain to be addressed after additional discovery is
12 taken. Regardless, judgment has already been entered against Kvam on his baseless accusations that
13 Mineau or Legion diverted Kvam’s money to Mineau’s other projects. Order at p. 38. There is
14 simply no legal basis for Kvam to obtain additional discovery or an accounting on this fabricated
15 issue.

16 The Motion must be denied as to Kvam’s Fifth Cause of Action. Instead, Kvam’s Fifth Cause
17 of Action should be denied as moot as set forth in Mineau’s and Legion’s concurrently filed *Motion*
18 *for Summary Judgment*.

19 **C. Kvam’s Sixth Cause Of Action (Court Supervision of Dissolution and Winding Up,**
20 **and Appointment of Receiver).**

21 In its Order, this Court held a ruling on Kvam’s Sixth Cause of Action in abeyance pending
22 resolution of Kvam’s Fifth Cause of Action for accounting. Order pp. 34-35. As discussed above,
23 Kvam is not entitled to any further relief on his Fifth Cause of Action; thus, judgment should be
24 entered on Kvam’s Sixth Cause of Action in accordance with the Order.

25 In his Motion, Kvam asserts that “the final dissolution and winding up will likely follow the
26 payment of the funds to Kvam and the final accounting as set forth above,” and seeks an “order
27

28 ¹ Neither of these outstanding motions has been resubmitted, and they both therefore remain
presumptively moot per the Order.

1 allowing Kvam to complete discovery necessary for the Fifth Cause of Action (Accounting) and Sixth
2 Cause of Action (Court Supervision of Dissolution and Winding Up, and Appointment of a
3 Receiver).” Motion pp. 10-11. Thus, despite opening his Motion by requesting summary judgment
4 on all three pending causes of action [Motion p. 1], it does not appear that Kvam is actually seeking
5 summary judgment on his Sixth Cause of Action at this time. For the sake of clarity, this Court
6 should deny the Motion with respect to Kvam’s Sixth Cause of Action.

7 Kvam also seeks “an order adopting the Discovery Commissioner’s January 10, 2020
8 *Recommendation for Order* and allowing additional discovery as set forth in Kvam’s *Motion for*
9 *Reconsideration*.” Order p. 11. How this requested relief fits into Kvam’s *Motion for Partial*
10 *Summary Judgment* is entirely unclear; regardless, such relief is entirely unavailable and improper
11 under Rule 56. Per this Court’s Order, Kvam should “resubmit any motions previously submitted
12 which are not made moot by reasons of this Order.” Order p. 44.

13 The Motion must be denied as to Kvam’s Sixth Cause of Action. Instead, judgment should
14 be entered on Kvam’s Sixth Cause of Action as set forth in Mineau’s and Legion’s concurrently filed
15 *Motion for Summary Judgment*.

16 **III. CONCLUSION**

17 There are no remaining issues of fact or law preventing entry of final judgment. However,
18 Kvam is not entitled to judgment as a matter of law on any of his remaining claims, nor is he entitled
19 to the relief sought in his Motion.

20 The Motion must be denied and final judgment entered as set forth in Mineau’s and Legion’s
21 concurrently filed *Motion for Summary Judgment*.

22 23 **AFFIRMATION**

24 The undersigned does hereby affirm that the preceding document, **OPPOSITION TO**
25 **MOTION FOR PARTIAL SUMMARY JUDGMENT**, filed in the Second Judicial District Court

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 2 day of July, 2021.

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

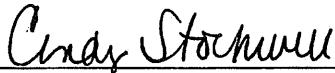
*Attorneys for Brian Mineau and Legion
Investments*

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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 2 day of July, 2021, I electronically filed a true and correct copy of the **OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT**, 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

1 **CODE \$2200**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

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

13 JAY KVAM,

Case No. CV18-00764

14 Plaintiff / Counterdefendant,

Dept. No. 6

15 vs.

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

19 Defendants / Counterclaimants.
20 _____ /

21 **MOTION FOR SUMMARY JUDGMENT**

22 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
23 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.,
24 and Mark H. Gunderson, Esq., file this *Motion for Summary Judgment* ("Motion") as to all remaining
25 causes of action filed by Plaintiff / Counterdefendant JAY KVAM ("Kvam"), consisting of Kvam's
26 First, Fifth, and Sixth Causes of Action, and "claims remaining against Defendant 7747 S. May Street,
27 if any." This Motion is made and based upon NRCP 56, the following memorandum of points and
28 authorities, the pleadings on file in this case, the *Opposition to Motion for Partial Summary Judgment*
filed concurrently with this Motion by Mineau and Legion, and any oral argument this court wishes
to entertain.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As set forth in this Court's *Order Granting, In Part, and Denying, In Part Defendants' Motion*
4 *for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP*
5 *56 Notice* ("Order"), which has now been affirmed on appeal, "the claims remaining at issue in this
6 action [are] Mr. Kvam's Fifth Cause of Action and Sixth Cause of Action, and any declaratory relief
7 requested under Mr. Kvam's First Cause of Action which was not resolved by the declarations or
8 findings of fact and conclusions of law made herein, and claims remaining against Defendant 7747
9 S. May Street, if any." Order p. 44 ¶ 14. In light of Kvam's recently filed *Motion for Partial Summary*
10 *Judgment* ("Kvam's MSJ"), it is apparent that there are no genuine disputes of material fact to be
11 resolved at trial and this matter is ripe for resolution as a matter of law. The only dispute remaining
12 is the appropriate manner in which to resolve Kvam's remaining claims.

13 Kvam has acknowledged that this Court's Order resolved all relief requested under his First
14 Cause of Action. That claim should therefore be denied as moot.

15 Kvam does not question or dispute the accounting Mineau and Legion have provided
16 concerning the net proceeds from the sale of the Property. According to Kvam, "the only issue that
17 remains for the accounting is the amount of money diverted to Mineau's other projects." However,
18 this Court has already entered summary judgment against Kvam on his baseless assertions that
19 Mineau or Legion diverted any of Kvam's money to Mineau's other projects. Thus, there are no
20 outstanding issues to be resolved under Kvam's Fifth Cause of Action, and that claim should also be
21 denied as moot.

22 In its Order, this Court held a ruling on Kvam's Sixth Cause of Action in abeyance pending
23 resolution of Kvam's Fifth Cause of Action for Accounting. Upon denying Kvam's Fifth Cause of
24 Action as moot, this Court should enter judgment in favor of Mineau and Legion on Kvam's Sixth
25 Cause of Action consistent with the Order.

26 There is simply nothing of substance left for this Court to do in this action. There are no
27 genuine disputes as to any material facts and there are no outstanding legal issues which affect any
28 parties' substantive rights in any way. Kvam's First and Fifth Causes of Action should be denied as

1 moot and final judgment entered on Kvam's Sixth Cause of Action in accordance with the Order.

2 The Motion should be granted.

3 **II. STATEMENT OF LAW**

4 A party may move for summary judgment, identifying each claim or the party of each claim
5 on which summary judgment is sought. NRCP 56(a). The court shall grant summary judgment if the
6 movant shows that there is no genuine dispute as to any material fact and the movant is entitled to
7 judgment as a matter of law. Id.

8 A party seeking summary judgment bears the initial burden of informing the court of the basis
9 for its motion and identifying those portions of the pleadings and discovery responses which
10 demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317,
11 323 (1986). Rule 56 "mandates the entry of summary judgment, after adequate time for discovery
12 and upon motion, against a party who fails to make a showing sufficient to establish the existence of
13 an element essential to that party's case, and on which that party will bear the burden of proof at
14 trial." Id. "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete
15 failure of proof concerning an essential element of the nonmoving party's case necessarily renders
16 all other facts immaterial." Id.

17 If the nonmoving party will have the burden of proof at trial, the movant can prevail "by either
18 (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) by
19 pointing out that there is an absence of evidence to support the nonmoving party's case." Cuzze v.
20 University and Community College System of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).
21 "In such instances, in order to defeat summary judgment, the nonmoving party must transcend the
22 pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine
23 issue of material fact." Id.

24 **III. ARGUMENT**

25 Kvam acknowledges in Kvam's MSJ that there are no genuine disputes of material fact, citing
26 primarily the docket in this matter and this Court's Order. Thus, Kvam's outstanding claims are ripe
27 for entry of judgment as a matter of law.

28 ///

1 ***A. The Court Should Deny Kvam's First Cause Of Action (Declaration of Joint***
2 ***Venture) As Moot.***

3 In its Order, this Court denied summary judgment on Kvam's First Cause of Action to the
4 extent that Kvam sought any declaratory relief which was not resolved by the declarations or findings
5 of fact and conclusions of law made in the Order. Order p. 44 ¶ 14. Kvam has now made clear that
6 he seeks no such additional relief.

7 In Kvam's MSJ, Kvam explains that this Court's Order and the Nevada Court of Appeals
8 have resolved all issues raised by his First Cause of Action. See Kvam's MSJ pp. 7-8. Accordingly,
9 no justiciable issues remain to be resolved by way of Kvam's First Cause of Action and Mineau and
10 Legion are entitled to judgment as a matter of law.

11 Kvam's First Cause of Action should be denied as moot.

12 ***B. The Court Should Deny Kvam's Fifth Cause Of Action (Accounting) As Moot.***

13 In its Order, this Court determined that a genuine issue of material fact exists regarding
14 whether the accounting provided by Mineau/Legion is factually and legally sufficient to verify the
15 accuracy of the amount of net proceeds received from the sale of the Property. Order pp. 33-34.
16 Kvam has now made it clear that he does not seek further accounting in this regard. Indeed, Kvam
17 even sets forth the accounting from the sale of the Property as an undisputed material fact. See
18 Kvam's MSJ p. 3.

19 Kvam asserts that, once he receives the proceeds from the sale of the Property¹, "the only
20 issue that remains for the accounting is the amount of money diverted to Mineau's other projects."
21 Kvam's MSJ p. 9 FN 1. However, this issue is outside the scope of the limited remaining issue,
22 which is the amount of net proceeds received from the sale of the Property. Order pp. 33-34.
23 Furthermore, judgment has already been entered against Kvam on his baseless accusations that
24 Mineau or Legion diverted Kvam's money to Mineau's other projects. Id. at p. 38. Therefore, there
25 is no legal basis for Kvam to receive an "accounting" on this fabricated issue and Mineau and Legion
26 are entitled to judgment in their favor as a matter of law.

27
28 ¹ As explained in Mineau and Legion's *Opposition to Motion for Partial Summary Judgment*, Kvam
is not entitled to be paid any amounts until this Court determines whether Mineau and Legion are
entitled to an offset for their attorneys' fees and costs.

1 Kvam's Fifth Cause of Action should be denied as moot.

2 **C. Judgment Should Be Entered As A Matter Of Law On Kvam's Sixth Cause Of**
3 **Action (Court Supervision of Dissolution and Winding Up, and Appointment of Receiver).**

4 In its Order, this Court held a ruling on Kvam's Sixth Cause of Action in abeyance pending
5 resolution of Kvam's Fifth Cause of Action for accounting. Order pp. 34-35. As discussed above,
6 judgment should be entered in Mineau and Legion's favor on Kvam's Fifth Cause of Action; thus,
7 judgment should likewise be entered in Mineau and Legion's favor on Kvam's Sixth Cause of Action.

8 This Court should enter judgment, consistent with its prior Order, that the partnership is
9 dissolved, all claims against TNT are assigned to Kvam, and the proceeds of the sale of the Property
10 in the amount of \$26,337.91 should be paid to Kvam (subject to any offset this Court may order for
11 attorneys' fees and costs).

12 The Motion should be granted with respect to Kvam's Sixth Cause of Action.

13 **D. Judgment Should Be Entered As A Matter Of Law On Kvam's Claims Remaining**
14 **against Defendant 7747 S. May Street, If Any.**

15 In its Order, this Court indicated that the claims remaining at issue in this action include
16 "claims remaining against Defendant 7747 S. May Street, if any." Order p. 44. Kvam has never
17 articulated any independent claims against Defendant 7747 S. May Street and all interests in that joint
18 venture have been assigned to Kvam. Thus, it does not appear that Kvam intends to prosecute any
19 claims against Defendant 7747 S. May Street.

20 For the sake of clarity and finality, this Court should enter judgment dismissing all claims
21 remaining against Defendant 7747 S. May Street, if any.

22 **IV. CONCLUSION**

23 Kvam's MSJ has plainly established that no genuine dispute of material fact exists and that
24 there are no outstanding legal issues which affect any parties' substantive rights in any way. Final
25 judgment should be entered in this matter. Upon entering final judgment, this Court should afford
26 the parties ten (10) days to file any claims for attorneys' fees and/or costs before the funds deposited
27 with the Clerk of Court are released

28 The Motion should be granted.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document, **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 2 day of July, 2021.

GUNDERSON LAW FIRM

By: 

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 2 day of July, 2021, I electronically filed a true and correct copy of the **MOTION FOR SUMMARY JUDGMENT**, 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 Kyam

Cindy Stockwell
Cindy Stockwell

1 **CODE: 3790**

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

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 6

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

14 Defendants.

15 **REPLY TO OPPOSITION TO PLAINTIFF'S MOTION**
16 **FOR PARTIAL SUMMARY JUDGMENT**

17 COMES NOW Plaintiff, JAY KVAM ("Kvam") by and through his counsel of record,
18 Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby files this reply to the
19 *Opposition to Plaintiff's Motion for Partial Summary Judgment* ("Motion" and "Opposition,"
20 respectively) filed by Defendants Brian Mineau and Legion Investments, LLC (hereafter,
21 "Mineau/Legion").

22 Although the *Opposition* filed by Mineau/Legion included a section entitled "Points
23 and Authorities," in fact, Mineau/Legion did not cite any legal authorities in support of their
24 *Opposition*. Rather, they simply mention two issues, mootness and the possibility of a
25 future motion for attorney's fees, without citing a single legal authority. Neither of the two
26 issues mentioned in Mineau/Legion's *Opposition* constitute sufficient reason to deny
27 Kvam's *Motion*.

28 Mootness is complex, constitutional doctrine that is part of the "case-or-controversy"

1 requirement. A detailed analysis of the case-or-controversy requirement is not possible in
2 a short reply brief and is well outside of any issues presented in this case. However, some
3 general points may be helpful. "The federal courts created pursuant to article III are barred
4 by the case-or-controversy requirement from deciding 'abstract, hypothetical or contingent
5 questions.'" *Alabama v. State Fed. of Labor v. McAdory*, 325 U.S. 450, 461, 65 S. Ct. 1384,
6 1389 (1945); accord *United States v. Evans*, 213 U.S. 297, 300, 29 S. Ct. 507, 508 (1909).
7 In order to determine the justiciability of a case-or-controversy, the courts may consider the
8 doctrines of ripeness and mootness. The ripeness doctrine concerns the question of
9 "whether the case involves uncertain or contingent future events that may not occur as
10 anticipated, or indeed may not occur at all." 13A C. Wright, A. Miller & E. Cooper, Federal
11 Practice and Procedure: Jurisdiction 2d § 3532, at 112 (1984). "In contrast to future-
12 oriented ripeness requirement, the bar on consideration of 'moot' cases looks primarily to
13 the relationship between past events and the present challenge in order to determine
14 whether there remains a 'case' or 'controversy' which meets the article III test of justiciability
15 and satisfies related prudential concerns." Laurence H. Tribe, American Constitutional Law
16 § 3-1 (2d ed. 1988) (citations omitted). "Each issue in a case must be examined for
17 mootness; '[w]here one of several issues presented becomes moot, the remaining live
18 issues supply the constitutional requirement of a case or controversy' with respect to those
19 live issues." *Id.* (quoting *Powell v. McCormack* 395 U.S. 486, 497, 89 S. Ct. 1944, 1951
20 (1969)). In *Powell v. McCormack*, for example, a congressman's injunctive demand to be
21 seated as a member of the 90th Congress became moot with the termination of that
22 Congress and his seating in the 91st Congress; he was allowed to continue his suit,
23 however, on his claim for back salary.

24 In this case, the Court denied Mineau/Legion's *Motion for Summary Judgment* on
25 Kvam's First Cause of Action (Declaration of Joint Venture), Fifth Cause of Action
26 (Accounting), and Sixth Cause of Action (Court Supervision of Winding Up, and
27 Appointment of Receiver). Those causes of action are still pending. Even though the
28 Nevada Supreme Court determined that Kvam's Seventh Cause of Action (Temporary and

Permanent Injunction) is moot, Kvam needs to proceed with the remaining causes of action to be paid the money he is due. Kvam has not been paid the proceeds of sale, even though Mineau/Legion now concede the rights to that money was assigned to Kvam. The proceeds of sale include \$24,473.77 that was paid into Court. That amount should have been paid to Kvam when the sale closed on November 16, 2018. Mineau/Legion also need to pay \$1,864.14 that was refunded from escrow.

This Court already ruled as follows:

*m. The parties agreed all interests in the partnership and any remedies due to the partnership, **including the proceeds from the sale of the Property in the amount of \$26,337.71, should be assigned to Mr. Kvam** and the partnership dissolved. Motion, Ex. 1, ¶ 38-39; Opposition, p. 20, Stipulation to Deposit Funds, December 12, 2018.*

[Summary Judgment Order at Conclusions of Law 21, p. 27-28]
(emphasis added).

However, Kvam has not been paid and this case is not moot unless and until he is paid. Likewise, the joint venture has not been wound up and cannot be wound up until there is a final accounting the funds have been paid to Kvam.

Mineau/Legion's argument that the money should not be released to Kvam due to the potential of a future motion for attorney's fees is based on a backward understanding of the ripeness and mootness doctrines. This Court already ruled that money on deposit with the Clerk of the Court belongs to Kvam. That money should have been paid to Kvam on November 16, 2018. Mineau/Legion cannot prevent the Court from paying that money to Kvam based on a motion for attorney's fees that Mineau/Legion might file in the future. There are many reasons why that motion may not be filed and why it would not be granted. As of today, there is no such motion and Mineau/Legion's argument is not ripe for decision.

1 WHEREFORE, Kvam respectfully submits that partial summary judgment should be
2 entered as requested on his First Cause of Action (Declaration of Joint Venture), Fifth
3 Cause of Action (Accounting), and Sixth Cause of Action (Court Supervision of Winding
4 Up, and Appointment of Receiver) and for an order adopting the Discovery Commissioner's
5 January 10, 2020 *Recommendation for Order* and allowing additional discovery as set forth
6 in Kvam's *Motion for Reconsideration*.

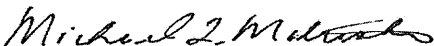
7 **AFFIRMATION**

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

10 Respectfully submitted.

11 Dated this 7th day July, 2021.

12 MATUSKA LAW OFFICES, LTD.

13 

14 By:

15 MICHAEL L. MATUSKA, SBN 5711
16 Attorneys for Plaintiff, JAY KVAM,
17 individually and derivatively on behalf of
18 the unincorporated joint venture identified
19 as 7747 S. May Street
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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 7th day of July, 2021, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** 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

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY KVAM,
Appellant,
vs.
BRIAN MINEAU; AND LEGION
INVESTMENTS, LLC,
Respondents.

Supreme Court No. 81422
District Court Case No. CV1800764

REMITTITUR

TO: Alicia L. Lerud, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

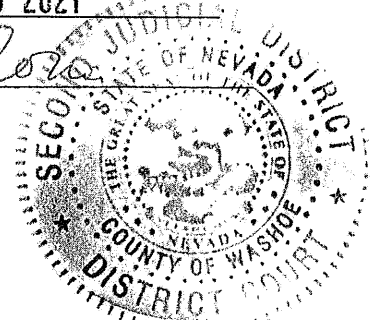
cc (without enclosures):

Hon. Lynne K. Simons, District Judge
Matuska Law Offices, Ltd. \ Michael L. Matuska
Gunderson Law Firm

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 19 2021


District Court Clerk



21-19918

CODE: 2645
Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
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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.

PLAINTIFF'S OPPOSITION

TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff, JAY KVAM ("Kvam") by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby files this Opposition to the *Motion for Summary Judgment* filed by Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC (hereafter, "Mineau/Legion"). This Opposition is made and based on the following points and authorities, and all other pleadings, exhibits and documents of record, including the following specific documents of record which are incorporated herein:

1. Kvam's January 16, 2020 *Opposition to Defendants' Motion for Summary Judgment; and Cross Motion for Partial Summary Judgment*;

2. The June 5, 2020 *Order Granting, in Part, and Denying, in Part, Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on*

1 *Claim Pursuant to Court's NRCP 56 Notice ("Summary Judgment Order");*

2 3. The June 16, 2021 *Order of Affirmance* from Case No. 81422-COA; and

3 4. Kvam's June 25, 2021 *Motion for Partial Summary Judgment*.

4 **I. INTRODUCTION**

5 Mineau'/Legion's *Motion for Summary Judgment* is actually their second motion for
6 summary judgment and will be referred to as such. Their first *Motion for Summary*
7 *Judgment* was filed on January 6, 2020. That motion was granted in part and denied in
8 part in the *Summary Judgment Order*. As such, Mineau/Legion's *Second Motion for*
9 *Summary Judgment* should not be considered by the Court unless and until they move
10 for leave to request reconsideration pursuant to DCR 13.7 and WDCR 12(8).

11 Mineau/Legion's *Second Motion for Summary Judgment* also should not be
12 considered because they failed to provide points and authorities as required by DCR 13.2
13 and DCR 12(1). Although Mineau/Legion's *Second Motion for Summary Judgment* has a
14 heading entitled "Memorandum of Points and Authorities", in fact, the authorities only
15 address the procedural aspects of NRCP 56. Mineau/Legion failed to provide authorities
16 on the substantive issues and the causes of action upon which they seek summary
17 judgment. In fact, they do not even identify a legal doctrine that would entitle them to
18 summary judgment. Rather, their *Second Motion for Summary Judgment*, at least as it
19 pertains to Kvam's First Cause of Action (Declaratory Relief), seems to proceed on two
20 assumptions: (1) that as a matter of law, this Court can only grant declaratory relief to
21 one party in a case; and (2) that as a matter of fact, Kvam's First Cause of Action
22 (Declaratory Relief) is redundant of Mineau/Legion's counterclaim for declaratory relief.
23 Both of these assumptions are incorrect.

24 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

25 1. Kvam requested an accounting from Mineau/Legion prior to filing the
26 *Complaint* in this case. [Ex. "1" (Declaration of Michael L. Matuska, Esq. ("Matuska
27 Dec.")). On February 16, 2018, Kvam's counsel wrote:

28 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.

[Ex. "3"].

2. On March 8, 2018, Mineau/Legion's counsel responded in pertinent part as follows:

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.

[Ex. "4"]

3. The Terms of Agreement referenced above reads, in its entirety, as follows:

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

Re:

7747 May Street, Chicago, Illinois.

With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam and Michael 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.

[Summary Judgment Order at Finding of Fact #10].

4. Kvam filed his *Complaint (Verified)* in this case on April 11, 2018. Kvam's First Cause of Action requests declaratory relief.

5. Mineau/Legion filed their *Answer and Counterclaim* on June 5, 2018. Their third counterclaim requested declaratory relief; however, the request was not identical to Kvam's request for declaratory relief.

6. Kvam filed his *Motion for Dissolution* on July 11, 2018 in which he argued, inter alia, that:

Rather, the Agreement is more reasonably construed as a joint venture agreement between Kvam on one hand, and Mineau and Legion on the other hand. This interpretation is supported by Uniform Partnership Act.

[*Motion for Dissolution*, Court Docket, at 3:4-6].

7. In their *Opposition to Motion for Dissolution*, Mineau/Legion argued that:

The theory underlying Kvam's lawsuit is that the Terms of Agreement created an unincorporated partnership, which Kvam now seeks to dissolve. Mineau and Legion dispute that a partnership was ever formed and deny owing Kvam the various duties and obligation which Kvam seeks to enforce through this lawsuit.

[*Opposition to Motion for Dissolution*, Court Docket, at 2:1-4].

8. Kvam's *Motion for Dissolution* was denied in the *Order* dated September 4, 2018 which stated in pertinent part that: "The record does not support adjudication of the issues at this time." (Court Docket, Order at 2:13).

9. Meanwhile, this Court entered an *Order* on September 5, 2018 which granted in part and denied in part Kvam's *Motion to Dismiss* the counterclaims, and granted Kvam's *Motion for a More Definite Statement*.

10. Thereafter, Mineau/Legion filed their *First Amended Counterclaim* on October 5, 2018.

11. All of Mineau/Legion's counterclaims were dismissed in a second *Order* on January 9, 2019, except for the counterclaim for declaratory relief.

12. On November 16, 2018, Legion sold the property for \$41,000. [See closing statement, Ex. "5"; *Summary Judgment Order* at Finding of Fact #67].

13. Legion's share of prorated property taxes, closing costs and the commission owed to the real estate brokers equaled \$16,526.23, and the net proceeds from the closing were \$24,473.77. [*Summary Judgment Order* at Finding of Fact #68-69].

14. Mineau/Legion did not inform Kvam about the sale or pay the foregoing amount (\$24,473.77) to Kvam; rather, Kvam was left to find out about the sale on his

own. [Ex. "2", Declaration of Jay Kvam ("Kvam Dec.")].

15. Kvam moved for a temporary restraining order and preliminary injunction on November 30, 2018 to prevent the loss of the sale proceeds. [Court Docket #7000744; Kvam Dec.] Facing no other options, Mineau and Legion stipulated to deposit the funds with the clerk of the court [Court Docket #7021308].

16. On December 19, 2018, Legion received an additional \$1,864.14 from the sale of the Property as a result of a refund on a tax bill and a water bill. [*Summary Judgment Order* at Finding of Fact #70].

17. Kvam filed his *First Amended Verified Complaint* ("FAC") on January 31, 2019, in part, to address the new issues pertinent to the sale.

18. Kvam filed his *Second Amended Verified Complaint* ("SAC") on September 11, 2019.

19. Kvam's FAC and SAC added new causes of action but repeated the First Cause of Action (Declaratory Relief) that was in his original *Complaint*.

20. Mineau/Legion filed their *Motion for Summary Judgment* on January 6, 2020, in which they moved for summary judgment on all causes of action stated in Kvam's SAC. [Court Docket #7478580].

21. Although Mineau/Legion purported to move for summary judgment on Kvam's First Cause of Action (Declaration of Joint Venture), Mineau/Legion conceded, for the first time, that the relationship between the parties should be characterized as a partnership that is governed by NRS Chapter 87. [*Motion for Summary Judgment* 12:3] ("As such, the parties formed a partnership pursuant to NRS 87.4322").

22. The Court proceeded to deny Mineau/Legion's *Motion for Summary Judgment* on Kvam's First Cause of Action (Declaration of Joint Venture) and Fifth Cause of Action (Accounting) and held in abeyance a decision on Kvam's Sixth Cause of Action (Court Supervision of Winding Up, and Appointment of Receiver). [*Summary Judgment Order*].

23. The Court granted Mineau/Legion's *Motion for Summary Judgment* on

Kvam's other causes of action; and granted summary judgment to establish Mineau/Legion's prior counterclaim for declaratory relief. [*Summary Judgment Order*].

24. In so doing, the Court entered the following pertinent Conclusions of Law:

c. The parties formed a joint venture/partnership pursuant to NRS 87.4322.

d. The Terms of Agreement and NRS Chapter 87 governed the partnership.

[*Summary Judgment Order* at 27:15-19].

25. Kvam appealed the *Summary Judgment Order* on June 29, 2020.

26. The Nevada Court of Appeals entered its *Order of Affirmance* on June 16, 2021.

27. The Court of Appeals limited its review to Kvam's claim for injunctive relief [*Order of Affirmance*, fn.2].

28. The Court of Appeals also explained that:

Here, the district court assigned all interest in the joint venture to Kvam, thus Mineau had already been prevented from conducting any further business on behalf of the joint venture. Therefore, we affirm the district court's denial of Kvam's claim for injunctive relief as **Mineau no longer holds an interest in the joint venture**, making the injunctive relief requested by Kvam moot.

[*Order of Affirmance*, p. 2] (emphasis added).

III. **ARGUMENT**

A. **MINEAU/LEGION DID NOT REQUEST RECONSIDERATION**

This Court already denied summary judgment in favor of Mineau/Legion on Kvam's First Cause of Action (Declaration of Joint Venture), Fifth Cause of Action (Accounting) and Sixth Cause of Action (Court Supervision of Winding Up, and Appointment of Receiver). There is no basis for Mineau/Legion to file a second *Motion for Summary Judgment* on those same causes of action, and their motion is strictly precluded by DCR 13.

No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be

reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

(DCR 13.(7))

Mineau/Legion's latest Motion for Summary Judgment is also precluded by WDCR 12(8), which incorporates DCR 13.

8. The rehearing of motions must be done in conformity with D.C.R. 13, Section 7. 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 14 days after service of written notice of entry of the order or judgment, unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed, and heard as is any other motion. A motion for rehearing does not toll the 30-day period for filing a notice of appeal from a final order or judgment.

(WDCR 12(8)).

In other words, because this Court already heard and disposed of Mineau/Legion's *Motion for Summary Judgment* on Kvam's First Cause of Action (Declaration of Joint Venture), Fifth Cause of Action (Accounting) and Sixth Cause of Action (Court Supervision of Winding Up, and Appointment of Receiver), Mineau/Legion cannot file a second motion for summary judgment on those same causes of action without leave of court and without moving for reconsideration. Mineau/Legion never moved for reconsideration of the June 5, 2020 *Summary Judgment Order*, this Court never granted leave to file a motion for reconsideration, and any such motion would need to have been filed within 14 days of written notice of entry of the *Summary Judgment Order*. It is too late for Mineau/Legion to move for reconsideration at this late date.

To make matters worse, Mineau/Legion do not raise any new issues in their latest *Motion for Summary Judgment*. Rather, they simply point to Kvam's pending *Motion for Partial Summary Judgment*.

B. DECLARATORY RELIEF IS NOT A ONE-WAY STREET

Mineau/Legion seem to assume that declaratory relief is a one-way street such that if declaratory relief is granted for one party, it cannot be granted for the other party. They fail to provide any legal authorities to support their argument, and they are not

correct. "Actions for declaratory relief are governed by the same liberal pleading standards that are applied in other civil actions." *Brelia v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993). Declaratory relief is "not intended to be exclusive or extraordinary, but alternative and optional." *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 69-70, 506 P.2d , 429 (1973). Declaratory relief is available "whether or not further relief is or could be claimed." NRS 30.030. In *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948) the Nevada Supreme Court stated:

The requisite precedent facts or conditions which the courts generally hold must exist in order that declaratory relief may be obtained may be summarized as follows: (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Id., 65 Nev. at 26, 189 P.2d at 364. In the present case, Kvam has satisfied all of these preconditions for the award of declaratory relief.

Moreover, it is difficult to see how Mineau/Legion's later filed third counterclaim for declaratory relief could ever preempt Kvam's prior First Cause of Action (Declaratory Relief). If declaratory relief is a one-way street, then the Court should have granted Kvam's earlier motions to dismiss Mineau/Legion's counterclaims. In fact, the Court allowed the case to proceed both on Kvam's First Cause of Action (Declaratory Relief) and Mineau/Legion's counterclaim for declaratory relief. Kvam is entitled to declaratory relief as requested in his pending *Motion for Partial Summary Judgment*.

C. KVAM'S CLAIM FOR DECLARATORY RELIEF IS NOT IDENTICAL TO MINEAU/LEGION'S CLAIM, AND COMPLETE RELIEF HAS NOT BEEN GRANTED TO KVAM

In his First Cause of Action (Declaration of Joint Venture), Kvam requests as follows:

20. *Plaintiff hereby incorporates by reference all of the*

paragraphs above as though fully set forth herein.

21. There is an actual, justifiable, present controversy between KVAM, MINEAU, and LEGION on the question of whether the Agreement identified in Par. 8 constitutes a joint venture agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some other type of agreement.

22. KVAM therefore requests a declaration on the legal rights created by the Agreement, the status of the unincorporated joint venture referred to herein as 7747 and the respective interests of the joint venturers.

23. KVAM further requests a declaration on the amount of loans and contributions made to the 7747 by each of the joint venturers.

24. KVAM further requests a declaration that 7747, MINEAU, and LEGION were required to assign the entire interest in the 7747 to KVAM in the event it failed in any way.

[Complaint, FAC, SAC p. 4]

In contrast, in their Third Claim for Relief (Declaratory Relief), Mineau/Legion request as follows:

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

33. A justiciable controversy has arisen between the parties regarding their respective rights, restrictions, duties, and obligations pursuant to the Agreement and the House.

34. Mineau's and Legion's interest in the controversy are adverse to Kvam's.

35. Mineau's and Legion's interests in the controversy are legally protectable.

36. *The controversy is ripe for judicial determination.*

37. *Mineau and Legion were forced to retain an attorney and have incurred attorney's fees and costs in prosecuting this action.*

[FACC p. 3-4].

Mineau/Legion's counterclaim lacks the specificity contained in Kvam's claim. Nevertheless, their counterclaim mentions nothing about a partnership or joint venture, and Mineau/Legion contended throughout this case that the Terms of Agreement should not be constructed as a joint venture agreement. Their position was therefore opposite to Kvam's First Cause of Action (Declaratory Relief) on one of the fundamental issues in this case. By declaring that the agreement between the parties was in fact a joint venture agreement, the Court granted part of the relief requested by Kvam. Although Mineau/Legion flip-flopped on that issue and ultimately conceded in their First *Motion for Summary Judgment* that the legal entity was in fact a joint venture, they cite no legal authority that their change-of-course precludes judgment in favor of Kvam.

In addition, the Court has not adjudicated all of the issues raised in Kvam's claim. Although the *Summary Judgment Order* declared that all interests have been assigned to Kvam, it did not actually order that the money deposited with the Court should be paid to Kvam, and therefore, has not actually declared all of Kvam's rights in the matter.

Because NRS 30.100 specifically provides for "further relief based on a declaratory judgment or decree . . . whenever necessary . . .," a complaint for declaratory relief need not state what supplemental remedies the petitioner desires. Supplemental remedies necessary to effectuate a declaratory judgment (such as injunctions and other coercive orders) may be sought by motion after the declaratory judgment has entered.

2 Nevada Civil Practice Manual, § 31.05 (Citing *Southern Nevada Homebuilders Ass'n v. City of North Las Vegas*, 112 Nev. 297, 913 P.2d 1276 (1996)). It was therefore proper for Kvam to file his *Motion for Partial Summary Judgment* which requested, inter alia, the release of the money on deposit.

Another essential issue in this case is the amount that Mineau/Legion contributed to the joint venture, if any. Kvam's attorney requested this information before the case

even started (Ex. "3") and included this issue in Kvam's First Cause of Action (Declaratory Relief). Although the *Summary Judgment Order* declared that "No party made any loans to the partnership," [Finding of Fact 21.h], the order did not declare the amount of contributions made by Mineau. The answer appears to be zero (\$0), unless the Court accepts at face value Mineau's declaration that is the subject of Kvam's pending *Motion For Reconsideration Of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; For Discovery Sanctions; And For Other Relief ("Motion for Reconsideration")*. Even if the Court accepts Mineau's declaration, that declaration merely establishes that Criterion, NV LLC placed \$20,000 into the account that was used to fund Mineau's multiple projects. There is no evidence that the money was actually spent on 7747 S. May Street. That is why the Discovery Commissioner entered the *Recommendation for Order* on January 10, 2020 which recommended that Kvam should be allowed to conduct discovery regarding Mineau's other projects.

D. KVAM'S OTHER REMAINING CAUSES OF ACTION

Kvam's other remaining causes of action include his Fifth Cause of Action (Accounting) and the Sixth Cause of Action (Court Supervision of Dissolution and Winding Up, and Appointment of a Receiver). Because the Court declared that the agreement between the parties was in fact a joint venture agreement governed by the Uniform Partnership Act, Kvam is entitled as a matter of law to an accounting. Likewise, the joint venture must be dissolved and wound up. As such, these remaining causes of action simply are not susceptible to dismissal based on Mineau/Legion's *Motion for Summary Judgment*. Furthermore, it is difficult to see how the Court can accept Mineau's accounting without knowing whether he contributed any funding to the project. The question of whether the accounting has been completed will also depend in large part on what happens with the pending *Motion for Reconsideration and Recommendation for Order*.

Likewise, the winding up cannot be completed until the funds on deposit with the Clerk of the Court have been paid to Kvam and the Court has addressed any additional

1 accounting issues that arise from the remaining discovery.

2 **IV. CONCLUSION**

3 Mineau/Legion's *Second Motion for Summary Judgment* should not be considered
4 by the Court unless and until they move for leave to request reconsideration pursuant to
5 DCR 13.7 and WDCR 12(8).

6 Mineau/Legion's *Second Motion for Summary Judgment* also should not be
7 considered because they failed to provide points and authorities as required by DCR 13.2
8 and DCR 12(1).

9 Kvam's First Cause of Action (Declaratory Relief) is not identical to
10 Mineau/Legion's counterclaim for declaratory relief nor is it precluded by that counterclaim
11 or the *Summary Judgment Order* which granted summary judgment on that counterclaim.
12 The funds on deposit with the Clerk of the Court have not been released to Kvam, the
13 Court has not declared the amount that Mineau/Legion contributed to the project, and that
14 amount cannot be determined until Kvam is allowed to complete the pending discovery.
15 For these reasons, Mineau/Legion's *Second Motion for Summary Judgment* should be
16 denied.

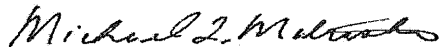
17 **AFFIRMATION**

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

20 Respectfully submitted.

21 Dated this 30th day July, 2021.

22 MATUSKA LAW OFFICES, LTD.

23 

24 By:

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 30th day of July, 2021, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** 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 OPPOSITION

TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Declaration of Michael L. Matuska	2
2	Declaration of Jay Kvam	2
3	Letter dated February 16, 2018 from Michael L. Matuska to Brian Mineau	3
4	Letter dated March 8, 2018 from Austin K. Sweet to Michael L. Matuska	1
5	Closing Statement dated November 16, 2018	3

Exhibit 1

DECLARATION OF MICHAEL L. MATUSKA
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

Exhibit 1

DECLARATION OF MICHAEL L. MATUSKA
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

CODE: 1520

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

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.

DECLARATION OF MICHAEL L. MATUSKA, ESQ.

IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS'

MOTION FOR SUMMARY JUDGMENT

I, MICHAEL L. MATUSKA, do hereby make this Declaration in Support of Plaintiff Jay Kvam's Opposition to Defendants Brian Mineau and Legion, LLC's *Motion for Summary Judgment* as follows:

1. That I am now and at times mentioned herein have been the attorney of record in this case for the Plaintiff, Jay Kvam.

2. That attached hereto as Exhibit "3" is a true and correct copy of the letter that I sent to Defendant Brian Mineau on February 16, 2018.

3. That attached hereto as Exhibit "4" is a true and correct copy of the letter that I received from Brian Mineau's attorney, Austin Sweet, on March 8, 2018.

I declare under penalty of perjury under the laws of the State of Nevada that the

1 foregoing is true and correct.

2 **AFFIRMATION**

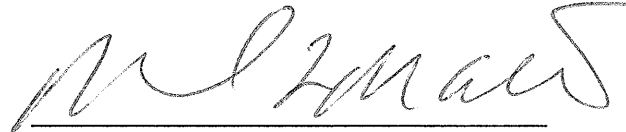
3 The undersigned does hereby affirm that the preceding document does not
4 contain the social security number of any person.

5 Executed this 30th day of July, 2021, at Carson City, Nevada.

6 Respectfully submitted,

7 MATUSKA LAW OFFICES, LTD.

8
9 By:



10 MICHAEL L. MATUSKA, SBN 5711
11 Attorneys for Plaintiff, JAY KVAM,
12 individually and derivatively on behalf of the
13 unincorporated joint venture identified as
14 7747 May Street
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Exhibit 2

DECLARATION OF JAY KVAM

(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

Exhibit 2

DECLARATION OF JAY KVAM

(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

CODE: 1520

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

Attorneys for Plaintiff

**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

**DECLARATION OF JAY KVAM IN SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, JAY KVAM, do hereby make this Declaration in Support of Plaintiff's Opposition to Defendant's *Motion for Summary Judgment* as follows:

1. Mineau sold the Property to Thousand Oaks Management, LLC for a loss on November 16, 2018. (See Closing Statement Ex. "5", showing net proceeds of \$24,473.77).

2. I was left to find out about the sale on my own and moved for a temporary restraining order and preliminary injunction on November 30, 2018 to prevent the loss of the sale proceeds. (#7000744).

3. On December 12, 2018, Mineau and Legion stipulated to deposit the funds with the clerk of the court (#7021308).

I declare under penalty of perjury under the laws of the State of Nevada that the

1 foregoing is true and correct.

2 **AFFIRMATION**

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

5 Executed this 29 day of July, 2021, at Carson City, Nevada.

6
7 Respectfully submitted,

8
9 By:

JAY KVAM

Exhibit 3

LETTER DATED FEBRUARY 16, 2018
FROM MICHAEL L. MATUSKA TO BRIAN MINEAU
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

Exhibit 3

LETTER DATED FEBRUARY 16, 2018
FROM MICHAEL L. MATUSKA TO BRIAN MINEAU
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)



**MATUSKA
LAW OFFICES**

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

Licensed in Nevada and California

2310 South Carson Street, #6

775-350-7222 Fax

Carson City, NV 89701

mlm@matuskalawoffices.com

www.matuskalawoffices.com

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)

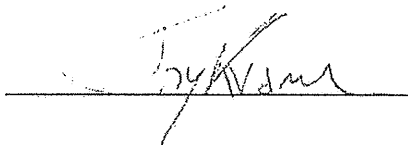
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

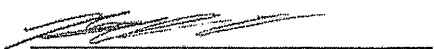
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest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



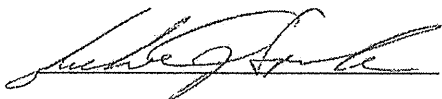
Date 2017-02-14

Brian Mineau



Date 2/13/2017

Michael J. Spinola



Date 2/13/17

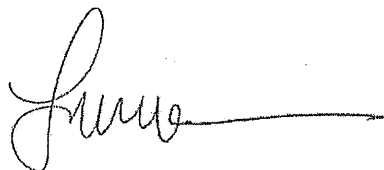
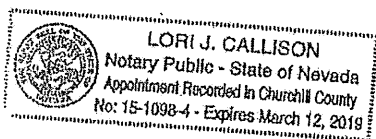
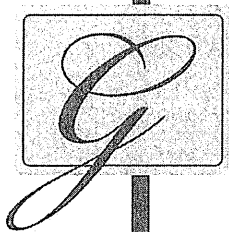


Exhibit 4

LETTER DATED MARCH 8, 2018
FROM AUSTIN K. SWEET TO MICHAEL L. MATUSKA
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

Exhibit 4

LETTER DATED MARCH 8, 2018
FROM AUSTIN K. SWEET TO MICHAEL L. MATUSKA
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)



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.

AKS/kg

Exhibit 5

CLOSING STATEMENT DATED NOVEMBER 16, 2018
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

Exhibit 5

CLOSING STATEMENT DATED NOVEMBER 16, 2018
(Plaintiff's Opposition to Defendants' Motion for Summary Judgment)

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

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

Property Address: 7747 S May St
 Chicago, IL 60620
Borrower: Thousand Oaks Management, LLC

Seller: Legion Investments, LLC

Settlement Date: 11/16/2018
Disbursement Date: 11/16/2018
Additional dates per state requirements:

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

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

Acknowledgement

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

Buyer/Borrower:

Seller:

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

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

[Signature]
Escrow Officer

Michael B Brown

11/16/2018
Date

1 **CODE 3795**

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

17 JAY KVAM,

Case No. CV18-00764

18 Plaintiff / Counterdefendant,

Dept. No. 6

19 vs.

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

23 Defendants / Counterclaimants.
24 _____/

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

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., file this Reply in support of their *Motion for Summary Judgment*
("Motion") as to all remaining causes of action filed by Plaintiff / Counterdefendant JAY KVAM
("Kvam"), consisting of Kvam's First, Fifth, and Sixth Causes of Action, and "claims remaining
against Defendant 7747 S. May Street, if any." This Reply is made and based upon NRCF 56, the
following memorandum of points and authorities, the pleadings on file in this case, and any oral
argument this court wishes to entertain.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Kvam's Opposition confirms the fundamental premise of the Motion: there are no genuine
4 disputes as to any material facts, there are no outstanding legal issues which affect any parties'
5 substantive rights in any way, and this matter is ripe for resolution as a matter of law. Kvam bore the
6 burden of presenting, by admissible evidence, specific facts to establish each essential element of his
7 remaining claims that show a genuine issue for trial. Kvam has failed to meet that burden.

8 Kvam asserts that two issues remain to be resolved under his claim for declaratory relief: (1)
9 the actual release of the funds on deposit to Kvam and (2) a declaration of the amount that
10 Mineau/Legion contributed to the joint venture. However, the release of the funds on deposit is a
11 post-judgment remedy which should not occur until the Court has ruled upon Mineau/Legion's
12 anticipated motion for attorneys' fees and costs. Further, the amount that Mineau/Legion contributed
13 to the joint venture is not a justiciable controversy because it does not affect any party's substantive
14 rights. Therefore, Kvam has failed to establish that he is entitled to any further relief under his First
15 Cause of Action which has not already been resolved by this Court's Order. That claim should be
16 denied as moot.

17 In its Order, this Court already determined that Mineau/Legion's duty to account was limited
18 to the Property itself and the proceeds from the sale of the Property. Kvam's Opposition confirms
19 that he does not question or dispute the accounting Mineau and Legion have provided concerning the
20 proceeds from the sale of the Property. Thus, there are no outstanding issues to be resolved under
21 Kvam's Fifth Cause of Action, and that claim should also be denied as moot.

22 Finally, Kvam asserts that the winding up cannot be completed until the funds on deposit with
23 the Clerk of the Court have been released. Kvam is mistaken; release of the funds should be
24 determined after entry of judgment and after the parties' claims for attorneys' fees have been
25 adjudicated.

26 As set forth in the Motion, there is simply nothing of substance left to accomplish at a trial in
27 this action. Kvam has failed to meet his burden of presenting, by admissible evidence, specific facts
28 to establish that his remaining claims can proceed to trial. The Motion should be granted.

1 **II. ARGUMENT**

2 A party may move for summary judgment, identifying each claim or the party of each claim
3 on which summary judgment is sought. NRCp 56(a). The court shall grant summary judgment if the
4 movant shows that there is no genuine dispute as to any material fact and the movant is entitled to
5 judgment as a matter of law. Id. As stated in the Motion, Kvam bore the burden of presenting in his
6 Opposition, by admissible evidence, specific facts to establish each essential element of his claims
7 that show a genuine issue for trial. Cuzze v. University and Community College System of Nevada,
8 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Kvam failed to meet that burden and the Motion should
9 be granted.

10 **A. Summary Judgment Is Appropriate At This Time.**

11 Kvam acknowledges in his Opposition that there is no genuine dispute of material fact which
12 may preclude summary judgment. In fact, Kvam offers a lengthy *Statement of Undisputed Material*
13 *Facts*, including exhibits and citations to the record, to establish that there is no genuine dispute of
14 material fact. Opposition pp. 2-6. Critically, Kvam outlines the full accounting of the proceeds from
15 the sale of the Property as an undisputed fact. Id. ¶¶ 12, 13, & 16. Accordingly, there is no genuine
16 dispute of material fact to be resolved through trial.

17 Nonetheless, Kvam argues that the Motion should be denied because the Motion is really an
18 improper request for reconsideration of this Court's Order. On the contrary, this Court denied
19 portions of Mineau and Legion's first *Motion for Summary Judgment* based upon the understanding
20 that Kvam sought additional declaratory relief and/or that Kvam sought additional accounting related
21 to the sale of the Property and that some genuine dispute of material fact still existed in that regard.
22 Mineau and Legion do not seek reconsideration of that ruling. Rather, Kvam has now articulated that
23 he does not seek additional declaratory relief or accounting related to the sale of the Property and that
24 no genuine dispute of material fact remains for trial. Mineau and Legion have therefore filed a new
25 *Motion for Summary Judgment*, seeking different relief based upon different circumstances than their
26 prior motion. Under these circumstances, Mineau and Legion's Motion is procedurally proper and
27 does not violate WDCR 12 or DCR 13.

28 ///

1 Kvam's outstanding claims are ripe for entry of judgment as a matter of law, and the only
2 question remaining is how judgment should be entered.

3 ***B. The Court Should Deny Kvam's First Cause Of Action (Declaration of Joint***
4 ***Venture) As Moot.***

5 As explained in the Motion, this Court denied summary judgment on Kvam's First Cause of
6 Action to the extent that Kvam sought any declaratory relief which was not resolved by the
7 declarations or findings of fact and conclusions of law made in the Order. Order p. 44 ¶ 14. In his
8 Opposition, Kvam argues that two issues remain to be resolved on his First Cause of Action: (1) an
9 order releasing the money deposited with the court; and (2) a determination of the amount that
10 Mineau/Legion contributed to the joint venture, if any. Neither issue precludes summary judgment.

11 An order releasing the money deposited with the court should be entered post-judgment. As
12 cited by Kvam, "Supplemental remedies necessary to effectuate a declaratory judgment (such as
13 injunctions and other coercive orders) may be sought by motion after the declaratory judgment has
14 entered." Opposition p. 10 (quoting 2 Nevada Civil Practice Manual, § 31.05) (emphasis added).
15 Here, this Court has already adjudicated that the benefit of the proceeds of the sale of the Property in
16 the amount of \$26,337.91 should be awarded to Kvam, which is a full declaration of his legal rights
17 in this regard. After judgment is entered, Kvam may seek the supplemental remedy of releasing the
18 money deposited with the Court. Of course, Mineau and Legion intend to file a motion for attorneys'
19 fees and costs, and the deposited funds should not actually be released until this Court has had the
20 opportunity to consider all such post-judgment motions. Regardless, a determination of how the
21 deposited funds should ultimately be distributed after final judgment should not delay entry of such
22 judgment.

23 Kvam also seeks a determination of the amount that Mineau/Legion contributed to the joint
24 venture, if any. However, this issue is not a justiciable controversy in which Kvam has a legally
25 protectable interest. MB Am., Inc. v. Alaska Pac. Leasing, 132 Nev. Adv. Op. 8, 367 P.3d 1286,
26 1291 (2016). This Court has already determined that all interests in the partnership are assigned to
27 Kvam. Order p. 42. Therefore, whether Mineau/Legion contributed \$27,090.31 (as established in

28 ///

1 the first *Motion for Summary Judgment*) or \$20,000.00 or \$0.00 does not change any party's rights
2 or legally protectible interests, especially since this Court has already entered judgment against Kvam
3 on his other causes of action related to this issue. Simply put, there is no reason to go to trial to
4 determine the amount that Mineau/Legion contributed to the joint venture, if any.

5 Regardless, Kvam has failed to meet his burden of presenting, by admissible evidence,
6 specific facts to establish each essential element of his claims that show a genuine issue for trial.
7 Cuzze, supra. This Court has already determined that Mineau/Legion contributed \$20,000.00 to the
8 joint venture. Order p. 21. Mineau/Legion have also presented evidence that they contributed another
9 \$7,090.31 for ongoing holding costs while Legion owned the Property, such as utility bills and
10 insurance premiums. See first Motion for Summary Judgment at Exs. 1 ¶ 25, 19, 31, and 32. Kvam
11 does not present any admissible evidence establishing a genuine issue for trial in this regard, nor does
12 Kvam establish that he is entitled to Rule 56(d) relief in this regard. Therefore, to the extent the total
13 amount that Mineau/Legion contributed to the joint venture actually matters, Kvam has failed to meet
14 the burden of proof necessary to survive summary adjudication on this issue.

15 Finally, Kvam argues that the Motion should be denied because declaratory relief is not "a
16 one-way street." This argument is inapposite. Mineau and Legion do not assert that their
17 counterclaim for declaratory relief has preempted Kvam's First Claim for Relief; rather, Mineau and
18 Legion assert that this Court has already resolved the entire justiciable controversy, rendering further
19 declaratory relief unnecessary and moot.

20 For these reasons, no justiciable issues remain to be resolved by way of Kvam's First Cause
21 of Action and Mineau and Legion are entitled to judgment as a matter of law.

22 Kvam's First Cause of Action should be denied as moot.

23 ***C. The Court Should Deny Kvam's Fifth Cause Of Action (Accounting) As Moot.***

24 As explained in the Motion, this Court determined that a genuine issue of material fact exists
25 regarding whether the accounting provided by Mineau/Legion is factually and legally sufficient to
26 verify the accuracy of the amount of net proceeds received from the sale of the Property. Order pp.
27 33-34. Kvam's Opposition establishes that he does not seek further accounting in this regard. Indeed,

28 ///

1 Kvam even sets forth the accounting from the sale of the Property as an undisputed material fact. See
2 Opposition pp. 4-5.

3 Kvam asserts that the Motion should be denied because he is entitled to an accounting as a
4 matter of law. Opposition p. 11. However, this Court has already properly determined that
5 Mineau/Legion's duty to account extends only to the Property itself and the proceeds from the sale
6 of the Property. Order p. 33. Again, Kvam has set forth that accounting as an undisputed material
7 fact. See Opposition pp. 4-5. Thus, the accounting to which Kvam is entitled as a matter of law has
8 already been provided and is undisputed. Kvam has failed to even argue, let alone establish, that any
9 accounting questions remain to be resolved by way of a trial.

10 For these reasons, Mineau and Legion are entitled to judgment as a matter of law on Kvam's
11 Fifth Cause of Action. The Motion should be granted.

12 ***D. Judgment Should Be Entered As A Matter Of Law On Kvam's Sixth Cause Of***
13 ***Action (Court Supervision of Dissolution and Winding Up, and Appointment of Receiver).***

14 As explained in the Motion, this Court held a ruling on Kvam's Sixth Cause of Action in
15 abeyance pending resolution of Kvam's Fifth Cause of Action for accounting. Order pp. 34-35.
16 Kvam argues that the winding up cannot be completed until the funds on deposit with the Clerk of
17 the Court have been paid to Kvam and the Court has addressed any additional accounting issues that
18 arise. Opposition pp. 11-12. As discussed above, a determination of how the deposited funds should
19 ultimately be distributed should come after entry of final judgment. Similarly, as discussed above,
20 there are no additional accounting issues to be resolved because the only accounting that matters is
21 the accounting of the amount of net proceeds received from the sale of the Property, which is
22 undisputed.

23 For these reasons, Kvam has failed to establish that any issues remain to be resolved by way
24 of a trial on Kvam's Sixth Cause of Action, so Mineau and Legion are entitled to judgment as a matter
25 of law. This Court should enter judgment, consistent with its prior Order, that the partnership is
26 dissolved, all claims against TNT are assigned to Kvam, and the proceeds of the sale of the Property
27 in the amount of \$26,337.91 should be paid to Kvam (subject to any offset this Court may order for
28 attorneys' fees and costs).

1 The Motion should be granted with respect to Kvam's Sixth Cause of Action.

2 ***E. Judgment Should Be Entered As A Matter Of Law On Kvam's Claims Remaining***
3 ***against Defendant 7747 S. May Street, If Any.***

4 In its Order, this Court indicated that the claims remaining at issue in this action include
5 "claims remaining against Defendant 7747 S. May Street, if any." Order p. 44. Kvam makes no
6 effort to oppose entry of summary judgment in this regard. For the sake of clarity and finality, this
7 Court should enter judgment dismissing all claims remaining against Defendant 7747 S. May Street,
8 if any.

9 **III. CONCLUSION**

10 Kvam cannot clearly articulate to Legion, Mineau, or this Court why he continues to maintain
11 his three remaining claims for relief. If trial commenced today, it is entirely unclear what evidence
12 Kvam would present or what relief he would request. The entire record in this action since remand
13 plainly establishes that no genuine dispute of material fact exists and that there are no outstanding
14 legal issues which affect any parties' substantive rights in any way.

15 Final judgment should be entered in this matter. Upon entering final judgment, this Court
16 should afford the parties ten (10) days to file any claims for attorneys' fees and/or costs before the
17 funds deposited with the Clerk of Court are released

18 The Motion should be granted.

19

20 **AFFIRMATION**

21 The undersigned does hereby affirm that the preceding document, **REPLY IN SUPPORT**
22 **OF MOTION FOR SUMMARY JUDGMENT**, filed in the Second Judicial District Court of the

23 ///

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

2 DATED this 9 day of August, 2021.

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*

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 9 day of August, 2021, 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 Cindy Stockwell
14 Cindy Stockwell
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1 CODE NO. 3347
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 JAY KVAM,

Case No. CV18-00764

10 Plaintiff,

Dept. No. 6

11 vs.
12

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

15 Defendants.
16 _____/

17 **ORDER TO SET HEARING ON DEFENDANTS' MOTION FOR SUMMARY**
18 **JUDGMENT AND PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 Before this Court is the *Motion for Summary Judgment* ("D MSJ") filed by Defendants
20 BRIAN MINEAU and LEGION INVESTMENTS, LLC. ("Defendants" unless individually
21 referenced), by and through their counsel of record, Austin K. Sweet Esq.
22

23 Plaintiff JAY KVAM ("Mr. Kvam"), by and through his counsel of record, Matuska Law
24 Offices, LTD., filed *Plaintiff's Opposition to Defendants' Motion for Summary Judgment*.

25 Defendants filed their *Reply in Support of Motion for Summary Judgment*.

26 Also before this Court is the *Plaintiff's Motion for Partial Summary Judgment* ("P
27 MPSJ"). Defendants filed their *Opposition to Motion for Partial Summary Judgment*. Mr.
28 Kvam filed his *Reply to Opposition to Plaintiff's Motion for Partial Summary Judgment*.

1 Both matters have been submitted to the Court for consideration. The Court has
2 reviewed the *D MSJ and P MPSJ*, together with the exhibits attached thereto, along with the
3 opposition and reply papers. The Court finds that oral argument would assist it in making its
4 its decisions.
5

6 Accordingly, and good cause appearing therefor,

7 **IT IS HEREBY ORDERED** counsel shall set this matter for oral argument by
8 contacting Holly Longe, Department 6's Judicial Assistant within fifteen (15) days of the
9 entry of this Order.
10

11 **IT IS FURTHER ORDERED** counsel shall submit proposed orders five (5) days
12 before the hearing set.

13 DATED this 11th day of August, 2021.
14

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16 DISTRICT JUDGE
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AUSTIN SWEET, ESQ.
MICHAEL MATUSKA, ESQ.
MARK GUNDERSON, ESQ.

Holly Longe

CODE 1250

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

JAY KVAM

Plaintiff,

vs.

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

Defendant.

Case No. CV18-00764

Dept. No. 6

APPLICATION FOR SETTING

TYPE OF ACTION: Civil

MATTER TO BE HEARD: Defendant's MSJ and Plaintiff's MPSJ

Date of Application : August 13, 2021 Made by: Plaintiff

Plaintiff or Defendant

COUNSEL FOR PLAINTIFF: Michael L. Matuska, Esq. (775) 350-7220

COUNSEL FOR DEFENDANT: Austin Sweet, Esq. (775) 829-1222

Instructions: Check the appropriate box. Indicate who is requesting the jury. Estimated No. Of Jurors:

☐ Jury Demanded by (Name):

☐ No Jury Demanded by (Name):

Estimated Duration of Trial: Motions Hearing: 1-2 hours

Attorney(s) for Plaintiff

1 9:30 a.m. 2nd
Motion - No. Setting at on the

Trial - No. Setting at on the

Attorney(s) for Defendant

November 2021
day of

day of

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

JAY KVAM,

Plaintiff,

vs.

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

Defendants.

Case No.: CV18-00764

Dept. No.: 6

NOTICE OF AND ORDER FOR AUDIO/VISUAL HEARING

**A MOTION FOR SUMMARY JUDGMENT HEARING IN THIS MATTER IS SET
FOR NOVEMBER 2, 2021, AT 9:30 A.M.**

Consistent with the Declaration of Emergency in Nevada and to effectuate resulting Directives issued by Governor Steve Sisolak, as renewed and extended¹, and Second Judicial District Court Administrative Orders ("AOs"), as amended and extended, the hearing in this matter shall be held by audio/visual platform.

The hearing will be conducted pursuant to the Nevada Supreme Court Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment, Part IX.

¹ The Declaration of Emergency for COVID-19 and all Directives issued are available at: gov.nv.gov/News/Emergency_Orders/Emergency_Orders (last visited 6/21/2021). The AOs are available at: washoecourts.com/Main/AdminOrders (last visited 6/21/2021).

Details for the Zoom Webinar/Zoom Meeting hearing are attached hereto as Exhibit 1 to this Notice. In addition, to view and hear the proceedings counsel, parties, and the public (unless the hearing is closed to the public by rule, statute, or order) may access the Zoom link by accessing www.washoecourts.com, clicking on “Online Hearings and Public Access to Proceedings-Click Here,” scrolling down to Department 6, and clicking on the link for this matter.

Pursuant to issued AOs, the parties are reminded that although conducted on an audio/visual platform, a hearing is a formal proceeding and shall be conducted with proper decorum. Appropriate attire is required.

If any party intends to introduce exhibits during the hearing, the exhibits shall be E-filed with the Court **forty-eight (48) hours** prior to the hearing. The exhibits will include a cover sheet with the case caption and document title, "PROPOSED EXHIBIT[S] SUBMITTED BY [PARTY] FOR [DATE] HEARING." The proposed exhibits shall be sequentially numbered. E-filing documents for the hearing does not operate to admit the evidence nor does it preclude objections by any party, both of which will be addressed during the hearing.

Any party who objects to this hearing proceeding by audio/visual means, must E-file an objection entitled “[PARTY]’s OBJECTION TO CONDUCTING HEARING BY AUDIO/VISUAL PLATFORM,” with a contemporaneously E-filed Request for Submission of the objection no later than **twenty-four (24) hours** prior to the hearing. The Court may or may not vacate the hearing based on the objection. Unless and until an order is entered vacating this hearing, the matter will proceed as noticed.

IT IS SO ORDERED.

DATED this 28th day of October, 2021.

DISTRICT JUDGE

EXHIBIT 1

ZOOM WEBINAR/ZOOM MEETING INFORMATION:

When: Nov 2, 2021 09:30 AM Pacific Time (US and Canada)

Topic: CV18-00764 Kvam v. Mineau MSJ hearing

Please click the link on the Court's website to join the webinar:

<https://washoecourts.zoom.us/j/96182360320>

Or One tap mobile :

US: +16699006833,,96182360320# or +12532158782,,96182360320#

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MICHAEL MATUSKA, ESQ.
AUSTIN SWEET, ESQ.
MARK GUNDERSON, ESQ.

Holly Longe

CASE NO. CV18-00764 JAY KVAM VS. BRIAN MINEAU, ET AL
MINUTE ORDER

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

01/04/22
HONORABLE
LYNNE K. SIMONS
DEPT. NO. 6
M. Schuck
(Clerk)
Nicole Hansen
(Reporter)
None Present
(Bailliff)

**ORAL ARGUMENTS ON MOTIONS FOR SUMMARY
JUDGMENT....**

Plaintiff, Jay Kvam, observing via Zoom and represented by Michael Matuska, Esq.
Defendant, Legion Investments, LLC, with Brian Mineau as a representative observing via Zoom and represented by Austin Sweet, Esq.
Defendant, Brian Mineau, observing via Zoom and represented by Austin Sweet, Esq.
Matter convened at 9:44 a.m. and concluded at 10:25 a.m.

This hearing was held remotely because of the closure of the courthouse at 75 Court Street, Reno, Washoe County, Nevada, due to the national and local emergency caused by COVID-19. The Court and all participants appeared via simultaneous audiovisual transmission. The Court was physically located in Washoe County, Nevada which was the site of the court session. At the direction of the Court, all participants stated their appearances and location. Respective counsel acknowledged receipt of notice that the hearing was taking place pursuant to the Second Judicial District Court's Administrative Orders entered in 2020, and the Nevada Supreme Court Rules - Part IX governing appearances by simultaneous audiovisual transmissions, and counsel stated they had no objection to proceeding in this manner.

The Court further made a record of the fact that these proceedings are open to the public for viewing and listening through the webinar/meeting invitation located on the Court's website and directed that if at any time anyone who is participating in this matter cannot see or hear the other participants in this case, they are to inform the Court.

Counsel Matuska noted he received notice of audiovisual hearing and had no objection to continue in said manner.
Counsel Sweet noted he also received notice of audiovisual hearing and had no objection to continue in said manner.
Court noted review of the file in addition to the motions for summary judgment. She further noted it was her decision to set the instant oral arguments. She had a few questions and wanted it on the record.
Counsel Matuska addressed the motion for summary judgment and the prior motion for summary judgment.
Counsel Sweet addressed his position and his concern regarding the accounting.

Counsel Matuska place his position on the record and again addressed the prior motion for summary judgment along with the last Court Order. He presented his argument. Counsel Sweet presented his argument and believed no claims remained to be resolved. They were all related and covered by the last Court Order or were dismissed. Counsel Matuska continued with his argument and addressed the last motion for summary judgment. Court referenced the recommendation of the Discovery Commissioner filed on January 10, 2021. She also noted review of the response.

COURT granted the objection, the recommendation will be amended in accordance with the objection's requested relief. Plaintiff's Motion for Reconsideration is denied, there are no factual and legal grounds to support reconsideration.

**Good cause appearing,
IT IS SO ORDERED**

DATED this 10th day of January, 2022.

NUNC PRO TUNC to the 4th day of January, 2022.



DISTRICT JUDGE

1 **CODE: 3095**

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 6

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

13 Defendants.

14
15 BRIAN MINEAU and LEGION
INVESTMENTS, LLC,

16 Counterclaimants,

17 v.

18 JAY KVAM,

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20 **ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

21 This matter came before the Court for hearing, on Plaintiff / Counterdefendant Jay
22 Kvam's ("Kvam") *Motion for Partial Summary Judgment* that was filed on June 25, 2021.
23 Defendants / Counterclaimants Brian Mineau and Legion Investments, LLC (hereafter,
24 "Mineau/Legion") filed their Opposition, and Kvam filed his Reply. Based on the foregoing
25 briefs and the argument presented at the hearing, and for good cause appearing, it is
26 hereby ordered and adjudged as follows.
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1 **I. FINDINGS OF UNDISPUTED MATERIAL FACTS**

2 **A. PRE-FILING BACKGROUND**

3 1. The following background facts are set forth in prior orders of this Court,
4 including the June 5, 2020, *Order Granting, in Part, and Denying, in Part, Defendants’*
5 *Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to*
6 *Court’s NRCP 56 Notice (“Summary Judgment Order”).*

7 2. This action arises from an agreement between the parties to purchase,
8 remodel and resell real property (“Project”) located at 7747 S. May Street, Chicago,
9 Illinois (the “Property”).

10 3. Kvam was the investor and Mineau took title to the Property through his
11 limited liability company, Legion Investments, LLC.

12 4. Most of the activity on the Project occurred in 2017.

13 5. On February 16, 2018, Kvam’s attorney sent a letter to Mineau inquiring
14 about the status of the project. In that letter, Kvam’s attorney described the agreement
15 between the parties as a joint venture and requested as follows:

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17 have a completion date. There does not seem to be any question of
18 whether Mr. Kvam fulfilled his funding obligation to the joint venture.
19 Please clarify whether Legion Investments, LLC has provided its share of
20 the funding. At this point, Mr. Kvam requests to be reimbursed for his
21 investment in the project, at which time he will forego any further demand
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24 in this regard and ability to make payment no later than February 28,
25 2018. To the extent you do not have the ability to buy him out completely,
26 please identify adequate security that we may use as collateral for a
27 promissory note and buy-out agreement.

28 (See Motion, Ex. “3”).

 6. On March 8, 2018, Mineau’s attorney responded with a letter in which he
stated inter alia: 1) “We disagree with the statements of fact and conclusions of law
contained in your letter”; 2) Mr. Mineau, Mr. Spinola and Legion have complied with the
terms of the Agreement and intend to continue doing so”; 3) “The terms of the Agreement
do not entitle Mr. Kvam to be ‘reimbursed’ or bought out on demand”; and 4) “Once the

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

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4 7. Kvam filed his *Verified Complaint* (“*Complaint*”) on April 11, 2018, in which
5 he alleged causes of action as follows: First Cause of Action (Declaration of Joint
6 Venture); Second Cause of Action (Rescission or Reformation of Agreement); Third Cause
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9 Agreement); Fifth Cause of Action (Accounting); Sixth Cause of Action (Court Supervision
10 of Dissolution and Winding Up, and Appointment of Receiver); Seventh Cause of Action
11 (Temporary and Permanent Injunction) and Eighth Cause of Action (Derivative Claim).

12 8. Kvam’s First Cause of Action (Declaration of Joint Venture) alleged as
13 follows:

14 21. There is an actual, justiciable, present controversy
15 between KVAM, MINEAU, and LEGION on the question of whether
16 the Agreement identified in Par. 7 constitutes a joint venture
17 agreement, an agreement for MINEAU to transfer his membership
18 interest in LEGION, or some other type of agreement.

19 22. KVAM therefore requests a declaration on the legal
20 rights created by the Agreement, the status of the unincorporated
21 joint venture referred to herein as 7747 and the respective interests
22 of the joint venturers.

23 23. KVAM further requests a declaration on the amount of
24 loans and contributions made to the 7747 by each of the joint
25 venturers.

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27 MINEAU, and LEGION were required to assign the entire interest in
28 the 7747 to KVAM in the event it failed in any way.

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2 2019. The FAC added an additional Eighth Cause of Action (Fraud, Fraudulent
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5 September 11, 2019. The SAC added a Ninth Cause of Action ("Conversion") and Tenth
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8 which they asserted eleven (11) separate counterclaims.

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10 Mineau/Legion's counterclaims in part and directed them to file a more definite statement
11 in part.

12 13. Mineau/Legion filed their more definite statement (entitled *First Amended*
13 *Counterclaim*) on October 5, 2018.

14 14. On January 9, 2019, this Court entered an additional Order in which it
15 dismissed all of Mineau/Legion's remaining counterclaims, except for their Third Claim for
16 Relief (Declaratory Relief). Although Mineau/Legion requested declaratory relief,
17 generally, they did not request any specific declaration.

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19 15. On November 16, 2018, Legion sold the property for \$41,000. [See closing
20 statement, Ex. "5"; *Summary Judgment Order* at Finding of Fact #67].

21 16. Legion's share of prorated property taxes, closing costs and the
22 commission owed to the real estate brokers equaled \$16,526.23, and the net proceeds
23 from the closing were \$24,473.77. [See closing statement, Ex. "5"; *Summary Judgment*
24 *Order* at Finding of Fact #68-69].

25 17. Mineau/Legion did not inform Kvam about the sale or pay the foregoing
26 amount (\$24,473.77) to Kvam; rather, Kvam was left to find out about the sale on his
27 own. [Ex. "2", Declaration of Jay Kvam].

28 //

1 18. Kvam moved for a temporary restraining order and preliminary injunction on
2 November 30, 2018, to prevent the loss of the sale proceeds. [Court Docket #7000744;
3 Kvam Dec.] Facing no other options, Mineau and Legion stipulated to deposit the funds
4 with the clerk of the court [Court Docket #7021308].

5 19. On December 19, 2018, Legion received an additional \$1,864.14 from the
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8 D. **THE JUNE 5, 2020, ORDER GRANTING, IN PART, AND**
9 **DENYING, IN PART, DEFENDANTS' MOTION FOR SUMMARY**
10 **JUDGMENT; ORDER GRANTING SUMMARY JUDGMENT ON**
11 **CLAIM PURSUANT TO COURT'S NRCP 56 NOTICE**
12 **("SUMMARY JUDGMENT ORDER")**

13 20. Mineau/Legion filed their *Motion for Summary Judgment* on January 6,
14 2020, in which they moved for summary judgment on all causes of action stated in
15 Kvam's SAC.

16 21. Although Mineau/Legion purported to move for summary judgment on
17 Kvam's First Cause of Action (Declaration of Joint Venture), Mineau/Legion conceded, for
18 the first time, that the relationship between the parties should be characterized as a
19 partnership that is governed by NRS Chapter 87. [*Motion for Summary Judgment* 12:3]
20 ("As such, the parties formed a partnership pursuant to NRS 87.4322.")

21 22. The Court denied Mineau/Legion's *Motion for Summary Judgment* on
22 Kvam's First Cause of Action (Declaration of Joint Venture) and Fifth Cause of Action
23 (Accounting) and held in abeyance a decision on Kvam's Sixth Cause of Action (Court
24 Supervision of Winding Up, and Appointment of Receiver). [*Summary Judgment Order*].

25 23. The Court granted Mineau/Legion's *Motion for Summary Judgment* on
26 Kvam's other causes of action; and granted summary judgment on Mineau/Legion's prior
27 counterclaim for declaratory relief. [*Summary Judgment Order*].

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1 24. In so doing, the Court entered the following Conclusions of Law in pertinent
2 part:

3 21. *The Court should declare with respect to the parties'*
4 *respective rights and interests:*

5 * * * *

6 c. *The parties formed a joint venture/partnership*
7 *pursuant to NRS 87.4322.*

8 d. *The Terms of Agreement and NRS Chapter 87*
9 *governed the partnership.*

10 * * * *

11 m. *The parties agreed all interests in the partnership and*
12 *any remedies due to the partnership, **including the***
13 ***proceeds from the sale of the Property in the amount of***
14 ***\$26,337.71, should be assigned to Mr. Kvam** and the*
15 *partnership dissolved. Motion, Ex. 1, ¶ 38-39; Opposition, p.*
16 *20, Stipulation to Deposit Funds, December 12, 2018.*
17 *[Summary Judgment Order at Conclusions of Law 21, p. 27-*
18 *28] (emphasis added).*

19 * * * *

20 49. *As state [sic], pursuant to NRS 87.4336(2)(a), a partner must*
21 *account to the partnership for any property, profit or benefit*
22 *derived by the partner from a use by the partner of*
23 *partnership property, including the appropriation of a*
24 *partnership opportunity.*

25 * * * *

26 57. *A partnership continues after dissolution only for the purpose*
27 *of winding up its business. The partnership is terminated*
28

1 when the winding up of its business is completed. NRS
2 87.4352(1).

3 * * * *

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5 remedies due to the partnership, including the proceeds from
6 the sale of the Property in the amount of \$26,337.71, should
7 be assigned to Mr. Kvam and the partnership dissolved.
8 Motion, Ex. 1, ¶ 38-39; Opposition, p. 20; Stipulation to
9 Deposit Funds, Dec. 12, 2018.

10 25. Kvam appealed the *Summary Judgment Order* on June 29, 2020, [Court
11 Docket #7946795].

12 26. The Nevada Court of Appeals entered its *Order of Affirmance* on June 16,
13 2021. [Court Docket #21-17380].

14 27. The Court of Appeals limited its review to Kvam's claim for injunctive relief
15 [*Order of Affirmance*, fn.2].

16 28. The Court of Appeals also explained that:

17 Here, the district court assigned all interest in the joint venture to
18 Kvam, thus Mineau had already been prevented from conducting
19 any further business on behalf of the joint venture. Therefore, we
20 affirm the district court's denial of Kvam's claim for injunctive relief
21 as **Mineau no longer holds an interest in the joint venture**,
22 making the injunctive relief requested by Kvam moot.

23 [*Order of Affirmance*, p. 2] (emphasis added).

24 II. CONCLUSIONS OF LAW

25 A. **KVAM'S THIRD CLAIM (DECLARATORY RELIEF)**

26 1. This Court ruled in the *Summary Judgment Order* the parties formed a joint
27 venture/partnership pursuant to NRS 87.4322, and all rights in the joint venture were
28 assigned to Kvam and that Kvam is entitled to the proceeds of sale now held by Clerk of
29 the Court in the amount of \$24,473.77 plus \$1,864.14 that Mineau/Legion received later.

30 //

1 **B. KVAM'S FIFTH CLAIM (ACCOUNTING)**

2 2. This Court ruled in the *Summary Judgment Order* that Kvam is entitled to
3 an accounting pursuant to *NRS 87.4336(2)(a)*.

4 **C. KVAM'S SIXTH CAUSE OF ACTION (COURT SUPERVISION OF**
5 **DISSOLUTION AND WINDING UP, AND APPOINTMENT OF A**
6 **RECEIVER)**

7 3. This Court ruled in the *Summary Judgment Order* that the partnership
8 continues after dissolution only for the purpose of winding up its business. The
9 partnership is terminated when the winding up of its business is completed. *NRS*
10 87.4352(1).

11 4. The winding up of 7747 S. May Street will be complete when Kvam
12 receives the funds on deposit with the court Clerk of the Court in the amount of
13 \$24,473.77 plus \$1,864.14 that Mineau/Legion received later.

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 10th day of March, 2022, I electronically filed the foregoing
4 with the Clerk of the Court system which will send a notice of electronic
5 filing to the following:

6 AUSTIN SWEET, ESQ.
7 MARK GUNDERSON, ESQ.
8 MICHAEL MATUSKA, ESQ.
9

10 And, I deposited in the County mailing system for postage and mailing with the
11 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
12 document addressed as follows:
13
14
15
16
17
18

19 Holly W. Lange
20
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1 **CODE: 2540**

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

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 3

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

Defendants.

14 **NOTICE OF ENTRY OF ORDER**

15 PLEASE TAKE NOTICE that on March 10, 2022, the Court entered its *Order Granting*
16 *Plaintiff's Motion for Partial Summary Judgment* in the above-mentioned matter, a copy of which
17 is attached hereto as Exhibit "1."

18 **AFFIRMATION**

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

22 Dated this 11th day of March 2022.

23 MATUSKA LAW OFFICES, LTD.

24 *Michael L. Matuska*

25 By:

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

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 11th day of March 2022, I served a true and correct copy of the preceding document entitled ***NOTICE OF ENTRY OF ORDER*** as follows:

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

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

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

☐ **BY EMAIL:** (as listed above)

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY
SUZETTE TURLEY

Exhibit Index

NOTICE OF ENTRY OF ORDER

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Order Granting Plaintiff's Motion for Partial Summary Judgment	10

Exhibit 1

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MOTION FOR PARTIAL SUMMARY JUDGMENT**
(Notice of Entry of Order)

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24 Supervision of Winding Up, and Appointment of Receiver). [Summary Judgment Order].

25 23. The Court granted Mineau/Legion's *Motion for Summary Judgment* on
26 Kvam's other causes of action; and granted summary judgment on Mineau/Legion's prior
27 counterclaim for declaratory relief. [Summary Judgment Order].

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1 24. In so doing, the Court entered the following Conclusions of Law in pertinent
2 part:

3 21. *The Court should declare with respect to the parties'*
4 *respective rights and interests:*

5 * * * *

6 c. *The parties formed a joint venture/partnership*
7 *pursuant to NRS 87.4322.*

8 d. *The Terms of Agreement and NRS Chapter 87*
9 *governed the partnership.*

10 * * * *

11 m. *The parties agreed all interests in the partnership and*
12 *any remedies due to the partnership, including the*
13 *proceeds from the sale of the Property in the amount of*
14 *\$26,337.71, should be assigned to Mr. Kvam and the*
15 *partnership dissolved. Motion, Ex. 1, ¶ 38-39; Opposition, p.*
16 *20, Stipulation to Deposit Funds, December 12, 2018.*

17 *[Summary Judgment Order at Conclusions of Law 21, p. 27-*
18 *28] (emphasis added).*

19 * * * *

20 49. *As state [sic], pursuant to NRS 87.4336(2)(a), a partner must*
21 *account to the partnership for any property, profit or benefit*
22 *derived by the partner from a use by the partner of*
23 *partnership property, including the appropriation of a*
24 *partnership opportunity.*

25 * * * *

26 57. *A partnership continues after dissolution only for the purpose*
27 *of winding up its business. The partnership is terminated*
28

1 when the winding up of its business is completed. NRS
2 87.4352(1).

3 * * * *

4 60. The parties agreed all interests in the partnership and any
5 remedies due to the partnership, including the proceeds from
6 the sale of the Property in the amount of \$26,337.71, should
7 be assigned to Mr. Kvam and the partnership dissolved.
8 Motion, Ex. 1, ¶ 38-39; Opposition, p. 20; Stipulation to
9 Deposit Funds, Dec. 12, 2018.

10 25. Kvam appealed the *Summary Judgment Order* on June 29, 2020, [Court
11 Docket #7946795].

12 26. The Nevada Court of Appeals entered its *Order of Affirmance* on June 16,
13 2021. [Court Docket #21-17380].

14 27. The Court of Appeals limited its review to Kvam's claim for injunctive relief
15 [*Order of Affirmance*, fn.2].

16 28. The Court of Appeals also explained that:

17 Here, the district court assigned all interest in the joint venture to
18 Kvam, thus Mineau had already been prevented from conducting
19 any further business on behalf of the joint venture. Therefore, we
20 affirm the district court's denial of Kvam's claim for injunctive relief
21 as Mineau no longer holds an interest in the joint venture,
22 making the injunctive relief requested by Kvam moot.

23 [*Order of Affirmance*, p. 2] (emphasis added).

24 II. CONCLUSIONS OF LAW

25 A. KVAM'S THIRD CLAIM (DECLARATORY RELIEF)

26 1. This Court ruled in the *Summary Judgment Order* the parties formed a joint
27 venture/partnership pursuant to NRS 87.4322, and all rights in the joint venture were
28 assigned to Kvam and that Kvam is entitled to the proceeds of sale now held by Clerk of
29 the Court in the amount of \$24,473.77 plus \$1,864.14 that Mineau/Legion received later.

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B. KVAM'S FIFTH CLAIM (ACCOUNTING)

2. This Court ruled in the *Summary Judgment Order* that Kvam is entitled to an accounting pursuant to *NRS 87.4336(2)(a)*.

C. KVAM'S SIXTH CAUSE OF ACTION (COURT SUPERVISION OF DISSOLUTION AND WINDING UP, AND APPOINTMENT OF A RECEIVER)

3. This Court ruled in the *Summary Judgment Order* that the partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed. *NRS 87.4352(1)*.

4. The winding up of 7747 S. May Street will be complete when Kvam receives the funds on deposit with the court Clerk of the Court in the amount of \$24,473.77 plus \$1,864.14 that Mineau/Legion received later.

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AUSTIN SWEET, ESQ.
MARK GUNDERSON, ESQ.
MICHAEL MATUSKA, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Haley W. Longe

1 **CODE: \$2515**
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
8 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 JAY KVAM,

11 Plaintiff,

12 v.

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

16 Defendants.

Case No. CV18-00764

Dept. No. 6

17 **NOTICE OF APPEAL**

18 Notice is hereby given that Plaintiff, JAY KVAM, hereby appeals to the Supreme Court of
19 Nevada from the following orders and judgments:

20 1. *Order Granting, In Part, and Denying, In Part Defendants' Motion for Summary*
21 *Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice*
22 *entered in this action on the 5th day of June, 2020; and*

23 2. *Order Granting Plaintiff's Motion for Partial Summary Judgment entered in this*
24 *action on the 10th day of March, 2022.*

25 **AFFIRMATION**

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

28 Dated this 25th day of March, 2022.

MATUSKA LAW OFFICES, LTD.

By:

Michael L. Matuska

MICHAEL L. MATUSKA, SBN 5711
Attorney 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 25th day of March, 2022, I served a true and correct copy of the preceding document entitled **NOTICE OF APPEAL** 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