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

PHILIP J. FAGAN, JR., an individual,
and as Trustee of the PHILIP J.
FAGAN, JR. 2001 TRUST,
Appellant,

v.

AAL-JAY, INC., a Nevada corporation;
CHRISTIANO DE CARLO, an
individual;
and LAIL LEONARD, an individual,
Respondents.

Electronically Filed
Case No. 84699 Jul 25 2022 01:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION PURSUANT TO NRAP 27
TO REQUIRE BOND**

Relief Requested by August 15, 2022

13
14 Appellants PHILIP J. FAGAN, JR., an individual, and as Trustee of the
15 PHILIP J. FAGAN, JR. 2001 TRUST, hereinafter collectively referred to as
16 “Fagan” moves this Court for the issuance of an Order Requiring Respondents to
17 post a bond to support the *de facto* injunction issued by the lower court, restraining
18 Fagan from substantially all of his property rights in the subject real property
19 located at 1 Grand Anacapri Dr. in Henderson, NV (the “Property”)
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INTRODUCTION AND STATEMENT OF FACTS

This appeal follows the entry of an order in the lower court which included
de facto mandatory injunctions in favor of the Respondents. The Lower Court
previously entered an order styled as an “Order Granting Emergency Motion for
Specific Performance” which, curiously, allowed the Eighth Judicial District Court

1 Clerk to execute an unsigned and unapproved purchase agreement on behalf of
2 Fagan, in order to facilitate the sale of Fagan's home located at 1 Grand Anacapri
3 Dr. in Henderson. *See* Specific Performance Order Ex. 1. Though that Order was
4 entered without any underlying judgment supporting the specific performance
5 remedy, that Order is not the subject of this appeal. Following the entry of the
6 "Emergency" Specific Performance Order, Respondents were, by their own
7 admission, unable to find financing and their unilaterally-selected escrow company
8 – First American Title Company, refused to close the transaction, apparently
9 fearful of their own potential liability. Undeterred, Respondents later filed yet
10 another "Emergency" motion entitled "Emergency Motion for First American Title
11 Insurance Company to Turnover Funds in Escrow to the Buyer Aal-Jay, Inc.;"(2)
12 Continuing Hearing on Motion for Order to Show Cause Why This Court Should
13 Not Hold Philip J. Fagan, Jr., as Trustee Of The Philip J. Fagan, Jr.2001 Trust In
14 Contempt For Violating This Court's Sale Order." *See* Emergency Motion,
15 **Exhibit 2**. Following the hearing on that motion, and Fagan's Countermotion for
16 clarification or reconsideration and for injunction requiring payment of rents or to
17 require Respondents to vacate his property [*see* Countermotion, **Exhibit 3**], the
18 Court entered an Order, over the objections of Fagan that contained a number of *de*
19 *facto* mandatory injunctions in favor of the respondents including:

- 20 (1) Ordering Fagan to personally payoff the liens on the subject property,
21 which amount to approximately \$1.1 million dollars, without receiving
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any “purchase funds” from the Respondents.

(2) Ordering Fagan to sign whatever documents counsel for Respondents or any unidentified title company subjectively deems to useful in furtherance of the Specific Performance order, **without any review of the documents by the District Court.**

(3) Ordering non-party First American Title Company, the escrow agent and fiduciary of Fagan, to return \$170,000 in Earnest Money Funds to the Respondents (and oddly attempting to discharge it from any liability to Fagan).

See 5/6/22 Order, **Exhibit 4**. The Order additionally denied Fagan’s motion to either require the Respondents to pay rent, for which they are now approximately 18 months in arrears, or alternatively allow Fagan to regain possession of the Property **which he owns**. *Id.* The denial of these requests amounts to a *de facto* prohibitive injunction, restraining Fagan from the enjoyment of his rights as a property owner – which include the right to sell, the right to exclude, and the right to possess.

The Respondents continue to occupy the property without payment of rent, while Fagan has been required to continue to make monthly payments totaling approximately \$11,000 per month on the Property. *See* Declaration of Philip Fagan, **Exhibit 5**.

Fagan, who has served as a Physician in Boulder City for decades, recently

1 learned that his family will immediately begin incurring medical bills of
2 approximately \$40,000 per month, or \$480,000 per year. *Id.* As a result, Fagan can
3 no longer continue making the monthly payments on the subject property – which
4 he cannot sell, as a result of this litigation, he cannot live in, because the lower
5 court has denied him his possessory rights, and he cannot evict the Respondents
6 from. *Id.*

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9 The Respondents, and specifically Christiano DeCarlo¹, have occupied the
10 property without rent payment for approximately 18 months and have even caused
11 the property to have a Mechanic's Lien Recorded against it without the knowledge
12 or consent of Dr. Fagan. *See* Mechanic's Lien, **Exhibit 6**.

13
14 Respondents did not apply for injunctive relief in the manner required by
15 NRCP 65 and NRS 33.010. Nonetheless, Fagan is, in fact, enjoined as set forth in
16 this Motion. Though Fagan was able to obtain a stay pending appeal of the *de facto*
17 mandatory injunction provisions, there is no mechanism to stay the prohibitive
18 injunction, as, procedurally, the *de facto* injunction came about as a result of the
19 lower court's refusal to allow Fagan to exercise the rights that he, as the Property
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23 ¹ This Court may take judicial notice of the fact that Christiano DeCarlo is a
24 longtime felon who was sentenced to prison in 2000 for crimes related to his
25 ownership of an Outcall Escort Business, and his attempts to violently deter
26 competing businesses [D. Nev. Case No. 2:98-cr-00375] and was later sentenced to
27 a second prison term in 2009 for stalking a woman, which concluded with a
28 standoff with police in which DeCarlo shot himself in the chest. He was charged
with three counts of Stalking, Felon in Possession of a Firearm, Resisting Arrest.
[8th Jud. Dist. Case No. 09-C-254960, 09-C-254964, and 09-C-254965]. Fagan
was unaware of who he was renting his home to because DeCarlo rented the
property under the AAL-JAY, Inc., ostensibly to obfuscate the identity of the true
renter.

1 owner, should already possess – including the ability to sell the property, the
2 ability to exclude persons from the property, and the ability to evict.

3
4 The *de facto* injunction exists today, without the support of any bond, as
5 required by NRCP 65 and NRS 33.010. Fagan respectfully request this Court
6 require a bond – alternatively in the amount of unpaid rent, or in the amount of the
7 alleged “purchase price” for the specific performance order, so that Fagan is not
8 placed in a position of financial ruin in order to support the Respondents, which
9 reside in Fagan’s home for free at Fagan’s expense.
10

11 ARGUMENT

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13 “The court may issue a preliminary injunction only on notice to the adverse
14 party.” NRCP 65(1). “The court may issue a preliminary injunction or a temporary
15 restraining order only if the movant gives security in an amount that the court
16 considers proper to pay the costs and damages sustained by any party found to
17 have been wrongfully enjoined or restrained. . .” NRCP 65(c). ‘Where a bond is
18 required by statute before the issuance of an injunction, it must be exacted or the
19 order will be absolutely void.’ *Shelton v. District Court*, 64 Nev. 487, 494, 185
20 P.2d 320, 323—324 (1947).
21

22
23 For a preliminary injunction to issue, the moving party must show that there
24 is a likelihood of success on the merits and that the non-moving party's conduct,
25 should it continue, would cause irreparable harm for which there is no adequate
26 remedy at law. *Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121
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1 Nev. 77, 80, 109 P.3d 760, 762 (2005). Injunctive relief is extraordinary relief, and
2 the irreparable harm must be articulated in specific terms by the issuing order or be
3 sufficiently apparent elsewhere in the record. *Id.*

4
5 The issuance of an injunction is only within a lower court's subject matter
6 jurisdiction if it is properly applied for, and the requisite notice given. *Maheu v.*
7 *Eighth Judicial Dist. Ct., County of Clark*, 493 P. 2d 709, 88 Nev. 26 (1972). Such
8 an order is void without the proper notice. *Id.*

9
10 Here, Dr. Fagan has been entirely divested of his property rights in the
11 subject property during the pendency of this litigation. "The power to exclude has
12 traditionally been considered one of the most treasured strands in an owner's
13 bundle of property rights." *SOC, Inc. v. Mirage Casino-Hotel*, 23 P. 3d 243 (Nev.
14 2001). Fagan cannot use his home, he cannot access his home, he cannot sell his
15 home (despite the strong, but declining real estate market), and he cannot evict
16 Respondents. Meanwhile, Fagan is bearing the weight of the financial
17 responsibility of the home on his own and is no longer able to do so. *See Decl. Ex.*

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21 5. If the lower court asserts that Respondents should be the "true owners" of the
22 property, as a result of the "emergency" specific performance order, the
23 Respondents should be required to post the alleged purchase price (\$800,000) as
24 bond for the usurpation of Fagan's property rights. Alternatively, the Respondents
25 should be, at a minimum, required to post as a bond, back rent in the amount of
26 \$7,000 per month, for a total of \$126,000, as well as deposit an additional \$7,000
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1 on the first of each month while this matter is pending.

2 The Respondents did not move for the *de facto* injunction or provide any
3 notice of such a motion as required by NRCP 65 and NRS 33.010. Respondents
4 did not engage any of the elements the lower court must consider for the issuance
5 of a preliminary injunction in any of their filings. Therefore, the injunction should
6 be considered void. However, because Fagan cannot evict or sell the subject
7 property without an affirmative order of the lower court, and the lower court has
8 (1) declined to allow Fagan to exercise any of his property rights; and (2) has failed
9 to recognize that its orders amount to a preliminary injunction, Fagan is left with
10 no other options than to request this Court require the Respondents to post a bond
11 to support the injunction during the pendency of this appeal.
12

13 Before the lower Court's May 6, 2022, Order, there was \$170,000 in earnest
14 money funds deposited in Escrow, which Fagan could have possibly collected
15 from should he ultimately prevail in this action and save his home. However, the
16 lower Court, acting in excess of its jurisdiction, ordered non-party First American
17 Title Company to give the escrow funds to the Respondents, without any regard for
18 the personal jurisdiction of First American Title Company, or its status as a
19 fiduciary of Fagan, or the fact that the order to release the funds violates the
20 provisions of the very "purchase agreement" the lower court has ordered specific
21 performance of. Assuming this appeal takes twelve months, Fagan will have paid,
22 in addition to attorney's fees, a **minimum** of \$132,000 in expenses on the property,
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1 so that the Respondents can live in his home for free while pursuing their claims to
2 force Fagan to sell his home to them.

3
4 This is not equitable. This does not comport with the rules of civil
5 procedure, statutory requirements of NRS Ch. 33, or the requirements of due
6 process, which were offended when the *de facto* injunction was issued without
7 notice, an opportunity to be heard, or the protection of a bond.
8

9 Dr. Fagan respectfully request this Court order Respondents to post a bond
10 in accordance with NRS Ch. 33, NRCP 65, and the innumerable decisions of this
11 Court that explicitly require a bond for the issuance of preliminary injunctive
12 relief.
13

14 DATED this 25th day of July, 2022
15
16

BLACK & WADHAMS
17

18
19 By /s/ Allison R. Schmidt
Allison R. Schmidt, Esq.
10777 West Twain Avenue, Ste
20 300
Las Vegas, NV 89135
21 aschmidt@blackwadhams.law
22 *Attorneys for Defendants*
23
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am employee of Black & Wadhams, and that on the 25th day of July, 2022, I served the above and foregoing **MOTION PURSUANT TO NRAP 27 TO REQUIRE BOND** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

Ogonna Brown, Esq.
LEWIS ROCA ROTHERGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
OBrown@lewisroca.com

/s/ Diane Meeter
An Employee of Black & Wadhams

EXHIBIT 1

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398
Email: obrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

IN THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE COUNTY OF CLARK, STATE OF NEVADA

AAL-JAY, INC., a Nevada Corporation.

Plaintiff,

v.

PHILIP J. FAGAN, JR., an individual, and as
Trustee of the PHILIP J. FAGAN, JR. 2001
TRUST; DOES I through X, inclusive, and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-21-832379-B

Dept. No. 24

EMERGENCY MOTION FOR SPECIFIC
PERFORMANCE OF PURCHASE
AGREEMENT, ON AN ORDER
SHORTENING TIME

[EMERGENCY HEARING REQUESTED]

Plaintiff AAL-JAY, INC. ("Plaintiff" or "AAL-JAY"), by and through its attorneys, Ogonna M. Brown, Esq. of the law firm Lewis Roca Rothgerber Christie LLP ("Lewis Roca"), hereby files this Emergency Motion for Specific Performance of Purchase Agreement, On An Order Shortening Time ("Emergency Motion"). The Emergency Motion seeks specific performance of Plaintiff's purchase of the real property parcel located at the address 2 Grand Anacapi, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property").

This Emergency Motion is based upon the following Memorandum of Points and Authorities; the Declaration of Christiano DeCarlo in Support of Emergency Motion ("DeCarlo Decl.") attached hereto as **Exhibit "A"**, the Director of AAL-JAY; the Declaration of Lail Leonard in Support of Emergency Motion ("Leonard Decl.") attached hereto as **Exhibit "B"**, the President of AAL-JAY, and the Declaration of Ogonna M. Brown, Esq. In Support of Emergency Motion On

1 An Order Shortening Time ("Brown Decl."), one of the attorneys for AAL-JAY; the papers and
2 pleadings on file in this action; and any such oral argument as this Court may entertain at hearing
3 on this Emergency Motion.

4 Dated this 7th day of May, 2021.

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP

7 

8 By: _____

Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel.: 702.949.8200
Fax: 702.949.8398
Email: obrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on Plaintiff's EMERGENCY MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN ORDER SHORTENING TIME ("Emergency Motion") shall be heard on the 1st day of June, 2021, at the hour of 9 : 00 .m. in Department 24 of this Court;

IT IS FURTHER ORDERED THAT the Defendants shall file an opposition to the Emergency Motion, if any, on or before May 25, 2021, 2021, at 9:00am a.m./p.m., and shall serve electronically a copy of same on counsel for Plaintiff using the Court's E-Filing E-Service System on this same date;

~~IT IS FURTHER ORDERED THAT Plaintiff shall file a reply in support of their Emergency Motion, if any, on or before _____ 2021, at _____ a.m./p.m. and shall serve electronically a copy of same on counsel for Defendants using the Court's E-Filing E-Service System on this same date.~~

Dated this 18th day of May, 2021



Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

859 4D1 78B7 5039
Erika Ballou
District Court Judge

By: 

Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel.: 702.949.8200
Fax: 702.949.8398
Email: obrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

**DECLARATION OF OGONNA M. BROWN, ESQ. IN SUPPORT OF EMERGENCY
MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN
ORDER SHORTENING TIME**

I, Ogonna M. Brown, upon oath state the following:

1. I am over the age of 18 and am competent to testify regarding the matters asserted herein.

2. I have personal knowledge of the facts set forth in this Declaration except as to those matters based upon information and belief, and as to those matters, I believe them to be true and correct. If called as a witness to testify, I could and would truthfully testify to the facts set forth herein.

3. I am an attorney licensed to practice in all courts within the State of Nevada, and I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP ("Lewis Roca").

4. I am counsel for Plaintiff AAL-JAY, INC. ("Plaintiff") in the above-captioned lawsuit, and have been retained by Plaintiff to represent its interests in this action against Defendants Philip J. Fagan, Jr., an individual ("Mr. Fagan"), and as Trustee of the Philip J. Fagan, Jr. 2001 Trust ("Fagan Trust") (collectively, "Defendants").

5. I make this Declaration in support of Plaintiff's *Emergency Motion For Specific Performance of Purchase Agreement, on an Order Shortening Time* ("Emergency Motion").

6. The relief requested in this Emergency Motion is necessary because Plaintiff is entitled to specific performance of the Residential Purchase Agreement ("Purchase Agreement") for purchase of the real property parcel located at the address 2 Grand Anacapi, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property") to purchase the Property for \$800,000, which Purchase Agreement was offered by Defendant Mr. Fagan as Trustee of the Fagan Trust through his counsel, which was remitted to an Escrow Officer at Defendants' escrow company, First American Title Insurance Company ("First American") and executed on January 21, 2021 by Lail Leonard as President of Plaintiff, AAL-Jay, Inc. ("Ms. Leonard").

7. As evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Zions Bancorporation, N.A. dba Nevada State Bank ("Lender"), Plaintiff is ready, willing and able to close on the purchase of the

1 Property for \$800,000, the purchase price set forth in the Purchase Agreement ("New Purchase
2 Price"), which price reflected the (35) prior payments made under the terms of the original Contract
3 and Addendum (defined herein).

4 8. The pre-approved lending from Lender is more than enough for the Plaintiff to close
5 on the Purchase of the Property at the New Purchase Price.

6 9. Good cause exists for this instant request for an expedited hearing on the Emergency
7 Motion and an expedited hearing on the Emergency Motion because the Lender will not fund the
8 loan for the Plaintiff's purchase of the Property until the Lender receives a fully executed Purchase
9 Agreement.

10 10. Good cause also exists because Defendants have commenced eviction proceedings
11 against the Plaintiff to vacate the Property on or before June 2, 2021 by way of serving a Thirty-
12 Day "No Cause" Notice to Quit Pursuant to NRS 40.251 ("Notice to Quit") served on May 3, 2021.

13 11. Plaintiff respectfully requests that this Court permit this Emergency Motion to be
14 heard on an order shortening time because Plaintiff believes that, in the absence of such relief,
15 Plaintiff risks losing the Property where Mr. Christiano DeCarlo currently resides with his family,
16 including a minor child, as well as the prior payments Plaintiff has made over the years toward the
17 goal of purchasing the Property.

18 12. Plaintiff is facing threat of eviction because the Defendants refuse to honor the
19 Purchase Agreement for \$800,000, notwithstanding that Plaintiff is prepared to immediately close
20 pursuant to the Purchase Agreement previously prepared by and submitted by the Defendants.

21 13. Plaintiff respectfully requests this Court hold a hearing on or before **June 2, 2021**,
22 on the Emergency Motion to ensue Plaintiff is not forced to forfeit the funds that have already been
23 invested over the years to Defendants towards the purchase of the Property, and to compel
24 Defendants to allow the sale to close on the agreed Purchase Price of \$800,000 for the Property.

25 14. This request for an order shortening time on the Emergency Motion is made in good
26 faith and without dilatory motive.

27 /s/ Ogonna Brown
28 OGONNA M. BROWN, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff brings the instant Emergency Motion for Specific Performance of Purchase Agreement, on an Order Shortening Time in order that Plaintiff may be afforded specific performance of the Residential Purchase Agreement ("Purchase Agreement") for purchase of the real property parcel located at the address 2 Grand Anacapi, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property"), which Purchase Agreement was offered by Defendant Mr. Fagan as Trustee of the Fagan Trust through counsel, who in turn submitted the Purchase Agreement for \$800,0000 to an Escrow Officer at Defendants' title company, First American Title Insurance Company ("First American"). Plaintiff accepted the offer of \$800,000 as evidenced by the Purchase Agreement drafted and prepared by Defendants, as evidenced by the executed Purchase Agreement for \$800,000, signed on January 21, 2021 by Lail Leonard as President of Plaintiff, AAL-Jay, Inc. ("Ms. Leonard").

In addition to executing the Purchase Agreement, Plaintiff has also made payments toward the Purchase Price and funded an Earnest Money Deposit ("EMD") in the total amount of \$170,000. Under the terms of the Promissory Note, Mr. Chrisitiano DeCarlo, the Director of AAL-JAY, Inc., and Ms. Leonard, the President of AAL-Jay, made 16 consecutive weekly payments of \$20,685.00 beginning January 30, 2019, totaling \$330,960. Further, in connection with the significant water damage to the Property, on May 28, 2020, Chubb approved the claim in the amount of approximately \$33,000, and withheld the \$10,000 deductible from the claim payments. Ultimately, the contractors were paid approximately \$77,000 to make the necessary repairs to make the Property habitable. Defendants are attempting to gain a windfall instead of selling the Property to Plaintiff as previously agreed.

Plaintiff's substantial investment in the Property with the expectation of purchasing the Property will be forfeited in the absence of specific performance of the Purchase Agreement, as Defendants are attempting to evict Plaintiff. Defendants fraudulently induced the Plaintiff in an attempt to void the \$800,000 Purchase Agreement, and duped the Plaintiff into believing that Defendants would review the reconciliation of past payments and proceed with the \$800,000

1 Purchase Agreement. Instead, Defendants extended the lease through April 2021, and then
2 repeatedly attempted to evict Plaintiff, all while refusing to proceed with the \$800,000 Purchase
3 Agreement in good faith. Plaintiff has been left with no other choice but to seeks an order from this
4 Court to enforce the terms of the Purchase Agreement to purchase the Property for \$800,000, and
5 for this Court to order Defendants to proceed to closing of the sale of the Property to Plaintiff for
6 \$800,000, for which \$170,000 remains in escrow with the title company.

7 II. STATEMENT OF FACTS

8 CONTRACT FOR DEED AND ADDENDUM

9 1. Plaintiff leased the Property from the owner, Philip J. Fagan, Jr., Trustee of the
10 Philip J. Fagan, JR 2011 Trust (“Defendant,” or alternatively, “Landlord”) on or near November of
11 2011.

12 2. Christiano DeCarlo, the Director of AAL-JAY, Inc. (“Mr. DeCarlo”), is the current
13 occupant of the Property.

14 3. On December 8, 2016, Plaintiff and Defendant (collectively, the “Parties”) entered
15 into a Contract for Deed (“Contract”). The Contract was signed by the Defendant, Philip J. Fagan
16 (“Dr. Fagan”) as Seller and Lail Leonard (“Ms. Leonard”) as President of AAL-JAY as Purchaser.
17 A true and correct copy of the Contract is attached to the DeCarlo Decl. as **Exhibit “1”**.

18 4. Pursuant to the terms of the Contract, Defendant agreed to sell the Property to the
19 Plaintiff for the purchase price of \$1,050,000.00 (“Purchase Price”). See **Ex. “1”** to the DeCarlo
20 Decl.

21 5. The Purchase Price was to be paid on a schedule agreed by and between the Parties,
22 as set forth in the Contract. See **Ex. “1”** to the DeCarlo Decl.

23 6. The balance of \$1,000,000 was to be due and payable as follows:

24 Balance payable, together with interest on the whole sum that shall be from
25 time to time unpaid at the rate of 3.25 per cent, per annum, payable in the
26 amount of Five Thousand Six Hundred Seventy-one and 96/100 dollars
27 (\$5,671.96) per month beginning on the 1st day of December, 2016, and
28 continuing on the same day of each month thereafter until the 31st day of
October, 2019, when all remaining principal and interest shall be paid.
Interest shall be computed monthly and deducted from payment and the
balance of payment shall be applied on principal.

1 See **Ex. "1"** to the DeCarlo Decl. at pg. 2. Also attached to the DeCarlo Decl. as **Exhibit "2"** is a
2 reconciliation schedule spreadsheet ("Reconciliation") setting forth the Tenant's payments for the
3 Property beginning in December 2016.

4 7. The interest rate was set at 3.25% for the term of the Contract, and was not variable.
5 See **Ex. "1"** to the DeCarlo Decl.

6 8. In addition to the Purchase Price, the first year's Property taxes were to be paid by
7 the Defendant and then added to the Purchase Price. After the first year, Plaintiff would assume
8 responsibility for the Property taxes for each subsequent year. See **Ex. "1"** to the DeCarlo Decl. at
9 pg. 3.

10 9. Despite this provision in the executed Contract, Defendant failed to add the 2017
11 Property taxes to the Purchase Price until March 2021.

12 10. Each party to the Contract agreed to insure their own contents of the Property. See
13 **Ex. "1"** to the DeCarlo Decl. at pg. 3.

14 11. Under the terms of the Contract, Plaintiff also assumed responsibility for liability
15 and hazard insurance for the duration of the Contract. Defendant agreed to purchase fire, hazard
16 and windstorm insurance but Plaintiff was to "repay the amount so paid by Seller within ten (10)
17 days of demand for same by Seller." See **Ex. "1"** to the DeCarlo Decl. at pg. 3.

18 12. In January 2018, the Parties entered into Addendum No. 1 to the Contract
19 ("Addendum"). The Addendum was signed by Dr. Fagan on behalf of the Defendant and me on
20 behalf of the Plaintiff. A true and correct copy of the Addendum is attached to the Leonard Decl.
21 as **Exhibit "3"**.

22 13. Under the terms of the Addendum, Plaintiff agreed to cure defaults for January,
23 February and March 2018. See **Ex. "3"** to the Leonard Decl.

24 14. Specifically, Plaintiff agreed to pay Defendant \$12,340.97 on or before February 2,
25 2018, but ultimately paid \$12,437.75. See **Ex. "3"** to the Leonard Decl.

26 15. Pursuant to the Addendum, the Parties further agreed that Plaintiff would pay to
27 Defendant on or before February 20, 2018 the monthly payments due under the Contract for April
28 and May 2018. See **Ex. "3"** to the Leonard Decl.

1 16. Thereafter, the Plaintiff would make each monthly payment due on the first day of
2 each month under the Contract and continue said monthly payments four (4) months in advance
3 until the amount due under the Contract was paid in full. *See Ex. "3"* to the Leonard Decl.

4 17. Plaintiff was also required to remain current on the payments due under the Contract
5 for the insurance and property taxes. *See Ex. "3"* to the Leonard Decl.

6 18. The Addendum further set forth provisions for future defaults: "In the event
7 Purchaser fails to timely make payment of the Deferred Amount to Seller or any of the payments
8 due under Section 4 and 5 of this Addendum or Purchaser otherwise defaults under the terms of the
9 Contract in the future, Purchaser agrees to immediately vacate the Property, deliver possession of
10 the Property to Seller and cooperate with Seller in terminating the Contract." *See Ex. "3"* to the
11 Leonard Decl.

12 **TENANT MAKES PAYMENTS FOR ARREARS**

13 19. On February 12, 2018, after the Parties executed the Addendum, Plaintiff contacted
14 Defendant's accountant, Michael Noll at Lorenzen & Noll, CPAs ("Mr. Noll") to request
15 documentation for the insurance amounts in arrears as well as the amounts billed in advance
16 pursuant to the agreed terms of the Addendum, including statements of all premiums paid for 2017
17 and 2018. Mr. Noll provided the requested information (copies of insurance policies, invoices and
18 receipts for payment) on February 21, 2018. A true and correct copy of the February 12, 2018
19 email exchange with Mr. Noll, including attachments, is attached to the DeCarlo Decl. as **Exhibit**
20 **"3"**.

21 20. On March 9, 2018, Mr. Noll emailed Ms. Leonard advising that "[u]pon receipt of
22 the balance due of \$12,437.75, this will bring Mr. Decarlo [*sic*] fully paid up through June 30,
23 2018." A true and correct copy of the March 9, 2018 email exchange with Mr. Noll is attached to
24 the DeCarlo Decl. as **Exhibit "4"**.

25 21. In his March 9, 2018 email, Mr. Noll further stated that in order "[t]o stay 3+ months
26 ahead, Mr. Decarlo [*sic*] is required to pay the July loan payment of \$5,671.96 on April 1, 2018."
27 *See Ex. "4"* to the DeCarlo Decl.

28 ...

1 22. On March 10, 2018, Plaintiff paid Defendant \$12,437.75, the total amount of the
2 outstanding arrears pursuant to the Addendum. A true and correct copy of Check No. 2141 is
3 attached to the DeCarlo Decl. as **Exhibit “5”**.

4 23. Defendant also paid the 2018 Property taxes totaling \$6,677.52. A true and correct
5 copy of a spreadsheet of all 2018 Property tax payments, including the corresponding check
6 numbers, is attached to the DeCarlo Decl. as **Exhibit “6”**; *see also Ex. “2”* to the DeCarlo Decl.

7 24. Beginning in June 2018, Defendant increased the interest rate on the payments from
8 3.25% to 4.85%, however, this rate increase was never fully explained to the Plaintiff until August
9 2020, at which time Defendant retroactively assessed the higher interest rate. At that time, Dr.
10 Fagan claimed that the increased interest rate was not a variable rate, but a “sliding scale” and “is
11 what it is.” Neither the Contract nor the Addendum included provisions for changes to the interest
12 rate.

13 25. On January 22, 2019, a Promissory Note in the amount of \$330,000 was executed
14 by Ms. Leonard, as Trustee of the Lail Leonard Trust dated January 26, 2005 and the undersigned
15 as Maker and Defendant as Payee. A true and correct copy of the January 22, 2019 Promissory
16 Note is attached to the DeCarlo Decl. as **Exhibit “7”**.

17 26. Ms. Leonard was provided with a check from Dr. Fagan’s wife in the amount of
18 \$330,000.00. Mrs. Fagan then accompanied Ms. Leonard to Nevada State Bank, wherein Ms.
19 Leonard deposited said check; and at Mrs. Fagan’s request per her husband, to have Ms. Leonard
20 issue a payment of \$30,000.00 to Philip J. Fagan Jr. which Ms. Leonard did in the form of Nevada
21 State Bank check number 001AA.

22 27. Ms. Leonard was told verbally by Dr. Fagan at a later date that the \$30,000.00 would
23 be applied to principle balance if the purchase agreement terms were fulfilled, and forfeited with
24 the other similar instances if we defaulted or failed to complete the purchase of the Property.

25 28. Under the terms of the Promissory Note, Ms. Leonard and Mr. DeCarlo made 16
26 consecutive weekly payments of \$20,685.00 beginning January 30, 2019. *See Ex. “8”* to the
27 DeCarlo Decl.

28 ...

1 29. However, based on a verbal agreement between the Parties, the manner in which the
2 payments under the January 2019 Promissory Note were to be applied to the outstanding balance
3 on the Property payments was disputed by the Parties.

4 30. The Plaintiff maintains that \$30,000 of these payments were to be applied to the
5 principal balance in addition to the \$28,000 that was also to be applied pursuant to the two previous
6 promissory notes.

7 31. According to the Defendant, \$30,000 of these payments represented three mortgage
8 payments, not including taxes and insurance. Consequently, the \$30,000 represents a value applied
9 to the principal of only \$13,366.50 (calculated as [\$5,671.96 monthly payment - \$660.00 tax
10 payment – \$556.46 interest payment = \$4,455.5] x 3 payments).

11 32. As of the date of this Motion, the Parties have not resolved this discrepancy in the
12 application of the funds.

13 **PROPERTY DAMAGE AND INSURANCE CLAIM**

14 33. In 2019 the Property sustained significant water damage as a result of a pipe burst.

15 34. In connection with the water damage, a claim was filed against the Property
16 insurance carrier, Chubb, under policy number 1019823002.

17 35. On May 28, 2020, Chubb approved the claim in the amount of approximately
18 \$33,000, and withheld the \$10,000 deductible from the claim payments.

19 36. Ultimately, the contractors were paid approximately \$77,000 to make the necessary
20 repairs to make the Property habitable.

21 37. Beginning in July 2020, Defendant again increased the interest rate on the payments
22 from 4.85% to 5.125%. Again, this rate increase was never fully explained to the Tenant until
23 August 2020, at which time Landlord retroactively assessed the higher interest rate. At that time,
24 Dr. Fagan claimed that the increased interest rate was not a variable rate, but a “sliding scale” and
25 “is what it is.” Neither the Contract nor the Addendum included provisions for changes to the
26 interest rate.

27 38. On July 2, 2020, Dr. Fagan’s bookkeeper, Kendrah Hardin (“Ms. Hardin”) sent the
28 breakdown of the principal and interest payments for the Property to Ms. Leonard. A true and

1 correct copy of the July 2, 2020 email exchange and the attachments is attached to the DeCarlo
2 Decl. as **Exhibit “8”**.

3 39. On July 16, 2020, Ms. Hardin sent a summary of the 2020 payments to Ms. Leonard.
4 A true and correct copy of the July 16, 2020 email exchange and the attachments is attached to the
5 DeCarlo Decl. as **Exhibit “9”**.

6 40. On August 11, 2020, Ms. Hardin sent an email to Ms. Leonard regarding past due
7 payments from April 2020 through August 2020. A true and correct copy of the August 11, 2020
8 email is attached to the DeCarlo Decl. as **Exhibit “10”**.

9 41. In response, on August 15, 2020, Ms. Leonard sent an email to Ms. Hardin
10 explaining that the prior advance payments had been applied to the rent for February, March and
11 April 2020. Ms. Leonard further stated that the payment for May 2020 was being sent. A true and
12 correct copy of the August 15, 2020 email is attached to the DeCarlo Decl. as **Exhibit “11”**.

13 42. Ms. Leonard also requested an update on the status of the Chubb insurance payments
14 for the water damage claim, to which no response was provided by Ms. Hardin or Dr. Fagan. *See*
15 **Ex. “12”** to the DeCarlo Decl.

16 **NEW PURCHASE AGREEMENT**

17 43. Sometime in the latter part of 2020, Mr. DeCarlo, on behalf of Plaintiff, engaged in
18 discussions with Dr. Fagan’s attorney, Richard Scott, Esq. (“Attorney Scott”) regarding the existing
19 terms of the Property purchase.

20 44. As a result of these conversations, on January 6, 2021, an Escrow Officer at First
21 American Title Insurance Company (“First American”) sent a Residential Purchase Agreement
22 (“Purchase Agreement”) to Ms. Leonard. A true and correct copy of the January 6, 2021 email
23 and attachments is attached to the DeCarlo Decl. as **Exhibit “12”**.

24 45. According to the terms of the Purchase Agreement that was prepared by the
25 Landlord’s attorneys and remitted by the escrow company by, the new Purchase Price for the
26 Property was \$800,000.00 (“New Purchase Price”), with a stipulation for \$50,000 to be placed in
27 escrow as Earnest Money Deposit (“EMD”). The New Purchase Price reflected the (35) prior
28

1 payments made under the terms of the original Contract and Addendum. *See Ex. "13"* to the
2 DeCarlo Decl.

3 46. On January 11, 2021, Ms. Leonard executed the Purchase Agreement and
4 transmitted via electronic correspondence the executed Purchase Agreement to the First American
5 Escrow Officer. A true and correct copy of the January 11, 2021 email and attachments is attached
6 to the DeCarlo Decl. as **Exhibit "13"**.

7 47. On January 12, 2021, Tenant wired \$50,000 into an escrow account. A true and
8 correct copy of the January 12, 2021 U.S. Bank General Wire Transfer Request is attached to the
9 DeCarlo Decl. as **Exhibit "14"**.

10 **LANDLORD RESCINDS EXISTING OFFER AND DRAFTS REVISED PURCHASE AGREEMENT**

11 48. On January 12, 2021, Dr. Fagan contacted Ms. Leonard to dispute the New Purchase
12 Price, and informed her that he was withdrawing the offer to sell the Property at the New Purchase
13 Price of \$800,000, notwithstanding that the Tenant already accepted the offer

14 49. On January 15, 2021, the First American Escrow Officer verbally advised Ms.
15 Leonard via telephone and text message of a revised Residential Purchase Agreement ("Revised
16 Purchase Agreement") with a new Purchase Price of \$895,000 instead of the previously agreed-
17 upon Purchase Price of \$800,000. A true and correct copy of the January 15, 2021 text message
18 attached to the Leonard Decl. as **Exhibit "16"**.

19 50. The First American Escrow Officer then presented the Revised Purchase
20 Agreement. A true and correct copy of the January 13, 2021 email and attachments is attached to
21 the DeCarlo Decl. as **Exhibit "15"**.

22 51. As a result of the retroactive interest rate increases, the revised Purchase Price was
23 overvalued at \$871,560.01 as opposed to \$848,304.44, which would have been the price as of
24 December 31, 2020, had the rate interest rate remained at the contractual rate of 3.25% This
25 represented an increase to the original contract purchase price of \$36,695.56.

26 52. The Revised Purchase Agreement also required a \$50,000 EMD. *See Ex. "13"* to
27 the DeCarlo Decl.

28 . . .

1 53. On January 15 2021, Ms. Leonard rejected the Landlord's Revised Purchase
2 Agreement on behalf of the Plaintiff on the basis that the parties already had a deal to purchase the
3 Property for \$800,000 as evidenced by the Purchase Agreement executed by Ms. Leonard.

4 **SECOND REVISED PURCHASE AGREEMENT & RESIDENTIAL LEASE AGREEMENTS**

5 54. To permit time to negotiate the terms of the Second Revised Purchase Agreement
6 and the Modified Purchase Price, the Defendant agreed to sign documentation believed to represent
7 an extension of time to negotiate the purchase of the Property to the Plaintiff for the month of
8 February 2021. Defendant relied on the nearly ten-year relationship with Dr. Fagan as trust in his
9 story that the agreement signed was for the purpose Dr. Fagan proposed was needed to finalize the
10 terms of the sale.

11 55. To that end, the Parties entered into a Residential Lease Agreement dated January
12 22, 2021 for the term of February 2021 for the agreed rent amount of the sum of the three
13 reoccurring payments of Wells Fargo Mortgage payment, interest, and taxes ("First Lease
14 Agreement"). A true and correct copy of the January 22, 2021 First Lease Agreement executed by
15 Ms. Leonard is attached to the Leonard Decl. as **Exhibit "17"**.

16 56. On February 23, 2021, at Plaintiff's request, Ms. Hardin sent to Plaintiff the
17 amortization schedule for the Property payments ("Amortization Schedule") which included the
18 increased interest rate. A true and correct copy of the February 23, 2021 email and attachment is
19 attached to the Leonard Decl. as **Exhibit "18"**.

20 57. Plaintiff was current on the payments due and owing under the Amortization
21 Schedule through March 2021, based upon the credit of the \$30,000 payment made under the
22 Promissory Note.

23 58. On March 12, 2021, Defendant filed a Five-Day Notice to Quit for Tenancy At Will
24 ("Five-Day Notice"). A true and correct copy of the Five-Day Notice is attached to the DeCarlo
25 Decl. as **Exhibit "16"**.

26 59. On March 15, 2021, the Parties conferred regarding the updated Amortization
27 Schedule.

28 60. During this discussion, Dr. Fagan agreed to have his staff itemize all payments.

1 61. While the parties were verifying the itemization and reconciliation, Dr. Fagan
2 represented to Plaintiff that in furtherance of discussions regarding the purchase of the Property,
3 that the Landlord and the Tenant would enter into another lease agreement for the months of March
4 2021 and April 2021.

5 62. Ms. Leonard, acting on Plaintiff's behalf and relying upon Attorney Yergensen's
6 representations, agreed to enter into another lease agreement for the months of March and April
7 under the false understanding that discussions regarding the purchase of the Property would
8 continue.

9 63. On March 9, 2021, Defendant presented a second lease agreement which was dated
10 March 2, 2021 ("Second Lease Agreement"). A true and correct copy of the March 9, 2021 email
11 exchange and attachments is attached to the Leonard Decl. as **Exhibit "19"**.

12 64. Landlord also sent an unsigned Letter of Agreement attached to the March 9, 2021
13 email. The Letter of Agreement stated that, upon execution of the March Lease Agreement that
14 "all other agreements are terminated and of no further force or effect." There were also additional
15 provisions based on proposed closing dates. *See Ex. "19" to the Leonard Decl.*

16 65. Under the terms of the Second Lease Agreement, Tenant would make (2) monthly
17 payments in the amount of \$6,800 for the months of March and April 2021, of which \$3,000 of the
18 payment amount would be applied to the Modified Purchase Price. *See Ex. "19" to the Leonard*
19 *Decl.*

20 66. Accordingly, Plaintiff submitted two checks dated March 15, 2021 to Defendant,
21 each in the amount of \$6,800. A true and correct copy of the check numbers 3276 and 3277
22 representing payment for the March and April 2021 Property rent are attached to the Leonard Decl.
23 as **Exhibit "20"**.

24 67. On the same day and after submission of the March and April rent payments, Ms.
25 Leonard executed the Second Lease Agreement on behalf of the Plaintiff. A true and correct copy
26 of the Second Lease Agreement dated March 2, 2021 signed by Ms. Leonard on March 15, 2021 is
27 attached to the Leonard Decl. as **Exhibit "21"**.

28 . . .

68. Once the Second Lease Agreement was executed by the Plaintiff, the Defendant agreed to not pursue the March 12, 2021 Five-Day Notice. Landlord further agreed that a new Purchase Agreement which would correctly reflect and apply all prior Property payments would be completed and submitted expeditiously ("Third Revised Purchase Agreement").

69. However, shortly thereafter, Plaintiff was informed by Defendant that the Third Revised Purchase Agreement would not be executed until the end of the lease term.

70. Instead, Dr. Fagan ceased communicating in good faith regarding the fair and accurate itemization and reconciliation of the previous payments made by the Tenant, refused to negotiate in good faith and refused to sign any purchase agreement for Tenant's purchase of the Property.

71. On March 17, 2021, as a result of Dr. Fagan's refusal to proceed in good faith and proceed with the Purchase Agreement, the Tenant placed a stop payment order on check numbers 3276 and 3277.

LANDLORD RE-INITIATES EVICTION PROCEEDINGS

72. On March 26, 2021, Plaintiff was served with a Seven (7) Day Notice To Pay Or Quit pursuant to NRS § 40.253 ("Seven-Day Notice") from Defendant. Service was effectuated by posting a copy of the Seven-Day Notice on the Property. A true and correct copy of the Seven-Day Notice is attached to the DeCarlo Decl. as **Exhibit "17"**.

73. On April 6, 2021, Plaintiff filed an Affidavit in Henderson Justice Court ("Justice Court") in opposition to the Seven-Day Notice, initiating case number 21EH000680.¹

74. On April 14, 2021, a hearing regarding the Seven-Day Notice was held before Judge Bateman in Justice Court at which time the Court denied the Defendant's request for summary eviction and permitted the District Court to maintain jurisdiction over the Parties' dispute.

...

¹ Plaintiff requests that this Court take judicial notice of the Justice Court docket. This Court may take judicial notice pursuant to Chapter 47 of the Nevada Revised Statutes under the Nevada Rules of Evidence. *See* NEV. REV. STAT. §§ 47.130-.170; *see also* *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (allowing Nevada courts to take judicial notice of matters of public record); *FGA, Inc. v. Giglio*, 128 Nev. 271, 286, 278 P.3d 490, 500 (2012) (same).

PLAINTIFF FILES COMPLAINT AGAINST DEFENDANT

75. On April 5, 2021, Plaintiff initiated the above-captioned matter seeking an Order from the Court to enforce the existing Purchase Agreement and enforce Plaintiff's rights to purchase the Property. *See* Complaint, on file herein.

PLAINTIFF PAYS RENT ARREARS TO DEFENDANT

76. On April 23, 2021, Plaintiff delivered a cashier's check in the amount of \$17,575.00 to the Defendant ("Cashier's Check"), representing payment of rent for March and April 2021, inclusive of late fees in accordance with the Second Lease Agreement, made under reservation of rights to avoid further eviction proceedings while Plaintiff pursues its rights under the Purchase Agreement for \$800,000. A true and correct copy of the Cashier's Check is attached to the DeCarlo Decl. as **Exhibit "19"**.

77. On April 26, 2021, the Defendant remitted an invoice for May 2021 ("Invoice"), even though the Defendant should have signed the \$800,000 Purchase Agreement, and as a result, the Plaintiff has been forced to pay rent for February, March and April 2021. A true and correct copy of Invoice No. 1059 for May 2021 is attached to the DeCarlo Decl. as **Exhibit "20"**.

78. The Defendant has refused to negotiate with the Plaintiff in good faith has refused to agree to the \$800,000 Purchase Price and has refused to discuss any terms with the Plaintiff.

79. The Defendant is proceeding in bad faith and induced the Plaintiff to waive its rights under the original \$800,000 Purchase Agreement to trick the Plaintiff, and all the while the Defendant continues to charge rent instead of allowing the Plaintiff to purchase the Property at the previously negotiated \$800,000 purchase price, which was submitted by the Defendant's attorney.

80. Defendant reneged on the Purchase Agreement and is proceeding in bad faith, and should be compelled to proceed with the \$800,000 Purchase Agreement.

81. Plaintiff is ready, willing and able to close on the purchase of the Property for \$800,000, as evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Zions Bancorporation, N.A. dba Nevada State Bank ("Lender"), which is more than enough for the Plaintiff to close on the Purchase of the Property. A true and correct copy of the email dated April 24, 2021, from Heather Weger, from

1 First American Title, confirming the total receipt of \$170,000 deposited in its escrow account for
2 the real property located at 1 Grand Anacapri Drive, in the amount of \$170,000 is attached to the
3 DeCarlo Decl. as **Exhibit “21”**; a true and correct copy of the Conditional Approval and Pre-
4 Qualification Letter dated April 14, 2021, from the Lender is attached to the DeCarlo Decl. as
5 **Exhibit “22”**.

6 82. The Lender will not fund the loan for the Plaintiff’s purchase of the Property until
7 the Lender receives a fully executed Purchase Agreement.

8 83. The Plaintiff requires this Court’s intervention to order the Landlord to perform
9 under the Purchase Agreement to sell the Property to the Tenant for \$800,000.

10 **III. APPLICABLE LAW**

11 **A. Specific Performance of the Purchase Agreement Should Be Granted**

12 “Specific performance is available only when: (1) the terms of the contract are definite and
13 certain; (2) the remedy at law is inadequate; (3) the appellant has tendered performance; and (4)
14 the court is willing to order it.” *Serpa v. Darling*, 107 Nev. 299, 304, 810 P.2d 778, 782 (1991); *see*
15 *also Carcione v. Clark*, 96 Nev. 808, 811, 618 P.2d 346, 348 (1980).

16 **1. The Terms of the Purchase Agreement Are Definite and Certain.**

17 Under the first element of specific performance, the terms of the Purchase Agreement are
18 definite and certain. Pursuant to the Purchase Agreement that was prepared by the Defendants’
19 attorneys and remitted to Defendants’ escrow company, First American by the Defendants’
20 attorney, Defendants agreed to sell the Property to the Plaintiff for the New Purchase Price of
21 \$800,000.00, with a stipulation for \$5,000 to be placed in escrow as EMD. *See Ex. “14”* to the
22 DeCarlo Decl. The New Purchase Price reflected the (35) prior payments made by Plaintiff under
23 the terms of the original Contract and Addendum (defined *supra*). The Purchase Agreement was
24 forwarded by the First American Escrow Officer, who was acting as a representative of the
25 Defendant, to Ms. Leonard on January 6, 2021, which Purchase Agreement Ms. Leonard executed
26 on January 21, 2021 and subsequently transmitted via electronic correspondence to the First
27 American Escrow Officer. *See Ex. “14”* to the DeCarlo Decl.

1 **2. Remedy at Law is Inadequate Because the Property Is a Unique Parcel of Land**
2 **with Characteristics and Inherent Attributes That Cannot Be Replicated by**
3 **Money Damages.**

4 Any remedy at law is inadequate because the Property is a singular parcel of real property
5 having unique characteristics and because under the Parties' contractual agreements, including the
6 Contract, Addendum, and the Purchase Agreement, Defendants agreed to sell the Property to the
7 Plaintiff. Based on these contractual agreements, Defendants have funded money, including the
8 (35) prior payments made under the terms of the original Contract and Addendum, as well as the
9 \$50,000 EMD, to the Plaintiff for the specific purpose of purchasing the Property. Any monetary
10 remedy would therefore be inadequate. Plaintiff has commenced purchase of the Property for
11 \$800,000 as contemplated under the Purchase Agreement, and has been approved for a loan by
12 Lender once the Defendant signs the Purchase Agreement and honors the New Purchase Price set
13 forth in the Purchase Agreement. Plaintiff has performed under the terms of the Parties' contractual
14 agreements and is seeking an Order of the Court to compel Defendants to also perform by
15 completing the sale of the Property to the Plaintiff.

16 If the Plaintiff is not able to complete the purchase of the Property at the agreed-upon price
17 of \$800,000 as contemplated by the Purchase Agreement, the Defendants will be unjustly enriched
18 by the funds that Plaintiff has previously paid to the Defendants, and which funds were paid for the
19 express purpose of the purchase of the Property. As a result, Defendants will unjustly reap
20 Plaintiff's equity in the Property and capitalize upon the same by improperly denying Plaintiff its
21 purchase transaction.

22 Plaintiff is ready, willing and able to close on the purchase of the Property for \$800,000, as
23 evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending
24 in the amount of up to \$680,000 from Lender, Nevada State Bank, which is more than enough for
25 the Plaintiff to close on the Purchase of the Property. *See Exs. "21" and "22"* attached to the
26 DeCarlo Decl.

27 Certainly, if Defendants are permitted to renege on their agreement to sell the Property to
28 the Plaintiff at the \$800,000 Purchase Price, Plaintiff will never be able to recoup the benefit for
29 which it expressly bargained with Defendants years ago: owning and living in the Property,

1 maintaining the Property and purchasing the Property. Because the Property possesses specific and
2 unique characteristics, a monetary compensation by way of returned funds to the Plaintiff would
3 not be an adequate remedy in this circumstance.

4 **3. Plaintiff and Its Lender, Nevada State Bank, Have Tried to Tender**
5 **Performance but Were Unable to Do So When Defendants Refused to Proceed**
6 **with the Sale of the Property to Plaintiff.**

7 The record unequivocally established that Plaintiff tendered performance under the
8 Purchase Agreement by funding the \$50,000 EMD on January 12, 2021, immediately after Plaintiff
9 executed the Purchase Agreement. *See Ex. "15"* to the DeCarlo Decl. Since initially funding
10 \$50,000 for the earnest money deposit in escrow, Plaintiff has transferred an additional \$120,000
11 into escrow, increasing the earnest money deposit held in escrow with the title company to
12 \$170,000 as of the date of this Motion. Furthermore, Plaintiff is prepared to immediately close
13 should Defendants execute the Purchase Agreement. Plaintiff is ready, willing and able to close
14 on the purchase of the Property for \$800,000, as evidenced by the proof of funds in escrow in the
15 amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Lender,
16 Nevada State Bank, which is more than enough for the Plaintiff to close on the Purchase of the
17 Property. *See Exs. "21" and "22"* attached to the DeCarlo Decl.

18 The Supreme Court has found specific performance appropriate when the record
19 demonstrates there is "no dispute" that the purchaser of real property offered to tender the purchase
20 price. *See Mayfield v. Koroghli*, 124 Nev. 343, 351-52, 184 P.3d 362, 367-68 (2008); *cf Ford v.*
21 *Ame/co Properties, Inc.*, 126 Nev. 711, 367 P.3d 769 (TbL.), 2010 WL 3385551 (2010)
22 (unpublished disposition finding specific performance inappropriate where the record demonstrated
23 a reasonable dispute whether purchasers had demonstrated they were ready, willing, and able to
24 tender the purchase price). Here, the record demonstrates not only that Plaintiff was ready, willing,
25 and able to tender the purchase price of \$800,000 but also evinces that Plaintiff's Lender, Nevada
26 State Bank has confirmed proof of funds in escrow and by way of pre-approved lending totaling in
27 excess of the Purchase Price. It is Defendants' – not Plaintiff's – actions that are preventing the
28 close of the Plaintiff's purchase of the Property.

1 Plaintiff believes that, in the absence of the requested relief for Defendants to perform under
2 the Purchase Agreement, Plaintiff risks losing Plaintiff is prepared to immediately close should
3 Defendants execute the Purchase Agreement.

4 **4. Specific Performance Is Warranted Under Circumstances of this Case.**

5 Plaintiff respectfully urges this Court to order specific performance of the Purchase
6 Agreement to enable Plaintiff to close on the purchase transaction of the Property, for which
7 Property Plaintiff has previously funded an EMD in the amount of \$50,000, and made (35)
8 payments towards over the course of several years.

9 In *Gullo v. City of Las Vegas*, 2015 WL 233493 (Tbl.) (Case No. 61843) (Nev. Jan. 15,
10 2015), the Nevada Supreme Court (in an unpublished disposition) upheld the District Court's order
11 of specific performance by finding that the City of Las Vegas had been entitled to specific
12 performance of its purchase contract because it signed all necessary closing documents, it deposited
13 all signed closing documents and the entire amount due under the purchase agreement with the
14 escrow agent on the closing date, and it had sought to close escrow on the closing date. *Id* at *1,
15 citing *Mayfield*, 124 Nev. 343, 184 P.3d 362. Here, Plaintiff has demonstrated proof of funds in
16 escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000
17 from Lender, Nevada State Bank, which is more than enough for the Plaintiff to close on the
18 Purchase of the Property. Plaintiff has also previously paid the \$50,000 EMD as contemplated
19 under the terms of the Purchase Agreement, which has since been increased, and is now funded in
20 the amount of \$170,000.

21 Absent specific performance, Plaintiff risks losing the Property where Mr. Christiano
22 DeCarlo currently resides with his family, including a minor child. In the event specific
23 performance is not ordered by this Court, the prior payments Plaintiff has made over the years
24 toward the goal of purchasing the Property will be completely lost. Plaintiff is facing threat of
25 eviction a second time now in the last thirty (30) days because the Defendants refuse to honor the
26 Purchase Agreement for \$800,000, notwithstanding that Plaintiff is prepared to immediately close
27 pursuant to the Purchase Agreement previously prepared by and submitted by the Defendants.
28 Absent relief from this Court, Plaintiff will be forced to forfeit the funds that have already been

1 invested over the years to Defendants towards the purchase of the Property. Under the
2 circumstance, this Court should compel Defendants to allow the sale of the Property to close for
3 the previously agreed upon Purchase Price of \$800,000. Plaintiff urges the Court to grant specific
4 performance of the Purchase Agreement and order that Defendants honor the terms of the Purchase
5 Agreement and to sell the Property to the Plaintiff for \$800,000.

6 **B. Specific Performance of the Purchase Agreement is Appropriate Because Plaintiff is**
7 **Ready, Willing, and Able to Tender the Full Purchase Price of the Property**

8 Under *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367-68 (2008), “If a
9 purchaser of real property has not yet tendered the purchase price, the district court may still grant
10 specific performance if the purchase can ‘demonstrate that she is ready, willing, and able to
11 perform.’” *Citing Serpa v. Darling*, 107 Nev. 299, 304, 810 P.2d 778, 782 (1991).

12 Here, the record shows Plaintiff was ready, willing, and able to tender the purchase price of
13 \$800,000 and further demonstrates that Plaintiff’s Lender, Nevada State Bank has confirmed proof
14 of funds in escrow and by way of pre-approved lending totaling in excess of the \$800,000 Purchase
15 Price. See Exs. “21” and “22” attached to the DeCarlo Decl. Furthermore, the record established
16 that Plaintiff tendered performance under the Purchase Agreement by funding the \$50,000 EMD
17 on January 12, 2021, immediately after Plaintiff executed the Purchase Agreement. See Ex. “14”
18 to the DeCarlo Decl. Although Plaintiff stands ready to complete the purchase transaction,
19 Defendant has failed to perform under the terms of the Parties’ contractual agreement by way of
20 the Purchase Agreement.

21 Therefore, on this record, Plaintiff is able to establish that, if Defendants are ordered to
22 proceed with the sale of the Property to the Plaintiff for \$800,000, Plaintiff’s Lender will proceed
23 with funding the loan upon receipt of a fully-executed Purchase Agreement from the Defendants.
24 Accordingly, Plaintiff is able to perform its obligations by tendering the full amount of the
25 Property’s contracted-for Purchase Price in order to close on the Property, especially in light of the
26 \$170,000 held in escrow with the title company and the pre-approval letter for the loan from the
27 Lender, evidencing Plaintiff’s ability to close on the sale of the Property.

28 . . .

1 C. **Specific Performance of the Purchase Agreement is Entirely Appropriate in Light of**
2 **Defendants' Purposeful Actions Taken in Order to Preclude Plaintiff From Closing**
3 **on the Purchase Transaction for the Property**

4 The record establishes that the Purchase Agreement was provided to the Plaintiff by
5 Defendants' representatives following discussions between Plaintiff and Dr. Fagan's counsel,
6 Attorney Scott. As a result of these conversations, on January 6, 2021, an escrow officer from the
7 Defendant's escrow company sent the Purchase Agreement to Ms. Leonard. See Ex. "12" attached
8 to the DeCarlo Decl. However, after Plaintiff signed the Purchase Agreement on January 11, 2021
9 and funded the EMD on January 12, 2021, Defendant Dr. Fagan, on behalf of the Defendants,
10 proceeded to dispute the New Purchase Price, and informed Plaintiff that Defendants were
11 withdrawing the offer to sell the Property at the New Purchase Price of \$800,000, notwithstanding
12 that the Plaintiff already accepted the offer. See Exs. "13" and "14" attached to the DeCarlo Decl.

13 On January 13, 2021, the First American Escrow Officer presented Ms. Leonard with the
14 Revised Purchase Agreement with a new Purchase Price of \$895,000 instead of the previously
15 agreed-upon Purchase Price of \$800,000, which agreement was rejected on the basis that the Parties
16 already had a deal to purchase the Property for \$800,000 as evidenced by the Purchase Agreement
17 executed by Ms. Leonard. Subsequently, the Parties agreed to enter into two lease agreements for
18 the term of February, March and April 2021. Plaintiff justifiably relied upon the information
19 provided by Defendants in that it entered into the Lease Agreements with the expectation that
20 Plaintiff would be permitted to purchase the Property as promised for the Purchase Price of
21 \$800,000. As a proximate cause of Defendants' misrepresentations and unfair dealings, Plaintiff
22 was induced into entering into the Second Lease Agreement under false circumstances. Defendants
23 were not engaging in good faith negotiations when they induced Plaintiff to sign the March Lease
24 Agreement with the intention of changing the Purchase Price. Instead, Dr. Fagan ceased
25 communicating in good faith regarding the fair and accurate itemization and reconciliation of the
26 previous payments made by the Plaintiff, and refused to negotiate in good faith and refused to sign
27 any purchase agreement for Plaintiff's purchase of the Property. Plaintiff is therefore seeking the
28 Court to order Defendants to honor the terms set forth in the original Purchase Agreement executed
by Plaintiff on January 11, 2021, and to sell the Property to the Plaintiff for the agreed-upon price

1 of \$800,000 as contemplated under the Purchase Agreement, and to determine that all later
2 proposed purchase prices are not enforceable.

3 **1. Equity favors granting specific performance and ordering Defendants to**
4 **complete the sale of the Property to Plaintiff.**

5 Based upon the record before this Court, equity may only be served if this Court orders
6 specific performance. The Nevada Supreme Court's ruling in *Carcione v. Clark*, 96 Nev.
7 808,811,618 P.2d 346,348 (1980) is instructive:

8 Equity regards as done what in good conscience ought to be done.
9 *Woods v. Bromley*, 69 Nev. 96 at 107, 241 P.2d 1103. Specific
10 performance is available when the terms of the contract are definite
11 and certain, *Dodge Bros., Inc. v. Williams Estate Co.*, 52 Nev. 364,
12 287 P.2d 282 (1930), the remedy at law is inadequate, *Harmon v.*
13 *Tanner Motor Tours*, 79 Nev. 4, 377 P.2d 622 (1963), the plaintiff
14 has tendered performance, *Southern Pacific Co. v. Miller*, 39 Nev.
15 169, 154 P. 929 (1916), and the court is willing to order it.

16 Although non-precedential, the Supreme Court's analysis in *Gullo v. City of Las Vegas*,
17 2015 WL 233493 (TbL.) (Case No. 61843) (Nev. Jan. 15, 2015), regarding the equity of awarding
18 performance is persuasive here. In *Gullo*, the Supreme Court's review of the record found City of
19 Las Vegas entitled to specific performance appropriate even though the City of Las Vegas's actions
20 in timely performing all of its responsibilities under the purchase agreement meant that a periodic
21 payment otherwise due on the escrow closing date was not made.

22 Even where time is made material, by express stipulation, the failure
23 of one of the parties to perform a condition within the particular time
24 limited will not in every case defeat his right to specific
25 performance, if the condition be subsequently performed, without
26 unreasonable delay, and no circumstances have intervened that
27 would render it unjust or inequitable to give such relief. The
28 discretion which a court of equity has to grant or refuse specific
performance, and which is always exercised with reference to the
circumstances of the particular case before it, may and of necessity
must often be controlled by the conduct of the party who bases his
refusal to perform the contract upon the failure of the other party to
strictly comply with its conditions.

26 *Gullo*, 2015 WL 233493 at *1 (internal quotation marks omitted), *quoting Mosso v. Lee*, 53 Nev.
27 176,182,295 P. 776, 777-78 (1931) (*quoting Cheney v. Libby*, 134 U.S. 68, 78 (1890) (internal
28 citations omitted)).

1 In the present case, specific performance is warranted and appropriate because Plaintiff
2 performed its responsibilities under the Parties' contractual agreements by making (35) payments
3 towards the purchase of the Property over the course of several years, by funding an EMD in the
4 amount of \$50,000, increasing the EMD to \$170,000, and by securing pre-approved funds in the
5 amount of \$680,000 from its Lender, Nevada State Bank, which in the aggregate, is more than
6 sufficient to fund the purchase of the Property at the previously agreed upon purchase price of
7 \$800,000. Lender is only waiting for the completely executed Purchase Agreement to proceed with
8 funding the balance of the loan to the Plaintiff for purchase of the Property. However, Defendants
9 reneged on the \$800,000 Purchase Agreement in bad faith, and fraudulently coerced Plaintiff to
10 attempt to void the Purchase Agreement based upon misrepresentations to Plaintiff that a
11 reconciliation of past payments would be forthcoming and adjusted accordingly in connection with
12 the purchase of the Property. However, after the lease extensions were executed, Defendants did
13 not negotiate with Plaintiff in good faith and cut off all communications with Plaintiff regarding
14 the purchase of the Property, in direct contravention of the representations Defendants made to
15 induce Plaintiff to "negotiate" the final purchase of the Property.

16 Under the specific circumstances of this case, equity should be exercised by this Court to
17 ensure that Defendants do not profit from Plaintiff's funds that have previously been paid to the
18 Defendants towards the purchase of the Property. Defendants have made multiple
19 misrepresentations to Plaintiff and failed to engage in good faith in the Parties' contractual
20 negotiations, and as a result Defendants continue to unjustly benefit from Plaintiff's prior Property
21 payments and continues to demand future lease payments, when the Property should have been sold
22 to Plaintiff for \$800,000 in January 2021 based upon the Purchase Agreement drafted and presented
23 by Defendants, through their counsel. In particular, if the Plaintiff cannot complete the purchase
24 transaction of the Property, Defendants will be inequitably rewarded with Plaintiff's funds, as well
25 as retention of ownership of the Property.

26 Defendants' deceptive actions and unfair dealings have prevented Plaintiff from purchasing
27 the Property, which unjustly places Defendants in the position of reaping Plaintiff's equity in the
28 Property. Defendants' refusal to now sell the Property to the Plaintiff at the previously agreed-

1 upon Purchase Price of \$800,000, based upon a Purchase Agreement drafted by Defendants'
2 counsel and submitted to the title company, is wholly inequitable and should be remedied by this
3 Court by ordering specific performance.

4 **IV. CONCLUSION**

5 For the forgoing reasons, Plaintiff AAL-JAY, INC. requests that this Court issue an order
6 directing Defendants to specifically perform the Purchase Agreement by immediately executing
7 the Purchase Agreement for the Purchase Price of \$800,000; by accepting Plaintiff's tender of the
8 loan funds secured through Plaintiff's Lender, Nevada State Bank; and by closing on Plaintiff's
9 purchase of the real property parcel located at the address 2 Grand Anacapi, Henderson, Nevada,
10 89011, Assessor Parcel Number 162-22-810-011 in the amount of \$800,000.

11 DATED this 7th day of May, 2021.

12 LEWIS ROCA ROTHGERBER CHRISTIE LLP

13
14
15 By: 

Ogona M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel.: 702.949.8200
Fax: 702.949.8398
Email: obrown@lewisroca.com

16
17
18
19 *Attorneys for Plaintiff AAL-JAY, Inc.*

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on May 7, 2021, I served a copy of **EMERGENCY MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN ORDER SHORTENING TIME** on all parties as follows:

☐ Electronic Service – By serving a copy thereof through the Court’s electronic service system via the Odyssey Court e-file system;

☒ E-mail – By serving a copy thereof at the email addresses listed below; and

Tisha R. Black, Esq tblack@blackwadhams.law
Chris Yergensen, Esq. cyergensen@blackwadhams.law

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

Philip J. Fagan Jr.
2 Via Sienna Place
Henderson, NV 89011

Philip J. Fagan Jr. Trust
2 Via Sienna Place
Henderson, NV 89011

/s/ Kennya Jackson
An employee of Lewis Roca Rothgerber Christie LLP

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/18/2021

15 Ogonna Brown

obrown@lewisroca.com

16 Kennya Jackson

kjackson@lewisroca.com

17 Peggy Dale

Mdale@lewisroca.com

18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

1 **MINT**
2 Ogonna M. Brown, Esq.
3 Nevada Bar No. 7589
4 OBrown@lewisroca.com
5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6 3993 Howard Hughes Parkway, Suite 600
7 Las Vegas, Nevada 89169
8 Tel. (702) 949-8200
9 Fax: (702) 949-8398

10 *Attorneys for Plaintiff AAL-JAY, Inc.*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 AAL-JAY, INC., a Nevada Corporation,
14
15 Plaintiff,

Case No. A-21-832379-C

Dept No. 24

16 v.

17 PHILIP J. FAGAN, JR., an individual, and as
18 Trustee of the PHILIP J. FAGAN, JR. 2001
19 TRUST, DOES I through X, inclusive, and
20 ROE CORPORATIONS I through X,
21 inclusive,

**PLAINTIFF'S (1) EMERGENCY MOTION
FOR FIRST AMERICAN TITLE
INSURANCE COMPANY TO TURNOVER
FUNDS IN ESCROW TO THE BUYER AAL-
JAY, LLC AND**

22 Defendants.

**(2) MOTION FOR ORDER TO SHOW
CAUSE WHY THIS COURT SHOULD NOT
HOLD PHILIP J. FAGAN, JR., AS
TRUSTEE OF THE PHILIP J. FAGAN, JR.
2001 TRUST IN CONTEMPT FOR
VIOLATING THIS COURT'S SALE
ORDER ON ORDER SHORTENED TIME**

23 PHILIP J. FAGAN, JR., as Trustee of the
24 PHILIP J. FAGAN, JR. 2001 TRUST

25 Counter-Claimant,

26 v.

[HEARING REQUESTED]

27 AAL-JAY, INC., a Nevada Corporation;
28 CHRISTIANO DE CARLO, an individual and
LAIL LEONARD,

Counter-Defendants.

Plaintiff AAL-JAY, INC. ("Plaintiff", "AAL-JAY" or "Buyer"), by and through its
attorneys, Ogonna M. Brown, Esq. of the law firm Lewis Roca Rothgerber Christie LLP ("Lewis
Roca"), hereby files this Emergency Motion for First American Title Insurance Company to

1 Turnover Funds in Escrow to the Buyer AAL-Jay, LLC and Motion for Order to Show Cause Why
2 This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the Philip J. Fagan, Jr. 2001 Trust in
3 Contempt for Violating This Court's Sale Order, On Order Shortened Time ("Emergency Motion"),
4 and seeks this Court's order directing First American Title Insurance Company ("First American")
5 to turnover funds in the amount of \$170,000, currently held in escrow to Buyer in connection with
6 the purchase of real property parcel located at the address 2 Grand Anacapi, Henderson, Nevada,
7 89011, Assessor Parcel Number 162-22-810-011 (the "Property"). Plaintiff seeks the entry of an
8 order from this Court for First American to distribute the full \$170,000 amount to Buyer to be used
9 toward the close of escrow for the purchase of the Property in compliance with this Court's August
10 26, 2021 order¹. Plaintiff simultaneously seeks an entry of an order from this Court requiring
11 Phillip J. Fagan, Jr. as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST ("Seller") to show cause
12 as to why he should not be held in contempt for violating this Court's sale order, and why Seller
13 should not be sanctioned and its Answer and Counterclaim stricken for contempt of this Court's
14 Order.

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¹ Plaintiff requests that this Court take judicial notice of the docket before Judge Ballou pursuant to NRS 47.150.

1 This Motion is based upon the Declaration of Lail Leonard (“Ms. Leonard”), the President
2 of Plaintiff AAL-JAY (“Leonard Decl.”), a true and correct copy of which is attached hereto as
3 **Exhibit “A”**, and the Declaration of Ogonna M. Brown, Esq., attorney for Plaintiff (“Brown
4 Decl.”), a true and correct copy of which is attached hereto as **Exhibit “B”** and upon the following
5 memorandum of points and authorities, and any argument this Court may entertain at the hearing
6 on the Motion.

7 DATED this 10th day of March, 2022.

8 LEWIS ROCA ROTHGERBER CHRISTIE LLP

9 By: /s/ Ogonna M. Brown

10 Ogonna M. Brown, Esq.

11 Nevada Bar No. 7589

12 OBrown@lewisroca.com

13 3993 Howard Hughes Parkway, Suite 600

14 Las Vegas, Nevada 89169

15 Tel. (702) 949-8200

16 Fax: (702) 949-8398

17 *Attorneys for Plaintiff AAL-JAY, Inc.*

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on PLAINTIFF'S (1) EMERGENCY MOTION FOR FIRST AMERICAN TITLE INSURANCE COMPANY TO TURNOVER FUNDS IN ESCROW TO THE BUYER AAL-JAY, LLC AND (2) MOTION FOR ORDER TO SHOW CAUSE WHY THIS COURT SHOULD NOT HOLD PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001 TRUST IN CONTEMPT FOR VIOLATING THIS COURT'S SALE ORDER, ON ORDER SHORTENED TIME ("Emergency Motion") shall be heard on the 5th day of April, 2022, at the hour of 9: 00 a.m. in Department 24 of this Court;

IT IS FURTHER ORDERED that the Defendants shall file an opposition to the Emergency Motion, if any, on or before March 23rd, 2022, at 5:00 a.m./p.m., and shall serve electronically a copy of same on counsel for Plaintiff using the Court's E-Filing E-Service System on this same date;

IT IS FURTHER ORDERED that Plaintiff shall file a reply in support of their Emergency Motion, if any, on or before March 30th, 2022, at 5:00 a.m./p.m. and shall serve electronically a copy of same on counsel for Defendants using the Court's E-Filing E-Service System on this same date.

IT IS SO ORDERED.

Dated this 15th day of March, 2022



Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

1E8 5C8 59DB 469D
Erika Ballou
District Court Judge

By: /s/ Ogonna M. Brown
Ogonna M. Brown, Esq.
Nevada Bar No. 7589
OBrown@lewisroca.com
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Plaintiff AAL-JAY, Inc.

**DECLARATION OF OGONNA M. BROWN, ESQ., IN SUPPORT OF
EMERGENCY MOTION TO TURNOVER FUNDS AND MOTION FOR ORDER TO
SHOW CAUSE ON ORDER SHORTENED TIME**

I, OGONNA M. BROWN, ESQ., being duly sworn states as follows:

1. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP, and counsel for Plaintiff AAL-JAY, Inc., the Plaintiff in the above-captioned case.

2. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein.

3. I have personal knowledge of the facts set forth in this Declaration except as to those matters based upon information and belief, and as to those matters, I believe them to be true and correct. If called as a witness to testify, I could and would truthfully testify to the facts set forth herein.

4. I am counsel for Plaintiff AAL-JAY, INC. ("Plaintiff") in the above-captioned lawsuit, and have been retained by Plaintiff to represent its interests in this action against Defendants Philip J. Fagan, Jr., an individual ("Mr. Fagan"), and as Trustee of the Philip J. Fagan Jr. 2001 Trust ("Fagan Trust") (collectively, "Defendants").

5. I make this Declaration in support of Plaintiff's Emergency Motion for First American Title Insurance Company to Turnover Funds in Escrow to the Buyer AAL-Jay, LLC and Motion for Order to Show Cause Why This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the Philip J. Fagan, Jr. 2001 Trust in Contempt for Violating This Court's Sale Order, On Order Shortened Time ("Emergency Motion").

6. The relief requested in this Emergency Motion is necessary because almost seven months after this Court's Specific Performance Order finding specific performance is required of the Purchase Agreement for \$800,000, Defendants have engaged in stall tactics, including refusing to cooperate, refusing to obtain the mortgage payoff, HOA payoff and necessary releases required to close on the sale of the Property in direct violation of this Court's order.

...

1 7. As a result of Defendants lack of cooperation, Plaintiff's lender will not proceed
2 with funding the pre-approved mortgage loan unless Plaintiff's title to the real property is
3 established without any cloud of title and now First American has indicated that it intends to
4 interplead the funds currently held in escrow unless a mutually executed agreement or order is
5 presented by March 11, 2021

6 8. Good cause exists for this instant request for an expedited hearing on the Emergency
7 Motion because interpleading the funds with the Clerk of the Court will further delay the closing
8 for the purchase of the Property because the funds will not be readily available to Buyer so it may
9 fully participate in the purchase in the event this Court compels Philip J. Fagan, Jr., as Trustee of
10 the Philip J. Fagan, Jr. 2001 Trust to comply with this Court's Sale Order.

11 9. Plaintiff seeks an order from this Court directing First American to disburse the
12 \$170,000 held in escrow to Buyer, to facilitate the closing of the purchase of the Property.

13 10. Plaintiff also seeks an order requiring Philip J. Fagan to show cause as to why this
14 Court should not hold him in contempt and strike his answer and counterclaim for directly violating
15 this Court sale order.

16 11. This request for an order shortening time on the Emergency Motion is made in good
17 faith and without dilatory motive.

18 DATED this 10th day of March, 2022.

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20 _____
OGONNA M. BROWN, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

1. On April 6, 2021, the Buyer filed an Amended Complaint against the Seller to enforce its right to purchase the property under the Purchase and Sale Agreement. *See* Leonard Decl. at ¶ 5.

2. The Buyer subsequently filed its Emergency Motion for Specific Performance of Purchase Agreement, on an Order Shortening Time (“Motion for Specific Performance”) on May 18, 2021, in an effort to obtain an adjudication for specific performance of the Purchase Agreement from this Court before Defendants pursued further eviction efforts after Defendants’ first request for summary eviction was denied. *See* Leonard Decl. at ¶ 6.

3. A hearing was set for 9:00 am on June 1, 2021. However, the hearing was continued at Defendants’ request by stipulation to June 22, 2021. *See* Leonard Decl. at ¶ 7.

4. The Motion for Specific Performance was fully briefed, and the Court held oral arguments on June 22, 2021, and concluded that the Defendants suffered from “seller’s remorse” and ordered specific performance of the Purchase Agreement for \$800,000. *See* Specific Performance Order dated August 26, 2021.

5. In this Court’s August 26, 2021 order, Seller, was ordered to sell the Property to Buyer or its assignee for \$800,000 pursuant to the Residential Purchase Agreement for the purchase price of \$800,000 which Buyer timely deposited \$50,000 as earnest money, which purchase price reflected (35) prior payments made under the terms of the original Contract and Addendum. *See* Specific Performance Order. This Court also ordered that the \$170,000 total amount that buyer wired into escrow with First American Title Insurance Company (“First American”) be used toward the close of escrow for the purchase of the Property. *See* Specific Performance Order.

6. This Court ordered that the Clerk of the Court execute the Residential Purchase Agreement dated December 14, 2020 and executed by Buyer on January 11, 2021 in the purchase price amount of \$800,000 for the sale of the Property, and that the Clerk of the Court execute any

1 necessary documents, such as the Deed, to effectuate the transfer of title of the Property to Buyer
2 in compliance with this Order for specific performance in the event the Seller fails and/or refuses
3 to comply with this Court's Order for specific performance. *See* Specific Performance Order.

4 7. After efforts for Plaintiff and Defendants to agree on the form order failed, Plaintiff
5 submitted a proposed order to the Court. Defendants' objected to the proposed order. *See* Brown
6 Decl. at ¶ 10.

7 8. Defendants filed a Motion for Stay Pending Adjudication of
8 Defendants/Counterclaimants' Writ of Mandamus and/or in the Alternative, Writ of Prohibition on
9 July 22, 2021 ("First Stay Motion"), before the Court formally entered an order granting the Motion
10 for Specific Performance. *See* Brown Decl. at ¶ 11.

11 9. Plaintiff objected to the First Stay Motion on the basis that it was not ripe and filed
12 prematurely. *See* Brown Decl. at ¶ 12.

13 10. At the hearing on the First Stay Motion, Defendants' conceded that the First Stay
14 Motion was not ripe and that Defendants would file another stay motion after the Court formally
15 entered the Order granting the Motion for Specific Performance. *See* Brown Decl. at ¶ 13.

16 11. Defendants filed their Second Stay Motion on August 30, 2021, to challenge the
17 Order, which was likewise denied by this Court. *See* Brown Decl. at ¶ 14.

18 12. After this Court awarded specific performance to enforce the Purchase and Sale
19 Agreement, the Buyer presented the Purchase and Sale Agreement for Defendants to execute.
20 However, Defendants refused to sign the Purchase Agreement, forcing the Buyer to suffer further
21 delay and submit the Purchase Agreement to the Clerk of the Court for signature. *See* Brown Decl.
22 at ¶ 15.

23 13. Pursuant to this Court's Specific Performance Order, on or around October 11, 2021,
24 the Clerk of the Court executed the Purchase Agreement on behalf of the Seller. *See* **Exhibit 1** to
25 Brown Decl.

26 . . .

22. On March 4, 2021, Christopher Yergensen, counsel for Philip Fagan wrote to First American objecting to Ms. Leonard's request to wire the funds to AAL-Jay, and demanded that the funds either remain in escrow or be interplead with the Court. *See* Leonard Decl. at ¶ 11.

23. To date, Defendants have failed to effectuate the transfer of title of the Property to the Buyer in direct violation of this Court's August 21, 2021 order and have sought stall tactics like objecting to the distribution of the escrow deposit to the Buyer in an effort to further delay the closing on the Property. *See* Brown Decl. at ¶ 23.

II. LEGAL ARGUMENT

A. First American Should Be Ordered to Distribute Funds Held in Escrow

In connection with the purchase of the Property, Plaintiff in this action transferred a total of \$170,000.00 to an escrow account with First American. However, this Court has made a finding related to any competing claims to these funds in its Specific Performance Order where it directed that they be used towards the close of escrow for the purchase of the Property. *See* this Court's Specific Performance Order dated August 26, 2021.

However, almost seven months later, First American has yet to distribute the escrow funds for the purchase of the Property in compliance with this Court's sale order. First American informed Ms. Brown that it would not proceed with escrow because Ms. Fagan refused to cooperate, in that he refused to obtain the mortgage payoff, HOA payoff, and the necessary releases required to close on the sale of the Property. *See* Brown Decl. at ¶ 18. First American fears that Mr. Fagan would commence litigation against it based upon communications from Mr. Fagan and/or its counsel and now refuses to proceed with the sale. *See* Brown Decl. at ¶¶ 19-20. In turn, after First American informed the lender that it would not proceed with the sale, on November 15, 2021, the lender informed Ms. Brown that it would not loan the funds to close the sale without title insurance from First American. *See* Brown Decl. at ¶ 21. Specifically, Plaintiff's lender, Zion Bancorporation, confirmed that it will not proceed with funding the pre-approved mortgage loan to Plaintiff unless and until Plaintiff's title to the Property is established without any cloud of title. *See* **Exhibit 2** to

1 Brown Decl.

2 Furthermore, as recent as February 28, 2021, First American disclosed its intent to
3 interplead the funds with the Court unless a mutually executed agreement or court order is presented
4 by March 11, 2022. *See Exhibit 1* to Leonard Decl. Despite attempts by Ms. Leonard to retrieve
5 the escrow deposit from First American in an effort to facilitate the close of the purchase of the
6 Property, Ms. Leonard was met with pushback from counsel for Defendants who objected to the
7 First American's distribution of the funds to Ms. Leonard and instead insisted that the funds either
8 remain with First American or be interplead with the Court. *See Exhibit 2* to Leonard Decl.

9 Defense counsel's objection lacks any rationale as this Court has already provided
10 instruction to the parties in its Specific Performance Order that the funds held in escrow are to be
11 used to close the purchase of the Property. *See* Specific Performance Order. Defense counsel's
12 faulty attempt to divert the distribution of the escrow deposit away from the Buyer is nothing more
13 than a stall tactic to await the determination of Defendants' Writ of Mandamus or in the Alternative,
14 Writ of Prohibition, which this Court previously denied Defendants' motion to stay this proceeding
15 to away the determination of the Writ, and cause further delay to the close of the purchase of the
16 Property. This Court has previously ruled that specific performance for the sale of the Property is
17 warranted in this case and Defendants have failed to present any viable argument why any delay of
18 the ordered remedy is necessary.

19 Plaintiff fears that interpleading the funds with the Clerk of the Court will further delay the
20 closing for the purchase of the Property, because the funds will not be readily available to AAL-
21 Jay to purchase the Property in the event this Court compels Philip J. Fagan, Jr., as Trustee of the
22 Philip J. Fagan, Jr. 2001 Trust to comply with this Court's Sale Order entered on August 26, 2021.
23 *See* Leonard Decl. at ¶ 13. In event this Court interpleads the \$170,000 from First American, AAL-
24 Jay will no longer have access to the funds and will be hindered in its ability to close on the sale
25 without having immediate access to the \$170,000, which could fund an escrow deposit with another
26 title company, or could be remitted directly to the Buyer to close the sale. *See* Leonard Decl. at ¶

1 14. For these reasons, by this Motion, Plaintiff seeks an order by this Court instructing First
2 American to distribute the full \$170,000 held in escrow to the Buyer so the parties may finalize the
3 purchase of the Property.

4 **B. Dr. Fagan's Blatant Violation of this Court's Sale Order**

5 Almost seven months after this Court's August 26, 2021 order, Dr. Fagan has failed to
6 effectuate and in fact has hindered the transfer of title of the Property to Buyer. Defendant insists
7 on making erroneous objections to the necessary measures that would facilitate the closing of the
8 purchase of the Property, including filing meritless motions to stay this proceeding and objecting
9 to the distribution of the escrow deposit that would enable the sale of the Property to Buyer. An
10 Order to Show Cause should be issued to require Dr. Fagan to appear and show cause why this
11 Court should not sanction him for his blatant violation of this Court's sale order as Dr. Fagan's
12 failure to cooperate including failure to remit the necessary documents to allow the transfer of title,
13 erroneous motions practice to stay this proceeding and objections to First American's distribution
14 of the escrow deposit to Ms. Leonard were made for an improper purpose solely to delay the closing
15 of the purchase of the Property in direct violation of this Court's Specific Performance Order. *See*
16 Specific Performance Order dated August 26, 2021. Each day that the closing is delayed, Plaintiff
17 is needlessly deprived of the property which this Court has found that equity requires be conveyed
18 to the Plaintiff. Plaintiff further seeks an order requiring Seller to show cause why it should not be
19 sanctioned and its Answer and Counterclaim stricken for contempt of this Court's Order.

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1 **III. CONCLUSION**

2 Plaintiff seeks the entry of an order from this Court:

- 3 1. Directing First American to distribute the \$170,000, consisting of the funds held in
4 escrow for the purchase of the Property to the Buyer.
- 5 2. Discharging First American from further liability with respect to the funds.
- 6 3. An order to show cause why this Court should not sanction Dr. Fagan for violating
7 this Court's Sale Order, for Plaintiff's attorneys' fees and costs and an order striking Defendants
8 Answer and Counterclaims.
- 9 4. For such other relief as this Court deems just and proper.

10 DATED this 10th day of March, 2022.

11 LEWIS ROCA ROTHGERBER CHRISTIE LLP

12 By: /s/ Ogonna M. Brown

13 Ogonna M. Brown, Esq.

14 Nevada Bar No. 7589

15 OBrown@lewisroca.com

16 3993 Howard Hughes Parkway, Suite 600

17 Las Vegas, Nevada 89169

18 Tel. (702) 949-8200

19 Fax: (702) 949-8398

20 *Attorneys for Plaintiff AAL-JAY, Inc.*

EXHIBIT “A”

EXHIBIT “A”

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 949-8200
Fax: (702) 949-8398
Email: obrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

**IN THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE COUNTY OF CLARK, STATE OF NEVADA**

AAL-JAY, INC., a Nevada Corporation.

Plaintiff,

v.

PHILIP J. FAGAN, JR., an individual, and as
Trustee of the PHILIP J. FAGAN, JR. 2001
TRUST; DOES I through X, inclusive, and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

PHILIP J. FAGAN, JR., as Trustee of the
PHILIP J. FAGAN, JR. 2001 TRUST

Counter-Claimant,

v.

AAL-JAY, INC., a Nevada Corporation;
CHRISTIANO DE CARLO, an individual and
LAIL LEONARD,

Counter-Defendants.

Case No. A-21-832379-C

Dept. No. 24

**DECLARATION OF LAIL LEONARD IN
SUPPORT OF:**

**(1) PLAINTIFF'S EMERGENCY
MOTION FOR FIRST AMERICAN
TITLE INSURANCE COMPANY TO
TURNOVER FUNDS IN ESCROW TO
THE BUYER AAL-JAY, LLC AND**

**(2) MOTION FOR ORDER TO SHOW
CAUSE WHY THIS COURT SHOULD
NOT HOLD PHILIP J. FAGAN, JR., AS
TRUSTEE OF THE PHILIP J. FAGAN,
JR. 2001 TRUST IN CONTEMPT FOR
VIOLATING THIS COURT'S SALE
ORDER ON ORDER SHORTENED TIME**

I, LAIL LEONARD being duly sworn states as follows:

1. I am the President of AAL-JAY, Inc. ("Plaintiff", "AAL-JAY" or "Buyer"), the
Plaintiff in this action.

...

1 2. I am over the age of eighteen (18) years and competent to testify to the matters set
2 forth herein.

3 3. This Declaration based on my personal knowledge of the facts and matters of this
4 action.

5 4. I make this Declaration in support Plaintiff's Emergency Motion for First American
6 Title Insurance Company to Turnover Funds in Escrow to the Buyer AAL-Jay, LLC and Motion
7 for Order to Show Cause Why This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the
8 Philip J. Fagan, Jr. 2001 Trust in Contempt for Violating This Court's Sale Order, On Order
9 Shortened Time ("Emergency Motion").

10 5. On April 6, 2021, the Buyer filed an Amended Complaint against the Seller to
11 enforce its right to purchase the property under the Purchase and Sale Agreement. *See* Compl. filed
12 April 6, 2021.

13 6. The Buyer subsequently filed its Emergency Motion for Specific Performance of
14 Purchase Agreement, on an Order Shortening Time ("Motion for Specific Performance") on May
15 18, 2021, in an effort to obtain an adjudication for specific performance of the Purchase Agreement
16 from this Court before Defendants pursued further eviction efforts after Defendants' first request
17 for summary eviction was denied. *See* Mot. for Specific Performance, filed May 18, 2021.

18 7. A hearing was set for 9:00 am on June 1, 2021. *See id.* However, the hearing was
19 continued at Defendants' request by stipulation to June 22, 2021. *See* Stipulation and Order to
20 Continue Hearing, filed May 28, 2021 (acknowledging Defendants' agreement to not conduct
21 eviction proceedings prior to the hearing on the Motion for Specific Performance).

22 8. On August 26, 2021, this Court entered its formal Order to grant the Motion for
23 Specific Performance. *See* this Court's August 26, 2021 Order.

24 9. After months of endeavoring to close through First American and to procure a loan
25 effectuate closing, on February 28, 2022, I received a letter from Rachael Carter of First American
26 Title Insurance Company ("First American") advising that any funds deposited with First American
27 will be placed with an interpleader unless a mutually executed agreement or court order is presented
28

1 prior to March 11, 2022. A true and correct copy of the February 28, 2022 letter from First
2 American is attached hereto as **Exhibit "1"**.

3
4 10. On March 2, 2022, I wrote to First American, requesting that the \$170,000 held in
5 escrow instead be returned to AAL-Jay's account and provided wiring instructions for the return of
6 the funds. A true and correct copy of my March 2, 2022 wire instructions to First American is
7 attached hereto as **Exhibit "2"**.

8 11. On March 4, 2021, Christopher Yergensen, counsel for Philip Fagan wrote to First
9 American objecting to my request to wire the funds to AAL-Jay, and demanded that the funds either
10 remain in escrow or be interplead with the Court. *Id.*

11 12. I fear that interpleading the funds with the Clerk of the Court will further delay the
12 closing for the purchase of the Property, because the funds will not be readily available to AAL-
13 Jay to purchase the Property in the event this Court compels Philip J. Fagan, Jr., as Trustee of the
14 Philip J. Fagan, Jr. 2001 Trust to comply with this Court's Sale Order entered last summer on
15 August 26, 2021.

16 13. In the event this Court interpleads the \$170,000 from First American, AAL-Jay will
17 no longer have access to the funds and will be hindered in its ability to close on the sale without
18 having immediate access to the \$170,000, which could fund an escrow deposit with another title
19 company, or could be remitted directly to the Buyer to close the sale.

20 14. AAL-Jay respectfully requests that this Court enter an Order directing First
21 American to turn over the \$170,000 currently in escrow with First American to AAL-Jay to provide
22 AAL-Jay with immediate access to its funds to close the sale of the Property.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
24 true and correct to the best of my knowledge.

25 Dated: March 10, 2022.

26 /s/ Lail Leonard

27 LAIL LEONARD

EXHIBIT “1”

EXHIBIT “1”



First American Title

First American Title Insurance Company
2500 N Buffalo Drive, Suite 120
Las Vegas, NV 89128
(702)251-5000

February 28, 2022

Philip J. Fagan Jr. 2011 Trust dated
637 Lucas Avenue Room 606
Los Angeles, CA 90017

The Lail Leonard Trust, dated January 26, 2005
1873 Golden Horizon Drive
Las Vegas, NV 89123


RE: File No. 13895-2608673

Property Address: 1 Grand Anacapri Drive, Henderson, NV 89011

NOTICE NOT TO HANDLE OR INSURE TRANSACTION

First American Title Insurance Company (Settlement Agent) hereby resigns as Settlement Agent and will decline to act as title insurer for the above reference transaction and have canceled our file for this transaction. **Any funds and documents deposited will be placed with an Interpleader unless a mutually executed agreement or court order is presented to Escrow Holder prior to March 11, 2022.**

It is Company policy not to elaborate on the reasons for declining to provide services with respect to any particular transaction. Thank you for your understanding.


Rachael Carter
First American Title - Escrow Officer/VP - Branch Manager
rmcarter@firstam.com

CC: Nicole Howell
First American Title - Nevada State Escrow Manager

EXHIBIT “2”

EXHIBIT “2”

From: Rachael Carter <rmcarter@firstam.com>
Sent: Friday, March 4, 2022 1:18 PM
To: Brown, Ogonna; LAIL LEONARD; cyergensen@blackwadhams.law; neubauerjanice@gmail.com
Cc: Shauna Rushing; Debbie Jackson (NV); Nicole Peterson
Subject: File Number-2608673-URGENT NOTICE-1 Grand Anacapri Drive (Email Ref=2106243284)

[EXTERNAL]

We are not going to proceed with insuring and need a mutual agreement as to the cancellation piece. All parties can either agree to a full cancellation and disbursement of funds, or no cancellation of the agreement but enter into an Interpleader Action.

Leave Me a Review
License#729491



Rachael Carter
Vice Pres. Southern Nevada, Branch Manager/Escrow Officer
2500 N Buffalo Drive., #120
Las Vegas, NV 89128
Phone: 702-251-5220
E-Fax: 800 889 1539
rmcarter@firstam.com <http://www.firstam.com>

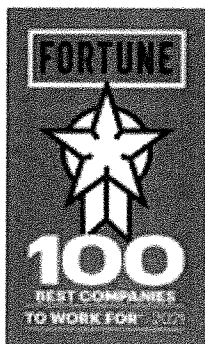
**First American**

CostsFirst™

EaglePro

Multicultural Resources

Fee Calc



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From: Brown, Ogonna <OBrown@lewisroca.com>
Sent: Friday, March 4, 2022 1:10 PM

To: Rachael Carter <rmcarter@firstam.com>; LAIL LEONARD <auntlail@cox.net>; cyergensen@blackwadhams.law; neubauerjanice@gmail.com
Cc: Shauna Rushing <srushing@firstam.com>; Debbie Jackson (NV) <dmjackson@firstam.com>; Nicole Peterson <nmpeterson@firstam.com>
Subject: [External] RE: File Number-2608673-URGENT NOTICE-1 Grand Anacapri Drive (Email Ref=2106243284)

Rachel:

I thought your company cancelled escrow and is not willing to proceed with closing? Am I misunderstanding?

Ogonna Brown
Partner

OBrown@lewisroca.com
D. 702.474.2622

LEWIS  ROCA

From: Rachael Carter <rmcarter@firstam.com>
Sent: Friday, March 4, 2022 12:57 PM
To: LAIL LEONARD <auntlail@cox.net>; cyergensen@blackwadhams.law; Brown, Ogonna <OBrown@lewisroca.com>; neubauerjanice@gmail.com
Cc: Shauna Rushing <srushing@firstam.com>; Debbie Jackson (NV) <dmjackson@firstam.com>; Nicole Peterson <nmpeterson@firstam.com>
Subject: File Number-2608673-URGENT NOTICE-1 Grand Anacapri Drive (Email Ref=2106243284)

[EXTERNAL]

Here is the response

From: Christopher Yergensen <cyergensen@blackwadhams.law>
Sent: Friday, March 4, 2022 12:52 PM
To: Rachael Carter <rmcarter@firstam.com>
Cc: neubauerjanice@gmail.com; Tisha Black <tblack@blackwadhams.law>
Subject: [External] Re: 1 Grand Anacapri Drive -File 2608673

Then we object to the funds being released to Ms Leonard at this time, and demand that the funds either remain in escrow or be interpled with the court. Ms Leonard is a party to a legal action regarding the alleged sale of the property. The case number is A-21-832379-C. Please interplead the funds to the court for this case.

Please note that if Ms Leonard desires for the return of the funds, she must cancel the escrow, or the funds must remain in escrow or interpled to the court as instructed above.

Sincerely,


Chris Yergensen, Esq.
Attorney for Philip Fagan.

Sent from my iPhone


On Mar 4, 2022, at 12:34 PM, Rachael Carter <rmcarter@firstam.com> wrote:

I received instructions to return the funds with account information only. There is no mention of cancelling.

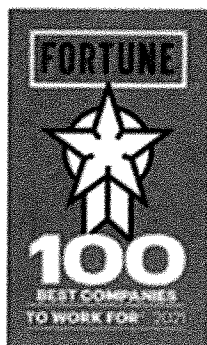
Leave Me a Review
License#729491



Rachael Carter
Vice Pres. Southern Nevada, Branch Manager/Escrow Officer
2500 N Buffalo Drive., #120
Las Vegas, NV 89128
Phone: 702-251-5220
E-Fax: 800.889.1539
rmcarter@firstam.com <http://www.firstam.com>

 **First American**

[CostsFirst™](#) [EaglePro](#) [Multicultural Resources](#) [Fee Calc](#)



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From: LAIL LEONARD <auntlail@cox.net>
Sent: Wednesday, March 2, 2022 4:40 PM
To: Rachael Carter <rmcarter@firstam.com>; cvergensen@blackwadhams.law; obrown@lewisroca.com; neubauerjanice@gmail.com
Cc: Shauna Rushing <srushing@firstam.com>; Debbie Jackson (NV) <dmjackson@firstam.com>; Nicole Peterson <nmpeterson@firstam.com>
Subject: [External] Re: File Number-2608673-URGENT NOTICE-1 Grand Anacapri Drive (Email Ref=2106243284)

Per your Notice to Handle or insure Transaction please be advised of the following wiring instructions File No: 13895-2608673, Property address: 1 Grand Ana Capri, Henderson, NV 89011:

Upon receipt please advise that the above wiring instructions have been received and thank You Lail Leonard

n February 28, 2022 at 4:13 PM rmcarter@firstam.com wrote:

File No.: 13895 2608673

Buyer: The Lail Leonard Trust, dated January 26, 2005

Seller: Philip J. Fagan Jr. 2011 Trust dated

Property Address: 1 Grand Anacapri Drive, Henderson, NV 89011

You can download Acrobat Reader at <https://www.adobe.com/products/acrobat/readstep2.html>

Rachael Carter
Escrow Officer/Branch Manager
First American Title Insurance Company
Phone: 702-251-5220 Ext.
Fax: 800-889-1539 Ext.

Beware of cyber-crime! If you receive an e-mail or any other communication that appears to be generated from a First American Title Insurance Company employee that contains new, revised or altered bank wire instructions, consider it suspect and call our office at a number you trust. Our wire instructions do not change.

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EXHIBIT “B”

EXHIBIT “B”

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 949-8200
Fax: (702) 949-8398
Email: obrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

IN THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE COUNTY OF CLARK, STATE OF NEVADA

AAL-JAY, INC., a Nevada Corporation.

Plaintiff,

v.

PHILIP J. FAGAN, JR., an individual, and as
Trustee of the PHILIP J. FAGAN, JR. 2001
TRUST; DOES I through X, inclusive, and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

PHILIP J. FAGAN, JR., as Trustee of the
PHILIP J. FAGAN, JR. 2001 TRUST

Counter-Claimant,

v.

AAL-JAY, INC., a Nevada Corporation;
CHRISTIANO DE CARLO, an individual and
LAIL LEONARD,

Counter-Defendants.

Case No. A-21-832379-C

Dept. No. 24

**DECLARATION OF OGONNA M.
BROWN, ESQ. IN SUPPORT OF**

**(1) PLAINTIFF'S EMERGENCY
MOTION FOR FIRST AMERICAN
TITLE INSURANCE COMPANY TO
TURNOVER FUNDS IN ESCROW TO
THE BUYER AAL-JAY, LLC AND**

**(2) MOTION FOR ORDER TO SHOW
CAUSE WHY THIS COURT SHOULD
NOT HOLD PHILIP J. FAGAN, JR., AS
TRUSTEE OF THE PHILIP J. FAGAN,
JR. 2001 TRUST IN CONTEMPT FOR
VIOLATING THIS COURT'S SALE
ORDER ON ORDER SHORTENED TIME**

[HEARING REQUESTED]

I, OGONNA M. BROWN, ESQ., being duly sworn states as follows:

1. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP, and
counsel for Plaintiff AAL-JAY, Inc., the Plaintiff in the above-captioned case.

1 2. I am over the age of eighteen (18) years and competent to testify to the matters set
2 forth herein.

3 3. I make this Declaration based on my personal knowledge of the facts and matters of
4 this action.

5 4. I make this Declaration in support Plaintiff's Emergency Motion for First American
6 Title Insurance Company to Turnover Funds in Escrow to the Buyer AAL-Jay, LLC and Motion
7 for Order to Show Cause Why This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the
8 Philip J. Fagan, Jr. 2001 Trust in Contempt for Violating This Court's Sale Order, On Order
9 Shortened Time ("Emergency Motion").

10 5. On May 18, 2021, Plaintiff filed its Motion for Specific Performance seeking an
11 order directing Defendants to specifically perform the Purchase Agreement by immediately
12 executing the Purchase Agreement for the Purchase Price of \$800,000; by accepting Plaintiff's
13 tender of the loan funds secured through Plaintiff's Lender, Nevada State Bank; and by closing
14 on Plaintiff's purchase of the real property parcel located at the address 2 Grand Anacapi,
15 Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 ("Property") in the amount
16 of \$800,000. *See* Mot. for Specific Performance, filed May 18, 2021.

17 6. The Motion for Specific Performance was fully briefed, and the Court held oral
18 arguments on June 22, 2021, and concluded that the Defendants suffered from "seller's remorse"
19 and ordered specific performance of the Purchase Agreement for \$800,000. *See* Specific
20 Performance Order dated August 26, 2021.

21 7. In this Court's August 26, 2021 order, Seller, Phillip J. Fagan, Jr. and Trustee of
22 the PHILIP J. FAGAN, JR. 2001 TRUST, was ordered to sell the Property to Buyer, AAL-Jay-
23 Inc., or its assignee for \$800,000 pursuant to the Residential Purchase Agreement for the purchase
24 price of \$800,000 which Buyer timely deposited \$50,000 as earnest money, which purchase price
25 reflected (35) prior payments made under the terms of the original Contract and Addendum. *See*
26 Specific Performance Order.

1 8. This Court also ordered that the \$170,000 total amount that buyer wired into
2 escrow with First American Title Insurance Company ("First American") be used toward the close
3 of escrow for the purchase of the Property. *See* Specific Performance Order.

4 9. This Court ordered that the Clerk of the Court execute the Residential Purchase
5 Agreement dated December 14, 2020 and executed by Buyer on January 11, 2021 in the purchase
6 price amount of \$800,000 for the sale of the Property, and that the Clerk of the Court execute any
7 necessary documents, such as the Deed, to effectuate the transfer of title of the Property to Buyer
8 in compliance with this Order for specific performance in the event the Seller fails and/or refuses
9 to comply with this Court's Order for specific performance. *See* Specific Performance Order.

10 10. After efforts for Plaintiff and Defendants to agree on the form order failed, Plaintiff
11 submitted a proposed order to the Court. Defendants' objected to the proposed order.

12 11. Defendants filed a Motion for Stay Pending Adjudication of
13 Defendants/Counterclaimants' Writ of Mandamus and/or in the Alternative, Writ of Prohibition
14 on July 22, 2021 ("First Stay Motion"), before the Court formally entered an order granting the
15 Motion for Specific Performance. *See* Def. July 22, 2021 Mot. for Stay.

16 12. Plaintiff objected to the First Stay Motion on the basis that it was not ripe and filed
17 prematurely.

18 13. At the hearing on the First Stay Motion, Defendants' conceded that the First Stay
19 Motion was not ripe and that Defendants would file another stay motion after the Court formally
20 entered the Order granting the Motion for Specific Performance.

21 14. Defendants filed their Second Stay Motion on August 30, 2021, to challenge the
22 Order, which was likewise denied by this Court. *See* Def. August 30, 2021 Mot. for Stay.

23 15. After this Court awarded specific performance to enforce the Purchase and Sale
24 Agreement, the Buyer presented the Purchase and Sale Agreement for Defendants to execute.
25 However, Defendants refused to sign the Purchase Agreement, forcing the Buyer to suffer further
26 delay and submit the Purchase Agreement to the Clerk of the Court for signature.

27 ...

1 16. Pursuant to this Court's Specific Performance Order, on or around October 11,
2 2021, the Clerk of the Court executed the Purchase Agreement on behalf of the Seller. A true and
3 correct copy of the fully executed Purchase Agreement is attached hereto as **Exhibit "1"**.

4 17. Upon information and belief, the Clerk of the Court is prepared to sign any
5 remaining necessary documents, such as the Deed and all transfer documents.

6 18. First American informed me that it would not proceed with escrow, because Philip
7 J. Fagan, Jr. ("Mr. Fagan") refused to cooperate, in that he refused to obtain the mortgage payoff,
8 HOA payoff, and the necessary releases required to close on the sale of the Property.

9 19. After requesting that Mr. Fagan sign the necessary papers to effectuate the sale,
10 Mr. Fagan refused, and First American feared that Mr. Fagan would commence litigation against
11 First American based upon communications from Mr. Fagan and/or his counsel.

12 20. First American now refuses to proceed with the sale.

13 21. In turn, after First American informed the lender that it would not proceed with the
14 sale, on November 15, 2021, the Lender informed me that it would not loan the funds to close the
15 sale without title insurance from First American.

16 22. Specifically, Plaintiff's lender, Zion Bancorporation, confirmed that it will not
17 proceed with funding the pre-approved mortgage loan to AAL-Jay unless and until AAL-Jay's title
18 to the real property is established without any cloud of title. A true and correct copy of the Email
19 dated September 7, 2021, from Lawrence R. Dingivan, SVP Managing Legal Counsel for
20 Consumer Financial Services with Zions Bancorporation, N.A. to me is attached hereto as **Exhibit**
21 **"2"**.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

1 23. To date, Defendants have failed to effectuate the transfer of title of the Property to
2 the Buyer in direct violation of this Court's Specific Performance Order and have sought stall
3 tactics like objecting to the distribution of the escrow deposit to the Buyer in an effort to further
4 delay the closing on the Property.

5 I declare under penalty of perjury under the laws of the United States that the foregoing is
6 true and correct to the best of my knowledge.

7 DATED this 10th day of March, 2022.

8 

9
10 OGONNA M. BROWN, ESQ.

EXHIBIT “1”

EXHIBIT “1”

RESIDENTIAL PURCHASE AGREEMENT

This Residential Purchase Agreement ("Agreement") is entered into on this 14th day of December, 2020, ("Effective Date") by and between the Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, JR. 2001 Trust ("Buyer") and AAL-JAY, Inc., a Nevada corporation ("Seller"). Buyer and Seller may collectively be referred to herein as Parties.

RECITALS

WHEREAS, Seller owns the residential real property located 1 Grand Anacapi, Henderson, Nevada 89011, assessor parcel number 162-22-810-011, (the "Property");

WHEREAS, on or around November 2016, Seller and Buyer entered into that certain Contract for Deed (the "Previous Contract"), wherein Seller agreed to sell, and Buyer agreed to Buy, the Property;

WHEREAS, the Previous Contract provided that the purchase price was to be \$1,050,000, in which Buyer was to pay to Seller approximately thirty five (35) monthly payments of principal and interest, with the remaining balance of principal and interest of the purchase price to be paid on or before October 31, 2019;

WHEREAS, Buyer has made monthly payments, but has failed to pay the remaining principal balance, with accrued interest thereon, on or before October 31, 2019;

WHEREAS, Seller is willing to give to Buyer credit for the principal portion of the monthly payments made to Seller in establishing the Purchase Price (as defined below) of this Agreement;

WHEREAS, based upon the terms and conditions set forth below, Buyer wishes to purchase all of Seller's right, title, and interest in and to the Property, and Seller wishes to sell all of Seller's right, title, and interest in and to the Property.

AGREEMENT

NOW THEREFORE, for good cause and valuable consideration, the receipt and sufficiency of which is hereby agreed upon, the Parties agree as follows:

1. The Previous Contract is hereby terminated, and all terms and conditions expressed therein are of no longer force or effect on either Party.
2. Purchase Price:
 - a. The Purchase Price for the Property shall be Eight Hundred Thousand and NO/100ths Dollars (\$800,000.00) ("Purchase Price").

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: _____

Seller's Initials: ALY

- b. The Purchase Price shall be paid by Buyer in Good Funds on or before the Close of Escrow. The Purchase Price does not include closing costs, prorations, or other fees and costs associated with the purchase of the Seller's Property Interest. Closing costs, prorations and all fees and costs associated with the purchase of Seller's Property Interest shall be paid for as set forth in Section 7 of this Agreement.
- c. Upon the opening of escrow, Buyer shall deposit the sum of Five Thousand and No/100ths Dollars (\$5,000.00) as and for its Earnest Money Deposit ("EMD"). The EMD shall be credited toward the Purchase Price at Close of Escrow, as defined below, or delivered to Seller in the event of Buyer's default as set forth herein.

3. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred to Buyer, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All fixtures, fittings and furniture including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s) and furniture remaining at the Property upon COE.

4. **ESCROW:**

- a. **OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at First American Title Company ("Escrow Company" or "Escrow Holder") with Michele Eaton ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. Escrow Holder is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.
- b. **CLOSE OF ESCROW:** Close of Escrow shall be on or before 5:00 pm PST on Thursday, December 17, 2020 ("COE").
- c. **IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all Escrow Holders to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the Escrow Holder. Seller is also made aware that Escrow Holder is required by federal law to provide

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: _____

Seller's Initials:

this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

5. **PRELIMINARY TITLE REPORT:** The Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected prior to Close of Escrow (the "Title Review Period"). If Buyer does not object to the PTR prior to Close of Escrow, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer; or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions." Buyer and Seller agree that the Deed of Trust recorded on May 09, 2006, in Book 20060509, as Instrument No. 04291, to secure an original indebtedness of \$1,400,000, is NOT a Permitted Exception, and Seller agrees to remove such exception to title of the Property at Close of Escrow.

6. Intentionally deleted.

7. **TITLE INSURANCE:** This Purchase Agreement is contingent upon the Buyer's ability to receive, good and marketable title to Seller's Property Interest on COE as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 3. Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 7.

8. **FEES, AND PRORATIONS:** The fees and costs associated with the closing shall be paid by the Parties as follows:

Loan Costs	Paid by Buyer
Escrow Company Fees:	Paid by Buyer
Title Policy:	Paid by Buyer
Real Property Transfer Tax:	Paid by Seller

PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed.

ATTORNEYS FEES: Each Party shall pay its own attorneys' fees associated with and respect to this transaction.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: _____

Seller's Initials:

9. **TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) any obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. **COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller is required to provide at Buyer's expense the CIC documents as required by NRS 116.4109 (collectively, the "Resale Package"). Buyer waives any rights to CIC documents, to the extent such apply, as Buyer has been in possession of the Property and should be aware of the status of the CIC. To the extent there are CIC Capital Contributions or CIC Transfer Fees related to the Property in connection with the transaction contemplated by this Agreement, those contributions and transfer fees shall be paid by Seller.

11. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and title or bill of sale related to any other item listed under Section 2 above, upon COE, if requested by Buyer.

12. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

13. **ASSIGNMENT OF THIS AGREEMENT:** This Agreement is non-assignable unless agreed upon in writing by the Parties.

14. **DEFAULT:**

a. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through a mediator mutually agreed upon by the parties, except in the case of a claim of specific performance. Mediation fees, if any, shall be divided equally among the Parties. Each party has consulted with an independent lawyer of their choice to review this mediation provision and this Agreement before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: / SELLER(S) INITIALS: /

b. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer may, at Buyer's option, (i) terminate this Agreement and receive the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

EMD, or (ii) take legal action for specific performance, including the claim for attorneys' fees and costs in taking such action of specific performance.

c. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, Seller may retain, as liquidated damages, the EMD and shall keep title to the Property. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default.

15. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with Section 5, neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law) and both Parties shall be obligated to pay, equally, any costs set forth herein associated with this transaction and such cancellation.

16. ESCROW INSTRUCTIONS: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold Escrow Holder free and harmless from any loss or expense, except losses or expenses as may arise from Escrow Holder's negligence or willful misconduct.

17. BROKER'S COMPENSATION/FEES: Buyer and Seller agree that the sale of the Property is not subject to any Broker's fees.

18. DEFINITIONS: "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners' associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Escrow Holder" means the neutral party that will handle the closing. "Good Funds" means an acceptable form of payment determined by Escrow Holder in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "N/A" means not.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement.

19. SIGNATURES, DELIVERY, AND NOTICES:

- a. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.
- b. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

20. MISCELLANEOUS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

(signatures follow on next page)

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: _____

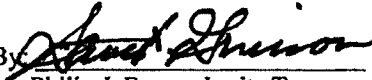
Seller's Initials:

IN WITNESS WHEREOF, each of the persons executing this Agreement has authority on behalf of the respective party to do so and has had the opportunity to review this Agreement with counsel of their choosing and based upon their review and understanding of this Agreement, agrees to the terms and conditions set forth herein as of the Effective Date set forth above.

Dated this 14th day of December, 2020.

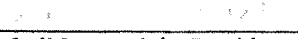
SELLER

Philip J. Fagan, JR. 2011 Trust


By: 
Philip J. Fagan, Jr., its Trustee

BUYER

AAL-JAY, Inc.
a Nevada corporation

By : 
Lail Leonard, its President

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Initials: 


Seller's Initials: 

EXHIBIT “2”

EXHIBIT “2”

Begin forwarded message:

From: Lawrence Dingivan <Lawrence.Dingivan@zionsbancorp.com>
Date: September 7, 2021 at 7:53:02 AM PDT
To: "Brown, Ogonna" <OBrown@lewisroca.com>, Hazeer Razack <Hazeer.Razack@nsbank.com>
Subject: RE: AAL-JAY v Fagan -- Order Granting Motion for Specific Performance and Defendants' Petition for Writ filed w/Nevada Supreme Court and Stay Motion

[EXTERNAL]

Ogonna: I confirm that I have advised Zions Bancorporation, N.A. operating division Nevada State Bank not to proceed with funding its proposed mortgage loan to AAL-Jay unless and until AAL-Jay's title to the real property that will secure payment of the mortgage loan is established by a non-appealable determination by the Nevada courts.

Thank you,

Larry

From: Brown, Ogonna <OBrown@lewisroca.com>
Sent: Thursday, September 02, 2021 11:30 PM
To: Lawrence Dingivan <Lawrence.Dingivan@zionsbancorp.com>; Hazeer Razack <Hazeer.Razack@nsbank.com>
Subject: RE: AAL-JAY v Fagan -- Order Granting Motion for Specific Performance and Defendants' Petition for Writ filed w/Nevada Supreme Court and Stay Motion

Ⓢ EXTERNAL EMAIL! Inspect contents carefully.

Dear Mr. Dingivan:

Please confirm that as a result of the defendants' refusal to comply with the Court's Order in that they will not sign the purchase agreement, and defendants' Emergency Writ Petition with the Nevada Supreme Court, along with defendants' Motion for Stay, that it is your recommendation that no further action is taken on the purchase file and that Nevada State Bank will not fund the loan at this time for AAL-Jay to purchase the property, subject to further orders from the Nevada Supreme Court and the State Court. Thank you for your prompt attention to this matter. I will keep you apprised of any further developments.

Ogonna Brown
Partner

2024/04/04
OBrown@lewisroca.com
D. 702.474.2622

LEWIS  ROCA

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

THIS ELECTRONIC MESSAGE, INCLUDING ANY ACCOMPANYING DOCUMENTS, IS CONFIDENTIAL and may contain information that is privileged and exempt from disclosure under applicable law. If you are neither the intended recipient nor responsible for delivering the message to the intended recipient, please note that any dissemination, distribution, copying or the taking of any action in reliance upon the message is strictly prohibited. If you have received this communication in error, please notify the sender immediately. Thank you.

1 CSERV

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)

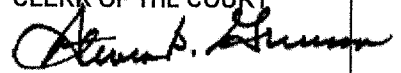
9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/15/2022

15 Ogonna Brown	obrown@lewisroca.com
16 Diane Meeter	dmeeter@blackwadhams.law
17 Chris Yergensen	cyergensen@blackwadhams.law
18 Jerri Hunsaker	jhunsaker@blackwadhams.law
19 Jennifer Hess	jhess@lewisroca.com
20 Nicole Lord	nlord@lewisroca.com
21 Dibora Berhanu	dberhanu@lewisroca.com
22 Kim Lopez	klopez@lewisroca.com
23 OMB Calendar	ombcalendar@lewisroca.com

24
25
26
27
28



ERR

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 949-8200
Fax: (702) 949-8398
Email: obrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

**IN THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE COUNTY OF CLARK, STATE OF NEVADA**

AAL-JAY, INC., a Nevada Corporation.

Plaintiff,

v.

PHILIP J. FAGAN, JR., an individual, and as
Trustee of the PHILIP J. FAGAN, JR. 2001
TRUST; DOES I through X, inclusive, and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

PHILIP J. FAGAN, JR., as Trustee of the
PHILIP J. FAGAN, JR. 2001 TRUST

Counter-Claimant,

v.

AAL-JAY, INC., a Nevada Corporation;
CHRISTIANO DE CARLO, an individual and
LAIL LEONARD,

Counter-Defendants.

Case No. A-21-832379-C

Dept. No. 24

ERRATA TO PLAINTIFF'S

**(1) EMERGENCY MOTION FOR FIRST
AMERICAN TITLE INSURANCE
COMPANY TO TURNOVER FUNDS IN
ESCROW TO THE BUYER AAL-JAY,
INC. AND**

**(2) MOTION FOR ORDER TO SHOW
CAUSE WHY THIS COURT SHOULD
NOT HOLD PHILIP J. FAGAN, JR., AS
TRUSTEE OF THE PHILIP J. FAGAN,
JR. 2001 TRUST IN CONTEMPT FOR
VIOLATING THIS COURT'S SALE
ORDER ON ORDER SHORTENED TIME**

Plaintiff AAL-JAY, INC. ("Plaintiff", "AAL-JAY" or "Buyer"), by and through its
attorneys, Ogonna M. Brown, Esq. of the law firm Lewis Roca Rothgerber Christie LLP ("Lewis
Roca"), hereby files this Errata to its Emergency Motion for First American Title Insurance
Company to Turnover Funds in Escrow to the Buyer AAL-Jay, LLC and Motion for Order to Show

1 Cause Why This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the Philip J. Fagan, Jr.
2 2001 Trust in Contempt for Violating This Court's Sale Order, On Order Shortened Time
3 ("Emergency Motion"), lodged with this Court on March 10, 2022:

4 The Emergency Motion erroneously identifies the property at issue in this litigation as 2
5 **Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011.** The
6 correct property at issue is **1 Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel**
7 **Number 160-22-810-011.** The purpose of this Errata is to correct this clerical error in the
8 Emergency Motion.

9 DATED this 15th day of March, 2022.

11 LEWIS ROCA ROTHGERBER CHRISTIE LLP

12 By: /s/ Ogonna M. Brown

13 Ogonna M. Brown, Esq.

14 Nevada Bar No. 7589

15 OBrown@lewisroca.com

16 3993 Howard Hughes Parkway, Suite 600

17 Las Vegas, Nevada 89169

18 Tel. (702) 949-8200

19 Fax: (702) 949-8398

20 *Attorneys for Plaintiff AAL-JAY, Inc.*

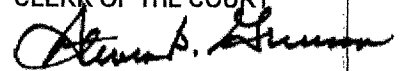
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 7.6, I certify that on March 15, 2022, I served a true and copy of the foregoing **ERRATA TO PLAINTIFF'S (1) EMERGENCY MOTION FOR FIRST AMERICAN TITLE INSURANCE COMPANY TO TURNOVER FUNDS IN ESCROW TO THE BUYER AAL-JAY, LLC AND (2) MOTION FOR ORDER TO SHOW CAUSE WHY THIS COURT SHOULD NOT HOLD PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001 TRUST IN CONTEMPT FOR VIOLATING THIS COURT'S SALE ORDER ON ORDER SHORTENED TIME** via Odyssey e-filing, to all parties on the court's service list.

/s/ Nicole Lord

An employee of Lewis Roca Rothgerber
Christie, LLP

EXHIBIT 3



1 **OPPC**
2 Allison R. Schmidt, Esq.
3 **BLACK & WADHAMS**
4 Nevada Bar No. 10743
5 10777 West Twain Avenue, 3rd Floor
6 Las Vegas, Nevada 89135
7 Telephone: (702) 869-8801
8 Facsimile: (702) 869-2669
9 E-mail: aschmidt@blackwadhamslaw.com
10 *Attorney for Defendants/Counterclaimants*

11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

14 AAL-JAY, INC., a Nevada corporation, 15 16 Plaintiff, 17 18 v. 19 PHILIP J. FAGAN, JR., an individual, and as 20 Trustee of the PHILIP J. FAGAN, JR. 2001 21 TRUST, 22 23 Defendants.	Case No. A-21-832379-C Dept. No.: 24 OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR FIRST AMERICAN TITLE COMPANY TO TURNOVER [sic] FUNDS IN ESCROW TO THE BUYER AAL-JAY, LLC AND MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THIS COURT SHOULD NOT HOLD PHILIP J. FAGAN JR, AS TRUSTEE OF THE PHILIP J. FAGAN JR 2001 TRUST IN CONTEMPT FOR VIOLATING THIS COURT'S SALE ORDER ON ORDER SHORTENED [sic] TIME;
24 PHILIP J. FAGAN, JR., as Trustee of the 25 PHILIP J. FAGAN, JR. 2001 TRUST, 26 27 Counterclaimant, 28 29 v. 30 AAL-JAY, INC., a Nevada corporation; 31 CHRISTIANO DE CARLO, an individual; 32 and LAIL LEONARD, an individual, 33 34 Counter-Defendants.	AND DEFENDANT/COUNTERCLAIMANT'S COUNTERMOTION FOR PRELIMINARY INJUNCTION AND COUNTERMOTION TO CLARIFY ORDER

1 COMES NOW, Defendants/Counterclaimants PHILIP J. FAGAN, JR., as Trustee of the
2 PHILIP J. FAGAN, JR., 2001 TRUST (hereinafter "Fagan" or "Defendants") by and through
3 their attorney of record, Allison R. Schmidt, Esq., of the law firm Black & Wadhams, and hereby
4 submit their OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR FIRST
5 AMERICAN TITLE COMPANY TO TURNOVER [sic] FUNDS IN ESCROW TO THE
6 BUYER AAL-JAY, LLC AND MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THIS
7 COURT SHOULD NOT HOLD PHILIP J. FAGAN JR, AS TRUSTEE OF THE PHILIP J.
8 FAGAN JR 2001 TRUST IN CONTEMPT FOR VIOLATING THIS COURT'S SALE ORDER
9 ON ORDER SHORTENED [sic] TIME and DEFENDANT/COUNTERCLAIMANT'S
10 COUNTERMOTION FOR PRELIMINARY INJUNCTION AND COUNTERMOTION TO
11 CLARIFY ORDER.
12

13
14 This Opposition and Countermotion is based upon the following memorandum of points
15 and authorities, the pleadings and papers on file herein and any other evidence or oral argument
16 the Court may entertain at the hearing of this Motion.

17 Dated this 23rd day of March 2022.
18

BLACK & WADHAMS

s/ Allison R. Schmidt

Allison R. Schmidt, Esq.

Nevada Bar No. 10743

10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

Telephone: (702) 869-8801

Facsimile: (702) 869-2669

E-mail: aschmidt@blackwadhamslaw

Attorney for Defendants/Counterclaimants

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

AAL-JAY, Inc. (hereinafter "AAL-JAY" or "Plaintiff") has filed documentation with this Court confirming that it will not be able to close on a sale of the subject property, yet still attempts to point a blameful finger at defendants for Plaintiff's ongoing inability to close.

Plaintiff's motion should be denied for myriad reasons. First, this Court is unable to Order First American Title Company ("First American") to take any action, because Plaintiff has not included First American as a party to this Action. Second, Plaintiff is judicially estopped from arguing that the funds should be disbursed to them, as the contract they have successfully sought to enforce does not provide for the disbursement of EMD funds to Plaintiff. Third, Plaintiff's motion for an order to show cause, which appears to be filed as an afterthought, with no citation to authority whatsoever, fails to identify a single provision of this Court's order which Fagan has purportedly violated – because he has not violated any provision of the Court's order. Fourth, Plaintiff's own exhibits demonstrate that Plaintiff cannot obtain financing to close escrow on this purchase.

It has been more than 15 months since the closing date identified in the purchase and sale agreement. Plaintiff has occupied the property without rent payment and caused an unresolved materialmen's lien to be placed on the property, while Defendants have been forced to shoulder the substantial burden and expenses associated with ownership, financing and maintenance of the multimillion-dollar home. Therefore, Defendants hereby countermove for a preliminary injunction requiring Plaintiff to deposit monthly rent with the Court, out of which Defendants should be permitted to receive periodic disbursements for the payment of the mortgage, taxes, insurance, HOA assessments, HOA fines/violations, repairs and upkeep of the property, and to

1 resolve the materialman's lien Plaintiff allowed to be placed on the property. Any funds
2 remaining after the payment of these expenses can be held by the court pending the final
3 outcome of the claims in this matter. Alternatively, Plaintiff should be required to vacate the
4 property immediately. Additionally, Defendants seek an order clarifying its specific performance
5 order to (1) set a date certain by which Plaintiff must demonstrate it is willing and able to close
6 on the contract and (2) identify what cause(s) of action, if any, the Court granted the remedy of
7 specific performance upon.
8

9 II.

10 LEGAL ARGUMENT

11 A. LEGAL STANDARDS

12 1. Motion to Turn Over Funds

13 There is no statutory or common law authority authorizing a "motion to turnover [*sic*]
14 funds" in Nevada. However, a district court is empowered to render a judgment or issue orders
15 either for or against a person or entity **only** if it has jurisdiction over the parties and the subject
16 matter. *See Young v. Nevada Title Company*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987).
17 Jurisdictional rules go to the very power of a court to act. *Rust v. Clark Cty. School District*, 103
18 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); *accord Phillips v. Welch*, 11 Nev. 187, 188 (1876)
19 ("Every court is bound to know the limits of its own jurisdiction, and to keep within them.")
20

21 Further, the doctrine of Judicial Estoppel generally applies "when" (1) the same party has
22 taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative
23 proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted
24 the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first
25 position was not taken as a result of ignorance, fraud, or mistake." *NOLM, LLC v. County of*
26 *Clark*, 100 P. 3d 658 (Nev. 2004).
27
28

2. Motion for Order to Show Cause

An order on which a judgment of contempt is based must be clear and unambiguous and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him. *See Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 659 P.2d 861 (1983); *Cunningham v. District Court*, 102 Nev. 551, 729 P.2d 1328 (1986).

It is a manifest abuse of discretion for a Court to hold a party in contempt when the order purportedly violated does not clearly prohibit the conduct engaged in by the contemnor. *See Cunningham*, 102 Nev. at 559-60, 729 P.2d at 1333-34; *Pengilly v. Rancho Santa Fe Homeowners*, 5 P. 3d 569 (Nev. 2000).

3. Motion for Preliminary Injunction

A preliminary injunction to preserve the status quo is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy. *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978). The balancing of the parties' relative hardships is an element in determining whether injunctive relief is appropriate. *See Ellis v. McDaniel*, 95 Nev. at 455, 459, 596 P.2d 222, 224 (1979). Under the "sliding scale" approach, where the threat of irreparable harm is great, only a lesser showing of likelihood of success on the merits is necessary. *See, e.g., Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003).

Because real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm, the district court erred in holding otherwise. *See Leonard v. Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) (view from home is unique asset;

1 injunction issued to preserve view); *see also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev.
2 201, 533 P.2d 471 (1975) (denial of injunction to stop foreclosure reversed because legal remedy
3 inadequate); *Dixon v. Thatcher*, 742 P. 2d 1029 (Nev. 1987).

4 **B. PLAINTIFF'S MOTION TO COMPEL FIRST AMERICAN TO TURN OVER**
5 **ESCROW FUNDS CANNOT BE GRANTED**

6 Plaintiff's moves this court for an order compelling First American to either turn the
7 deposited escrow funds over to plaintiff, or alternatively require First American to interplead the
8 funds with the court. The glaring problem with Plaintiff's motion is that First American is not a
9 party to this action, and the court therefore lacks personal jurisdiction over First American to
10 issue an order compelling their performance of any act in this case. NRS 14.065 explicitly limits
11 the exercise of jurisdiction of a Court to the parties before it, which have been properly served
12 with a summons and complaint. Here, First American is not a party, no claims have been
13 asserted against First American, and no complaint or summons has issued or been served upon
14 First American. Accordingly, this Court lacks the necessary jurisdiction to issue the order
15 requested by Plaintiff to compel First American to release the funds in its possession, or to
16 compel First American to interplead those funds.

17
18
19 Additionally, Plaintiff is judicially estopped from arguing that the escrow funds should be
20 released or distributed in any manner that is inconsistent with the purchase contract that Plaintiff
21 has successfully sought specific performance of. Here, the purported "purchase agreement"
22 does not provide for the distribution of the escrow funds to the buyer under any circumstances,
23 except where all or any material part of the property is destroyed prior the close of escrow (*See*
24 *Ex. 1 to the Declaration of Ogonna M. Brown*, p. 4 of 7 at ¶ 12) or if the buyer elects to
25 terminate the agreement upon seller's default (*Id.* At p. 4 of 7, ¶ 14(b). Even assuming, for the
26 sake of argument, that Fagan, as seller, has defaulted on the terms of a valid and binding
27 purchase and sale agreement, which Fagan vehemently disputes, the contract that Plaintiff has
28

1 successfully sought enforcement of contains an election of remedies, which states that Plaintiff
2 may only receive return of the deposited escrow funds **if and only if** plaintiff elects to terminate
3 the purchase and sale agreement. *Id.* AAL-Jay cannot simultaneously seek to enforce its specific
4 performance order while asking this court for relief that is directly inconsistent with the terms of
5 the alleged contract it seeks to enforce.
6

7 Judicial estoppel applies to protect the judiciary's integrity and prevents a party from
8 taking inconsistent positions by either intentional wrongdoing or an attempt to obtain an unfair
9 advantage. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (*citing*
10 *Kitty-Anne Music Co. v. Swan*, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (2003)). The doctrine
11 of Judicial Estoppel generally applies "when "(1) the same party has taken two positions; (2) the
12 positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was
13 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as
14 true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a
15 result of ignorance, fraud, or mistake." *NOLM, LLC v. County of Clark*, 100 P. 3d 658 (Nev.
16 2004). Here, judicial estoppel bars AAL-JAY from seeking relief that is inconsistent or violative
17 of the terms of the purchase and sale agreement it successfully obtained an order of specific
18 performance on. AAL-JAY took the position that the terms of the purchase and sale agreement
19 are valid and enforceable, first before this tribunal, and additionally before the Nevada Supreme
20 Court in defendants' writ petition. AAL-JAY was successful in its assertion, in that this Court
21 issued an order granting AAL-Jay specific performance of the alleged agreement. AAL-JAY
22 now argues that the escrow funds should be released to it, which would be in direct contradiction
23 of the terms of the purchase and sales agreement, which only provide for the release of escrow
24 funds to the buyer in 2, extremely narrow circumstances, which are not present here. AAL-JAY
25 cannot be said to have taken its earlier position as a result of ignorance or mistake – they had the
26
27
28

1 benefit of the assistance of seasoned counsel to assist it with its analysis and strategy in this
2 matter. Thus, judicial estoppel applies, and Plaintiff's motion must be denied on this additional
3 basis.

4
5 **C. PLAINTIFF HAS NOT AND CANNOT IDENTIFY A SINGLE PROVISION**
6 **OF THIS COURT'S ORDER THAT DEFENDANTS HAVE VIOLATED**

7 Plaintiff appears to request an order to show cause as an afterthought, and out of the
8 apparent frustration that its Bank is refusing to fund the purchase of the home. Plaintiff's
9 argument consists of approximately ½ page of text on page 12 of its motion that is completely
10 devoid of any citation to authority to support it. *See* Mot. At p. 12. The absence of points and
11 authorities in support of Plaintiff's request for an order to show cause may be construed by this
12 court as an admission that the motion is not meritorious, as well as a waiver of any ground not
13 supported. EDCR 2.20.

14 It is important for this Court to consider Plaintiff's request for an order to show cause in
15 the context of the proceedings in this case. Importantly, Plaintiff drafted the order for specific
16 performance in its entirety, refusing all input from the plaintiff, and the order was entered over
17 the lengthy objections of defendants, which were placed on the record. Plaintiff was, for all
18 purposes, the "master" of the order and its contents. Plaintiff, now ostensibly frustrated that its
19 bank is refusing to fund the purchase, attempting to have Dr. Fagan held in contempt for acts and
20 omissions that the order crafted by the Plaintiff does not require or prohibit. Notably, Plaintiff's
21 argument fails to identify a single provision of the order which Dr. Fagan has purportedly
22 violated. The declaration of Ogonna M. Brown, attached to Plaintiff's motion as exhibit 2,
23 complains of the following "acts:"
24

- 25
26 - "Defendants refused to sign the purchase agreement, forcing the buyer to suffer
27 further delay and submit the purchase agreement to the clerk of the court for
28 signature." *See* Ex. B, ¶ 15.

- 1 - "First American informed me that it would not proceed with escrow, because [Fagan]
2 refused to cooperate, in that he refused to obtain the mortgage payoff, HOA payoff,
3 and the necessary releases required to close on the sale of the property." *Id.* at ¶ 18.
4
5 - "After requesting Mr. Fagan sign the necessary papers to effectuate the sale, Mr.
6 Fagan refused. . . " *Id.* at ¶ 19.

7 An order on which a judgment of contempt is based must be clear and unambiguous and must
8 spell out the details of compliance in clear, specific and unambiguous terms so that the person
9 will readily know exactly what duties or obligations are imposed on him. *See Southwest Gas*
10 *Corp. v. Flintkote Co.*, 99 Nev. 127, 659 P.2d 861 (1983); *Cunningham v. District Court*, 102
11 Nev. 551, 729 P.2d 1328 (1986). It is a manifest abuse of discretion for a Court to hold a party
12 in contempt when the order purportedly violated does not clearly prohibit the conduct engaged in
13 by the contemnor. *See Cunningham*, 102 Nev. at 559-60, 729 P.2d at 1333-34; *Pengilly v.*
14 *Rancho Santa Fe Homeowners*, 5 P. 3d 569 (Nev. 2000).

16 Here, it would be a manifest abuse of discretion for this Court to hold Dr. Fagan in
17 contempt for any of the acts or omissions cited by the Plaintiff and its counsel in their request for
18 an order to show cause. The Order does not require Dr. Fagan to sign the purchase agreement
19 and permitted the Clerk of the Court to sign the agreement in the event Dr. Fagan refused, which
20 he did at the direction of counsel. Further, the specific performance order does not direct Fagan
21 to sign any "releases" or to obtain lien payoffs, all of which can be obtained by the Plaintiff
22 itself, either via subpoena or via NRS 107.220. There is no statutory or common law provision
23 that would allow an order of the court to compel Defendants to sign any document or release.
24 Indeed, the act of signing a document indicates a party's agreement or assent to the document,
25 which is wholly absent in this case. Contracts executed under duress may be invalidated. *See*
26 *Rent-a-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010).
27
28

1 Lastly, the Plaintiff's inability to close is, according to Plaintiff's own admissions, not
2 because of Fagan, but because its Bank refuses to fund the transaction, and First American
3 refuses to proceed based on the alleged fear of First American that it will be sued. First, Plaintiff
4 includes as an attachment to Exhibit B, a copy of an email from its lender, Zions Bancorporation,
5 NA in which the lender states:

6 "I have advised [the lender] not to proceed with funding its proposed
7 mortgage loan to AAL-Jay unless and until AAL-Jay's title to the real
8 property that will secure payment of the mortgage loan is established by
9 **a non-appealable determination** of the Nevada courts."

10 *See* Mot. At Ex. B-2 (emphasis added). No court can require Defendants to abandon their
11 appellate rights, and Defendant does not intend to abandon or otherwise relinquish those rights.
12 By plaintiff's own admission, and according to the email from Lawrence Dingivan, Plaintiff is
13 presently unable to fund the purchase of this home, as its lender will no longer move forward
14 with the funding. Thus, even if Plaintiff had all lien payoffs and Fagan or the Court Clerk
15 (which Plaintiff states is "prepared to sign any remaining necessary documents" – *see* Ex. B. at ¶
16 17) executed whatever documents were put in front of them, Plaintiff's lender will not fund the
17 purchase loan until all of Defendants' appellate rights are exhausted, which has not occurred, and
18 will not occur for quite some time. Unless Plaintiff has an additional source of funds, or the
19 necessary cash to close, Plaintiff admits through its present Motion that it is presently unable to
20 perform on the purchase agreement. The fact that First American has allegedly made a business
21 decision not to issue title insurance or close, and the fact that Plaintiff's lender has refused to
22 close until all defendants' appellate rights are exhausted are matters outside Plaintiff's control
23 and cannot provide the basis for a contempt order.
24
25

26 ...

27 ...

1 **D. THIS COURT SHOULD ISSUE A PRELIMINARY INJUNCTION TO**
2 **PRESERVE THE STATUS QUO WHILE THIS MATTER IS PENDING**

3 Defendants are the present owner of the subject property, a multimillion-dollar home,
4 upon which defendants are required to pay a monthly mortgage, as well as property taxes,
5 insurance, substantial HOA assessments, utilities, and other fees and costs to maintain each and
6 every month. In January of 2021, the parties agreed that AAL-JAY would pay monthly rent in
7 the amount of \$7,000 to remain in the property. *See* January 2021 Lease, **EXHIBIT A**. The
8 parties later agreed that AAL-JAY would pay \$6,800 in rent for two months in March 2021 in
9 order to remain in possession of the property. *See* March 2021 Lease, **EXHIBIT B**. AAL-Jay
10 does not dispute that it signed these lease agreements, which provides that AAL-JAY, Inc. will
11 timely pay the rents required and vacate the premises at the conclusion of the lease. *See* Ex. A,
12 B. However, AAL-JAY has remained in possession of the property after breaching the lease
13 agreements and without making any payment whatsoever in 15 months. On top of the loss of
14 possession of the home that Defendant owns, AAL-JAY has also caused a materialman's lien to
15 be recorded against the property, further diminishing Defendant's title to the property. *See* Lien,
16 **EXHIBIT C**¹. Zillow presently lists the rental value of the property at \$8,433/month. *See*
17 Zillow rental estimate (retrieved on 3/22/2022), **EXHIBIT D**.

18
19
20 Despite the default in rent payment by AAL-Jay, Defendant was unable to obtain an
21 eviction, as the Justice Court deferred the matter to this Court. Despite the present record-high
22 property values and rental values in Southern Nevada, Defendant is unable to sell the property,
23 or otherwise enjoy any of his rights to the property. Should AAL-JAY be ultimately
24 unsuccessful in forcing the conveyance of the property, a Defendant will have been divested of
25

26
27 ¹ Defendants request judicial notice of the Materialmen's lien attached hereto as Ex. C pursuant to NRS
28 47.130 and , as it is an official record of the Clark County Recorder, readily capable of accurate
 determination.

1 his property rights for years and will have lost out on his right as the owner to lease the property
2 at market rates, or to have access to and possession of the property as the owner. While
3 Defendant cannot presently enjoy his property rights as an owner of the property, Defendants are
4 still required to shoulder the burden of ownership, including paying all the expenses for the
5 ownership, maintenance, and upkeep of the property. This is simply inequitable. This Court
6 should require Plaintiff to pay, at a minimum, the \$6,800 in monthly rent it agreed to begin
7 paying effective March of 2021 into the Court or Trust, from which Defendants should be
8 permitted to seek quarterly reimbursement for the expenses of owning, and maintaining the
9 property², and resolving the lien that Plaintiff caused to be recorded against the property. The
10 remaining funds can be held pending the final order and judgment of this Court, which can
11 determine their distribution. Further, the court should enjoin Plaintiff from causing any further
12 liens or encumbrances to be created on the property. Alternatively, this Court should order
13 Plaintiff to vacate the property unless and until Plaintiff becomes the record titleholder to the
14 property. "The power to exclude has traditionally been considered one of the most treasured
15 strands in an owner's bundle of property rights." *SOC, Inc. v. Mirage Casino-Hotel*, 23 P. 3d 243
16 (Nev. 2001).

19 A preliminary injunction to preserve the status quo is normally available upon a showing
20 that the party seeking it enjoys a reasonable probability of success on the merits and that the
21 defendant's conduct, if allowed to continue, will result in irreparable harm for which
22 compensatory damage is an inadequate remedy. *Number One Rent-A-Car v. Ramada Inns*, 94
23 Nev. 779, 780, 587 P.2d 1329, 1330 (1978). The balancing of the parties' relative hardships is
24 an element in determining whether injunctive relief is appropriate. *See Ellis v. McDaniel*, 95

26
27 ² These expenses include, but are not limited to, the monthly mortgage, the HOA assessments, Property
28 Insurance, Taxes, Utilities, Trash Removal, Sewer Expenses, HOA violations and fines assessed against
the property, and repair and maintenance expenses.

1 Nev. at 455, 459, 596 P.2d 222, 224 (1979). Under the “sliding scale” approach, where the
2 threat of irreparable harm is great, only a lesser showing of likelihood of success on the merits is
3 necessary. *See, e.g., Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th
4 Cir. 2003).

5
6 Here, it is not subject to dispute that Defendant is the present owner of the property, and
7 that this action affects Defendant’s property rights, as the action has prevented Defendant from
8 obtaining an eviction order against Plaintiff (despite plaintiff remaining in the property for over
9 15 months without payment), requiring Defendant to transfer his property rights to Plaintiff, and
10 preventing Defendant from otherwise marketing the property when property values in Southern
11 Nevada are at record highs. Because real property and its attributes are considered unique and
12 loss of real property rights generally results in irreparable harm, the district court erred in holding
13 otherwise. *See Leonard v. Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) (view from home is
14 unique asset; injunction issued to preserve view); *see also Nevada Escrow Service, Inc. v.*
15 *Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction to stop foreclosure reversed
16 because legal remedy inadequate); *Dixon v. Thatcher*, 742 P. 2d 1029 (Nev. 1987). The
17 irreparable harm faced by Defendant cannot be understated.
18

19
20 Additionally, Defendant enjoys a reasonable probability of success on the merits in this
21 matter. One of the most fundamental and long-standing concepts of the law of contracts is the
22 statute of frauds, which requires certain contracts to be in writing. Though the statute of frauds
23 originated a 1677 Act of the Parliament of England, the State of Nevada, some 150 years ago,
24 codified the statute of frauds at NRS 111.210. NRS 111.210(1) states: “Every contract . . . for
25 the sale of any lands, or any interest in lands, shall be void unless the contract . . . be in writing,
26 and be subscribed by the party by whom the . . . sale is to be made.” (Emphasis added).
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28

1 Here, there is no dispute that the draft “purchase agreement was not and has not been
2 signed by the Defendant. The agreement itself states that “time is of the essence” (*see* Mot. At
3 Ex. B-2, ¶ 20) and that “close of escrow shall be on or before 5:00 pm PST on Thursday,
4 December 17, 2020. *Id.* at ¶ 4(b). The use of the word “shall” denotes a lack of discretion.
5 *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013) (“The word
6 ‘shall’ is generally regarded as mandatory.”); *cf. In re Montierth*, 131 Nev. 543, 550, 354 P.3d
7 648, 652 (2015). Here, it is undisputed that Lail Leonard, on behalf of AAL-JAY did not
8 execute the contract until January 11, 2021 – nearly a month after the contract was due to be
9 performed. *See* Plaintiff’s Emergency Mot. For Specific Performance, p. 14, ¶ 46. Plaintiff
10 could not validly accept a contract at a point in time which that contract had already expired by
11 its own terms. Neither Plaintiff’s Motion for Specific Performance, nor the resulting order
12 provide any reasoning why Plaintiff would be permitted to accept a month after the mandatory
13 close of escrow date. AAL-Jay has presented no writing, signed by themselves or Defendants
14 agreeing to extend the close of escrow beyond December 17, 2020. Any such agreement to
15 extend the close of escrow would be required to be in writing and signed by the parties both by
16 the applicable Nevada Statute of Frauds and also by the terms of the contract itself. *See* Mot. At
17 Ex. B-2, ¶ 20. Even if AAL-Jay could accept the contract on January 11, 2021, which it could
18 not, AAL-Jay would have immediately been in breach of the agreement for failing to close
19 escrow by December 17, 2020.
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21
22

23 Here, performance of the contract is an impossibility because the date upon which closing
24 was required to occur passed. The Nevada Supreme Court has held, in numerous cases, that
25 when an agreement states that “time is of the essence” the buyer cannot circumvent their failure
26 to perform by the time stated in the agreement by arguing they performed “in a reasonable
27 amount of time.” *R & S Investments v. Howard*, 95 Nev. 279, 593, P.2d 53 (1979); *Holmby, Inc.*
28

1 v. *Dino*, 647 P. 2d 392 (Nev. 1982). "The very nature of an escrow arrangement is to provide for
2 performance at a stated and unquestionable time. Consequently, the doctrine of substantial
3 performance is not applicable." *Id.*

4 Under Nevada law, to show a breach of contract a plaintiff must show "(1) the existence
5 of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach."
6 *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 899 (9th Cir.2013). "Basic contract principles
7 require, for an enforceable contract, an offer and acceptance, meeting of the minds, and
8 consideration." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254 (2005). "A contract has a
9 binding force based upon the fact that it evidences a meeting of the minds of two parties in good
10 faith." *Aerial Lumber Co. v. United States*, 239 F.2d 906, 907 (9th Cir.1956). Here, there was no
11 binding or enforceable contract because Plaintiff did not accept and perform the terms of the
12 December 2020 purchase agreement in time, and Plaintiff has not produced any agreement in
13 writing, signed by both parties, to agree to extend the close of escrow. Specific Performance is
14 not available because Plaintiff has not and cannot demonstrate that it was "ready, willing and
15 able to perform" the contract on or before the stated close of escrow. *Serpa v. Darling*, 107 Nev.
16 299, 304, 810 P.2d 778, 782 (1991). As the Nevada Supreme Court has noted when a "contract
17 clearly and unambiguously provided that time was the essence of the agreement . . . appellant
18 had irrevocably breached its agreement to make payment of the balance of the down payment on
19 or before that date." *R & S INVESTMENTS v. Howard*, 593 P. 2d 53 (Nev. 1979).

20 What plaintiff **has** signed are **two** leases on the property, which specifically state that it
21 "supersedes and terminates all previous agreements, whether written or not written, between the
22 Parties." See EXHIBIT A and EXHIBIT B.

23 Thus, in order to find in favor of Plaintiff, this court would have to:

24 (1) Ignore the statute of frauds;

1 (2) Ignore the express terms of the contract sought to be enforced;

2 (3) Ignore the fact that Plaintiff did not "accept" the terms of the contract until after the
3 condition precedent of the buyer closing on or before December 17, 2020, had expired;

4 (4) Ignore the lack of a written agreement to extend the close of escrow beyond
5 December 17, 2020;

6 (5) Ignore the express terms of the January 2021 lease, signed by Plaintiff;

7 (6) Ignore the express terms of the March 2021 lease, signed by the Plaintiff;

8 (7) Ignore the Plaintiff's own admissions and evidence that show Plaintiff is presently
9 unable to close on a sale of the property; and

10 (8) Ignore the Plaintiff's own breach of the purported agreement.

11 It is additionally telling that the parties originally contracted for the sale of this property in 2016,
12 and the Plaintiff has, time and time again, breached each and every agreement between the
13 parties to sell the property.

14 In addition, Plaintiff continues to holdover possession of the property after the expiration
15 of the 2021 leases (which Plaintiff made no rent payments on), without making any payment for
16 the possession of the property, which no party can reasonably dispute that Plaintiff (and
17 Christiano DeCarlo, specifically) continue to appreciate. There is no dispute that Plaintiff has
18 failed to render payment on the terms of the lease agreement, and has possessed the property at
19 all relevant times, thus there is a high probability that Defendant will prevail on its breach of
20 contract claim, breach of good faith and fair dealing, and an unjust enrichment claim.

21 Since the ongoing harm suffered by Defendant with respect to its property rights is
22 irreparable as a matter of law, and Defendant enjoys a reasonable probability of success on the
23 merits, this Court should issue the preliminary injunction, protecting the interests of the parties
24 and preserving the status quo until such time as the underlying claims of this case are finally
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1 resolved, which will likely be a matter of years from the present.

2 E. THIS COURT SHOULD ISSUE AN ORDER CLARIFYING OR
3 OTHERWISE GRANTING RELIEF FROM ITS ORDER FOR SPECIFIC
4 PERFORMANCE PURSUANT TO NRCP 60.

5 NRCP permits this Court to revisit an order that is (1) void; (2) where applying it
6 prospectively would no longer be equitable; and (3) for any other reason that justifies relief. The
7 provisions of NRCP 60(b)(4 through 6) are not limited by the 6-month timeframe described in
8 NRCP 60(c)(1). Here, there are several issues with the Specific Performance Order. First, as the
9 order notes as its first conclusion of law: “specific performance is available only when: (1)
10 the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the
11 appellant has tendered performance; and (4) the court is willing to order it.” See Specific
12 Performance Order at p. 7. Both the Nevada Supreme Court and the Ninth Circuit Court of
13 Appeals have held that, in a real estate purchase agreement, the close of escrow is a material
14 term, and determined that specific performance is not available where the close of escrow date is
15 indefinite. See *Lahaina-Maui Corp. v. Tau Tet Hew*, 362 F.2d 419, 422 (9th Cir. 1966) (stating
16 that “if . . . negotiations of the parties affirmatively disclose or indicate further negotiations,
17 terms and conditions are contemplated, the proposed [contract] . . . is considered incomplete and
18 incapable of being specifically enforced.”); see *Dodge Bros.*, 52 Nev. at 364 (1930) (stating that
19 “[t]here is no better established principle of equity jurisprudence than that specific performance
20 will not be decreed when the contract is incomplete, uncertain, or indefinite.”). When a contract
21 states that time is of the essence, “the time for a party's performance becomes a material term of
22 the contract, so that the failure to perform by the time specified usually constitutes and has the
23 legal effect of a material breach.” *Mayfield v. Koroghli*, 184 P. 3d 362 (Nev. 2008). Neither the
24 contract nor the specific performance order state a time by which the Plaintiff is required to
25 tender their performance on the contract – leaving the option open, apparently indefinitely,
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1 which would violate the rule against perpetuities³. The Order should alternatively be voided or
2 amended to include a deadline for the Plaintiff to tender performance based on some finding of
3 fact, conclusion of law, or express term in a written, signed agreement between the parties.
4 Specific performance requires the parties to perform as they promised in the original agreement.
5 *See Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367-68 (2008); *Cain v. Price*, 415 P.
6 3d 25 (Nev. 2018). Here the contract calls for a closing date of December 17, 2020, which
7 obviously cannot be performed. Therefore, the Order must specify and provide a basis for a
8 later closing date.

10 Second, the order should be voided because it issues the remedy of specific performance
11 before the Court has entered judgment in favor or the Plaintiff on any claim. Specific
12 performance is not a claim, but a remedy for breach of contract. *Golden West Baseball Co. v.*
13 *City of Anaheim*, 25 Cal. App. 4th 11 - Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. 1994;
14 *LaSalle Nat. Bank v. Metropolitan Life Ins. Co.*, 18 F. 3d 1371 (7th Cir. 1994) ("specific
15 performance is a remedy, not a cause of action."); Restatement (Second) of Contracts § 357; 81A
16 C.J.S. Specific Performance § 4 (2015); *Chambliss, Bahner and Crawford v. Luther*, 531 S.W.2d
17 108 (Tenn. App. 1975); *Gordon v. Pfab*, 246 N.W.2d 283 (Iowa 1976); *Hart v. Dick*, 570 S.W.2d
18 820 (Mo. App. 1978); Corbin on Contracts § 1102 (1964). *Daley v. Earven*, 639 P. 2d 372 - Ariz:
19 Court of Appeals, 2nd Div. 1981. Since Plaintiff has not filed any motion for summary
20 judgment, and since plaintiff has not obtained judgment on any of its claims, the issuance of an
21 order for the remedy of specific performance was premature, and in excess of the Court's
22 jurisdiction. Nothing under Nevada Law, the Nevada Rules of Civil Procedure, or any case law

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26 ³ "The common-law rule [against perpetuities] is usually stated thus: No interest is good unless it must
27 vest, if at all, not later than twenty-one years after some life in being at the creation of the interest."
28 *Sarrazin v. First Nat'l Bank of Nev.*, 60 Nev. 414, 418, 111 P.2d 49, 51 (1941) (internal quotation
omitted). In Nevada, the rule is codified in our Constitution: "No perpetuities shall be allowed except for
eleemosynary purposes." Nev. Const. art. 15, § 4. In 1987, Nevada adopted a statutory rule against
perpetuities. See NRS 111.1031; 1987 Nev. Stat., ch. 25, §§ 2-8, at 62-65.

1 allows the Court to issue a pre-judgment remedy of specific performance. Indeed, even if the
2 Plaintiff had filed a properly supported Motion for Summary Judgment that complies with the
3 requirements of NRCP 56, which Plaintiff has not done, the Motion would have required denial,
4 as many material facts remain in dispute. *See* Declaration of Philip Fagan, **EXHIBIT E**. Thus,
5 the remedy order is void, as there is no underlying judgment on a substantive claim to support it.
6

7 **III.**

8 **CONCLUSION**

9 Based on the above discussion, Defendants respectfully request the Court deny Plaintiff's
10 motion to turnover funds and for an order to show cause, and grant Defendant's Countermotion
11 for a preliminary injunction and for review, revision or clarification of the Court's specific
12 performance order pursuant to NRCP 60(b).
13

14 Dated this 23rd day of March 2022.

15 **BLACK & WADHAMS**

16 /Allison R. Schmidt

17 Allison R. Schmidt, Esq.

18 Nevada Bar No. 10743

19 10777 West Twain Avenue, Suite 300

20 Las Vegas, Nevada 89135

21 Telephone: (702) 869-8801

22 Facsimile: (702) 869-2669

23 E-mail: aschmidt@blackwadhams.law

24 *Attorney for Defendants/Counterclaimants*
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INDEX OF EXHIBITS

A – January 2021 Lease

B – March 2021 Lease

C – Materialman’s Lien Recorded on 7/2/21

D – Zillow Rental “Zestimate” for 1 Grand Anacapri

E – Fagan Declaration

CERTIFICATE OF SERVICE

I certify that I am an employee of BLACK & WADHAMS and that on the 23rd day of March 2022, I caused the above and foregoing document entitled OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR FIRST AMERICAN TITLE COMPANY TO TURNOVER [sic] FUNDS IN ESCROW TO THE BUYER AAL-JAY, LLC AND MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THS COURT SHOULD NOT HOLD PHILIP J. FAGAN JR, AS TRUSTEE OF THE PHILIP J. FAGAN JR 2001 TRUST IN CONTEMPT FOR VIOLATING THIS COURT'S SALE ORDER ON ORDER SHORTENED [sic] TIME and DEFENDANT/COUNTERCLAIMANT'S COUNTERMOTION FOR PRELIMINARY INJUNCTION AND COUNTERMOTION TO CLARIFY ORDER to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ hand delivered

to the party or their attorney(s) listed on the Master filing list with the court for this case

Oganna Brown, Esq.
LEWIS ROCA ROTHERGERBER
CHRISTIE LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
OBrown@lewisroca.com

/s/ Diane Meeter
An Employee of Black & Wadhams

EXHIBIT A

RESIDENTIAL LEASE AGREEMENT

I. THE PARTIES. This Residential Lease Agreement ("Agreement") made this 22nd day of January, 2021, is by and between:

Landlord: Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, Jr. 2001 Trust ("Landlord"), and

Tenant: AAL-JAY, Inc., a Nevada corporation ("Tenant"). Landlord and Tenant are each referred to herein as a "Party" and, collectively, as the "Parties".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, the Tenant agrees to lease the Premises from the Landlord under the following terms and conditions:

II. LEASE TYPE. This Agreement shall be considered a Fixed Lease, and supersedes and terminates all previous agreements, whether written or not written, between the Parties. The Tenant shall be allowed to occupy the Premises, in accordance to this Agreement only, starting on February 1, 2021 and ending on February 28, 2021 ("Lease Term"). At the end of the Lease Term the Tenant shall vacate the Premises.

III. OCCUPANT(S). The Premises is to be occupied strictly as a residential dwelling with only those individuals related to, or affiliated with, the Tenant.

IV. THE PROPERTY. The Landlord agrees to lease the described property below to the Tenant:

1 Grand Anacapi, Henderson, Nevada 89011

The aforementioned property shall be leased wholly by the Tenant ("Premises").

V. PURPOSE. The Tenant may only use the Premises as a residential dwelling.

VI. FURNISHINGS. The Premises is fully furnished. Tenant hereby acknowledges and agrees that such furnishings are in an acceptable condition and takes such furnishings "as-is".

VII. APPLIANCES. The Premises contains appliances. Tenant hereby acknowledges and agrees that such appliances are in an acceptable condition and takes such appliances "as-is".

VIII. RENT. The Tenant shall pay the Landlord the amount of \$7,000 ("Rent") for the Lease Term on or before January 31, 2021 ("Due Date").

IX. LATE FEE. If Rent is not paid on or before the Due Date, there shall be a penalty of \$75 for every Day Rent is Late. Rent is considered late for when it has not been paid by the Due Date.

X. POSSESSION. The Parties acknowledge that Tenant is currently in possession of the Premises, and therefore, Tenant has examined the condition of the Premises and acknowledges that Tenant has accepted the Premises in good order, "as-is", and in its current condition.

XI. SECURITY DEPOSIT. Landlord does not require a payment of a "Security Deposit" in connection with this Agreement.

XII. UTILITIES. Any and all utilities and/or services are the responsibility of the Tenant.

XIII. PETS AND CHILDREN. The Tenant shall have the right to have pets on the Premises. The tenant shall have the right to have children on the Premises.

XIV. NOTICES. Any notice to be sent by the Landlord or the Tenant to each other shall use the following addresses:

Landlord:

Tenant:

XV. ACCESS. If not already delivered, Landlord agrees to give access to the Tenant in the form of keys, fobs, cards, or any type of keyless security entry as needed to enter the Premises. Duplicate copies of the access provided may only be authorized under the consent of the Landlord and, if any replacements are needed, the Landlord may provide them for a fee. At the end of this Agreement all access provided to the Tenant shall be returned to the Landlord.

XVI. SUBLETTING. The Tenant shall not be able to sublet the Premises without the written consent from the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one subtenant shall not be deemed to be consent to any subsequent subtenant.

XVIII. ABANDONMENT. If the Tenant vacates or abandons the Premises for a time-period that is the minimum set by Nevada law or five (5) days, whichever is less, the Landlord shall have the right to terminate this Agreement immediately and remove all belongings including any personal property off of the Premises. If the Tenant vacates or abandons the Premises, the Landlord shall immediately have the right to terminate this Agreement.

XIX. ASSIGNMENT. Tenant shall not assign this Lease without the prior written consent of the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one assignment shall not be deemed to be consent to any subsequent assignment.

XX. RIGHT OF ENTRY. The Landlord shall have the right to enter the Premises during normal working hours by providing at least twenty-four (24) hours notice in order for inspection, make necessary repairs, alterations or improvements, to supply services as agreed or for any reasonable purpose. The Landlord may exhibit the Premises to prospective purchasers, mortgagees, or lessees upon reasonable notice.

XXI. MAINTENANCE, REPAIRS, OR ALTERATIONS. The Tenant shall, at its own expense and at all times, maintain premises in a clean and sanitary manner, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. The Tenant may not make any alterations to the leased premises without the consent in writing of the Landlord. The Landlord shall be responsible for repairs to the interior and exterior of the building.

XXII. NOISE/WASTE. The Tenant agrees not to commit waste on the premises, maintain, or permit to be maintained, a nuisance thereon, or use, or permit the premises to be used, in an unlawful manner. The Tenant further agrees to abide by any and all local, county, and state noise ordinances.

XXIII. OCCUPANTS AND GUESTS. Occupants of the Premises shall be limited to 6 persons and shall be used solely for housing accommodations and for no other purpose. Guests of the Tenant are allowed for periods not lasting for more than 48 hours unless otherwise approved by the Landlord in writing.

XXIV. COMPLIANCE WITH LAW. The Tenant agrees that during the term of the Agreement, to promptly comply with any present and future laws, ordinances, orders, rules, regulations, and requirements of the Federal, State, County, City, and Municipal government or any of its departments, bureaus, boards, commissions and officials thereof with respect to the premises, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against the Tenant, the Landlord, or both.

XXV. DEFAULT. If the Tenant fails to comply with any of the financial or material provisions of this Agreement, or materially fails to comply with any duties imposed on the Tenant by statute or state laws, within the time period after delivery of written notice by the Landlord specifying the non-compliance and indicating the intention of the Landlord to terminate the Agreement by reason thereof, the Landlord may terminate this Agreement. If the Tenant fails to pay rent when due, the Landlord may, at its option, declare rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to the Landlord at law or in equity and may immediately terminate this Agreement.

The Tenant will be in default if: (a) Tenant does not pay rent or other amounts that are owed; (b) Tenant, its guests, violate this Agreement, rules, or fire, safety, health, or criminal laws, regardless of whether arrest or conviction occurs; (c) Tenant abandons the Premises; (d) Tenant, or any person related to or affiliated of Tenant, is arrested, convicted, or given deferred adjudication for a criminal offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, or drug paraphernalia under state statute; (e) any illegal drugs or paraphernalia are found in the Premises or on the person of the Tenant or guests while on the Premises and/or; (f) as otherwise allowed by law.

XXVI. DISPUTES. If a dispute arises during or after the term of this Agreement between the Landlord and Tenant, they shall agree to hold negotiations amongst themselves, in "good faith", before any litigation.

XXVII. SEVERABILITY. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

XXVIII. SURRENDER OF PREMISES. Upon the expiration of the Lease Term hereof, the Tenant shall surrender the Premise in better or equal condition as it were at the commencement of this Agreement, reasonable use, wear and tear thereof, and damages by the elements excepted.

XXIX. WAIVER. A Waiver by the Landlord for a breach of any covenant or duty by the Tenant, under this Agreement is not a waiver for a breach of any other covenant or duty by the Tenant, or of any subsequent breach of the same covenant or duty. No provision of this Agreement shall be considered waived unless such a waiver shall be expressed in writing as a formal amendment to this Agreement and executed by the Tenant and Landlord.

XXX. EQUAL HOUSING. If the Tenant possesses any mental or physical impairment, the Landlord shall provide reasonable modifications to the Premises unless the modifications would be too difficult or expensive for the Landlord to provide. Any impairment(s) of the Tenant are encouraged to be provided and presented to the Landlord in writing in order to seek the most appropriate route for providing the modifications to the Premises.

XXXI. HAZARDOUS MATERIALS. The Tenant agrees to not possess any type of personal property that could be considered a fire hazard such as a substance having flammable or explosive characteristics on the Premises. Items that are prohibited to be brought into the Premises, other than for everyday cooking or the need of an appliance, includes but is not limited to gas (compressed), gasoline, fuel, propane, kerosene, motor oil, fireworks, or any other related content in the form of a liquid, solid, or gas.

XXXII. INDEMNIFICATION. The Landlord shall not be liable for any damage or injury to the Tenant, or any other person, or to any property, occurring on the Premises, or any part thereof, or in common areas thereof, and the Tenant agrees to hold the Landlord harmless from any claims or damages unless caused solely by the Landlord's negligence. It is recommended that renter's insurance be purchased at the Tenant's expense.

XXXIII. COVENANTS. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this Agreement.

XXXIV. RIGHT TO RAISE FLAG. The Landlord allows the Tenant the right to raise the American flag in accordance with NRS 118A.325.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 118A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada.

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease Term.

Landlord's Signature _____ Date: _____

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust


Tenant's Signature Lail Leonard Date: 1-28-2021

Name: Lail Leonard, President of AAL-JA, Inc.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 113A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada.

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease term.

Landlord's Signature  Date: 1/29/2021

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust

Tenant's Signature  Date: 1-28-2021

Name: Lail Leonard, President of AAL-IA, Inc.

EXHIBIT B

RESIDENTIAL LEASE AGREEMENT

I. THE PARTIES: This Residential Lease Agreement ("Agreement") made this 2nd day of March, 2021, is by and between:

Landlord: Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, Jr. 2001 Trust ("Landlord"), and

Tenant: AAL-JAY, Inc., a Nevada corporation ("Tenant"). Landlord and Tenant are each referred to herein as a "Party" and, collectively, as the "Parties".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, the Tenant agrees to lease the Premises from the Landlord under the following terms and conditions:

II. LEASE TYPE: This Agreement shall be considered a Fixed Lease, and supersedes and terminates all previous agreements, whether written or not written, between the Parties. The Tenant shall be allowed to occupy the Premises, in accordance to this Agreement only, starting on March 1, 2021 and ending on April 30, 2021 ("Lease Term"). At the end of the Lease Term the Tenant shall vacate the Premises.

III. OCCUPANT(S). The Premises is to be occupied strictly as a residential dwelling with only those individuals related to, or affiliated with, the Tenant.

IV. THE PROPERTY. The Landlord agrees to lease the described property below to the Tenant:

1 Grand Anacapi, Henderson, Nevada 89011

The aforementioned property shall be leased wholly by the Tenant ("Premises").

V. PURPOSE. The Tenant may only use the Premises as a residential dwelling.

VI. FURNISHINGS. The Premises is fully furnished. Tenant hereby acknowledges and agrees that such furnishings are in an acceptable condition and takes such furnishings "as-is".

VII. APPLIANCES. The Premises contains appliances. Tenant hereby acknowledges and agrees that such appliances are in an acceptable condition and takes such appliances "as-is".

VIII. RENT. The Tenant shall pay the Landlord the amount of \$6,800 ("Rent") per each month of the Lease Term. Payment of the entire amount of Rent in the amount of \$13,600 shall be due and payable on or before March 4, 2021 ("Due Date").

IX. LATE FEE. If Rent is not paid on or before the Due Date, there shall be a penalty of \$75 for every Day Rent is Late. Rent is considered late for when it has not been paid by the Due Date.

X. POSSESSION. The Parties acknowledge that Tenant is currently in possession of the Premises, and therefore, Tenant has examined the condition of the Premises and acknowledges that Tenant has accepted the Premises in good order, "as-is", and in its current condition.

XI. SECURITY DEPOSIT. Landlord does not require a payment of a "Security Deposit" in connection with this Agreement.

XII. UTILITIES. Any and all utilities and/or services are the responsibility of the Tenant.

XIII. PETS AND CHILDREN. The Tenant shall have the right to have pets on the Premises. The tenant shall have the right to have children on the Premises.

XIV. NOTICES. Any notice to be sent by the Landlord or the Tenant to each other shall use the following addresses:

Landlord:

2451 Sierra, Henderson NV 89011

Tenant:

1873 Golden Horizon Dr. Las Vegas, NV 89123

XV. ACCESS. If not already delivered, Landlord agrees to give access to the Tenant in the form of keys, fobs, cards, or any type of keyless security entry as needed to enter the Premises. Duplicate copies of the access provided may only be authorized under the consent of the Landlord and, if any replacements are needed, the Landlord may provide them for a fee. At the end of this Agreement all access provided to the Tenant shall be returned to the Landlord.

XVI. SUBLETTING. The Tenant shall not be able to sublet the Premises without the written consent from the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one subtenant shall not be deemed to be consent to any subsequent subtenant.

XVIII. ABANDONMENT. If the Tenant vacates or abandons the Premises for a time-period that is the minimum set by Nevada law or five (5) days, whichever is less, the Landlord shall have the right to terminate this Agreement immediately and remove all belongings including any personal property off of the Premises. If the Tenant vacates or abandons the Premises, the Landlord shall immediately have the right to terminate this Agreement.

XIX. ASSIGNMENT. Tenant shall not assign this Lease without the prior written consent of the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one assignment shall not be deemed to be consent to any subsequent assignment.

XX. RIGHT OF ENTRY. The Landlord shall have the right to enter the Premises during normal working hours by providing at least twenty-four (24) hours notice in order for inspection, make necessary repairs, alterations or improvements, to supply services as agreed or for any reasonable purpose. The Landlord may exhibit the Premises to prospective purchasers, mortgagees, or lessees upon reasonable notice.

XXI. MAINTENANCE, REPAIRS, OR ALTERATIONS. The Tenant shall, at its own expense and at all times, maintain premises in a clean and sanitary manner, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. The Tenant may not make any alterations to the leased premises without the consent in writing of the Landlord. The Landlord shall be responsible for repairs to the interior and exterior of the building.

XXII. NOISE/WASTE. The Tenant agrees not to commit waste on the premises, maintain, or permit to be maintained, a nuisance thereon, or use, or permit the premises to be used, in an unlawful manner. The Tenant further agrees to abide by any and all local, county, and state noise ordinances.

XXIII. OCCUPANTS AND GUESTS. Occupants of the Premises shall be limited to 6 persons and shall be used solely for housing accommodations and for no other purpose. Guests of the Tenant are allowed for periods not lasting for more than 48 hours unless otherwise approved by the Landlord in writing.

XXIV. COMPLIANCE WITH LAW. The Tenant agrees that during the term of the Agreement, to promptly comply with any present and future laws, ordinances, orders, rules, regulations, and requirements of the Federal, State, County, City, and Municipal government or any of its departments, bureaus, boards, commissions and officials thereof with respect to the premises, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against the Tenant, the Landlord, or both.

XXV. DEFAULT. If the Tenant fails to comply with any of the financial or material provisions of this Agreement, or materially fails to comply with any duties imposed on the Tenant by statute or state laws, within the time period after delivery of written notice by the Landlord specifying the non-compliance and indicating the intention of the Landlord to terminate the Agreement by reason thereof, the Landlord may terminate this Agreement. If the Tenant fails to pay rent when due, the Landlord may, at its option, declare rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to the Landlord at law or in equity and may immediately terminate this Agreement.

The Tenant will be in default if: (a) Tenant does not pay rent or other amounts that are owed; (b) Tenant, its guests, violate this Agreement, rules, or fire, safety, health, or criminal laws, regardless of whether arrest or conviction occurs; (c) Tenant abandons the Premises; (d) Tenant, or any person related to or affiliated of Tenant, is arrested, convicted, or given deferred adjudication for a criminal offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, or drug paraphernalia under state statute; (e) any illegal drugs or paraphernalia are found in the Premises or on the person of the Tenant or guests while on the Premises and/or; (f) as otherwise allowed by law.

XXVI. DISPUTES. If a dispute arises during or after the term of this Agreement between the Landlord and Tenant, they shall agree to hold negotiations amongst themselves, in "good faith", before any litigation.

XXVII. SEVERABILITY. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

XXVIII. SURRENDER OF PREMISES. Upon the expiration of the Lease Term hereof, the Tenant shall surrender the Premise in better or equal condition as it were at the commencement of this Agreement, reasonable use, wear and tear thereof, and damages by the elements excepted.

XXIX. WAIVER. A Waiver by the Landlord for a breach of any covenant or duty by the Tenant, under this Agreement is not a waiver for a breach of any other covenant or duty by the Tenant, or of any subsequent breach of the same covenant or duty. No provision of this Agreement shall be considered waived unless such a waiver shall be expressed in writing as a formal amendment to this Agreement and executed by the Tenant and Landlord.

XXX. EQUAL HOUSING. If the Tenant possesses any mental or physical impairment, the Landlord shall provide reasonable modifications to the Premises unless the modifications would be too difficult or expensive for the Landlord to provide. Any impairment(s) of the Tenant are encouraged to be provided and presented to the Landlord in writing in order to seek the most appropriate route for providing the modifications to the Premises.

XXXI. HAZARDOUS MATERIALS. The Tenant agrees to not possess any type of personal property that could be considered a fire hazard such as a substance having flammable or explosive characteristics on the Premises. Items that are prohibited to be brought into the Premises, other than for everyday cooking or the need of an appliance, includes but is not limited to gas (compressed), gasoline, fuel, propane, kerosene, motor oil, fireworks, or any other related content in the form of a liquid, solid, or gas.

XXXII. INDEMNIFICATION. The Landlord shall not be liable for any damage or injury to the Tenant, or any other person, or to any property, occurring on the Premises, or any part thereof, or in common areas thereof, and the Tenant agrees to hold the Landlord harmless from any claims or damages unless caused solely by the Landlord's negligence. It is recommended that renter's insurance be purchased at the Tenant's expense.

XXXIII. COVENANTS. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this Agreement.

XXXIV. RIGHT TO RAISE FLAG. The Landlord allows the Tenant the right to raise the American flag in accordance with NRS 118A.325.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 112A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada.

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements, and as such all previous discussions, understandings, and oral agreements are void and of no further force or effect. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease Term.

Landlord's Signature

Philip J. Fagan, Jr. Date: 3/17/21

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust

Tenant's Signature

Lail Leonard Date: 3-15-2021

Name: Lail Leonard, President of AAL-JA, Inc.

EXHIBIT C

Inst #: 20210702-0001460
Fees: \$42.00
07/02/2021 12:30:21 PM
Receipt #: 4600186
Requestor:
Dobberstein Law Group
Recorded By: BGN Pgs: 2
Debbie Conway
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

AFTER RECORDING, MAIL TO:

Dobberstein Law Group
9480 S. Eastern Ave. Suite 225
Las Vegas, NV 89123

Assessor's Parcel Number: 160-22-810-011

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of the property:

1. The amount of the original contract is: \$3,616.00
2. The total amount of all changes and additions, if any, is: \$0
3. The total amount of all payments received to date is: \$0
4. The amount of the lien, after deducting all just credits and offsets, is: \$3,616.00
5. The name of the owner, if known, of the property is: Philip J. Fagan Jr. 2011 Trust
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: Christiano DeCarlo
7. A brief statement of the terms of payment of the lien claimant's contract is: all payments are due upon receipt or the approved payment schedule noted on the included estimate and subsequent completion of services rendered.

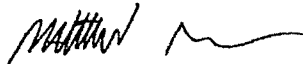
...
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8. A description of the property to be charged with the lien is: 1 Grand Anacapi Dr., Henderson, NV 89011 bearing APN: 160-22-810-011

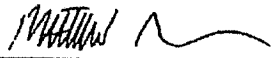
Dated this 7th day of June 2021.

Side Job Services Inc.


By: 
Matthew Resar
Title: President

State of NEVADA)
) ss.
County of CLARK)

Matthew Resar being first duly sworn on oath according to law, deposes and says: I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

By: 
Matthew Resar

Subscribed and sworn to before me this
7th day of the month of June of the year 2021.


Notary Public in and for the County and State

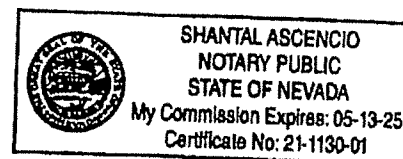
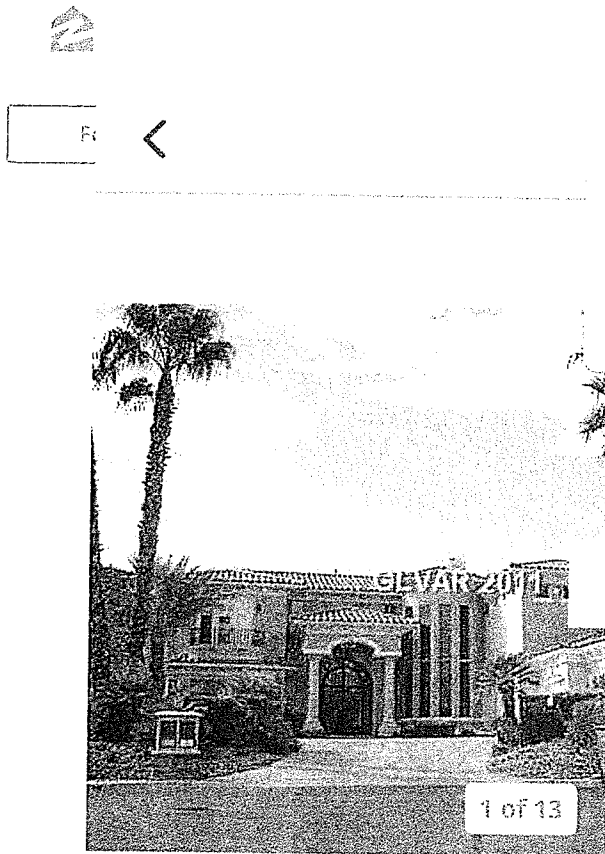




EXHIBIT D



 Sign in to Zillow with Google




 Allison Schmidt
oproperties82@gmail.com

 Allison Schmidt
allison@nevadaslawyers.com

Off market Zestimate®:

\$1,814,800 Rent Zestimate®:
\$8,433

Est. refi payment: \$9,188/mo

 Refinance your loan

Home value Owner tools Home



Do you own this home?

Get exclusive tools to track
your home's value and
update its details on Zillow.

[Learn more](#)

Unlock owner
dashboard

Home value



Zestimate

\$1,814,800

EXHIBIT E

EXHIBIT E

1
2
3 DECLARATION OF PHILLIP J. FAGAN, JR.

4 I, Phillip J. Fagan, Jr., hereby declare as follows:

5 1. That I am over the age of eighteen and currently reside in the State of Nevada.

6 2. That I am the trustee of the Phillip J. Fagan, Jr. 2001 Trust, a Nevada revocable
7 trust.

8 3. That on May 9, 2006, I purchased the real property at 1 Grand Anacapi,
9 Henderson, Nevada (the "Property") for the sum of One Million Nine Hundred Thousand Dollars
10 (\$1,900,000).

11 4. I am the current owner of the Property, through my trust.

12 5. That in November 2016, my attorney, Richard Scott, prepared a purchase
13 agreement for the purchase and sale of the Property (the "2016 Agreement"), by and between me,
14 as the seller, and AAL-JAY, Inc., a Nevada corporation, as the buyer (hereinafter, "Plaintiff").

15 6. That on or around December 8, 2016, I executed the 2016 Agreement to sell the
16 Property to Plaintiff.

17 6. That the 2016 Agreement was an installment contract and required Plaintiff to make
18 monthly payments against the purchase price, wherein a portion of the monthly payments would
19 be interest and the remaining portion as a credit to the principal balance of the purchase, with a
20 balloon payment (the remaining principal balance) due on or before October 31, 2019.

21 7. That the Plaintiff breached the 2016 Agreement numerous times in failing to make
22 the monthly payments.

23 8. That the Plaintiff breached the 2016 Agreement by failing to pay the remaining
24 principal balance on or before October 31, 2019.

25 9. That the 2016 Agreement, due to Plaintiff's breaches, is terminated and of no
26
27
28

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10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8301 FAX: (702) 869-2669

1 further force or effect.

2 10. That Richard Scott has not acted or been authorized to act as my legal counsel since
3 2019.

4 11. That Richard Scott has been in a nursing home facility since 2019 due to a
5 neurological condition affecting his memory.

6 12. That since 2019, I have retained and used different legal counsel for my legal
7 affairs.

8 13. That in December 2020, I received correspondence from First American Title
9 Company regarding Plaintiff's renewed desire to purchase the Property.

10 14. That I did not instruct nor authorize First American Title to open an escrow, nor
11 prepare any documentation with respect to the purchase and sale of the Property.

12 15. That I did not execute or agree to any instructions or documentation from First
13 American Title Company to sell the Property.

14 16. That I was made aware that certain representatives of Plaintiff have declared to this
15 Court that Plaintiff spoke with my former attorney, Richard Scott, in November 2020, about the
16 purchase and sale of the Property and that Plaintiff opened and established a purchase escrow with
17 First American Title Company as a result of these alleged conversations with Richard Scott.

18 17. That it is my belief that no conversation regarding the purchase and sale of the
19 Property occurred between Richard Scott and Plaintiff in November 2020.

20 18. That, in the highly unlikely event that Plaintiff actually spoke with Richard Scott
21 in November 2020, such conversation, and any terms or conditions discussed with respect to the
22 Property, was done so without my authorization.

23 19. That in December 2020, following notification from First American Title Company
24 that Plaintiff had opened an escrow account for the purpose of purchasing the Property, I began to
25

BLACK & WADHAM
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8301 FAX: (702) 869-2669

EXHIBIT 4

DISTRICT COURT
CLARK COUNTY, NEVADA

AAL-JAY, INC., a Nevada Corporation.

Plaintiff,

v.

PHILIP J. FAGAN, JR., an individual, and
as Trustee of the PHILIP J. FAGAN, JR.
2001 TRUST; DOES I through X, inclusive,
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

CASE NO: A-21-832379-C

DEPT NO: XXIV

**ORDER GRANTING PLAINTIFF'S (1) EMERGENCY MOTION FOR FIRST
AMERICAN TITLE INSURANCE COMPANY TO TURNOVER FUNDS IN
ESCROW TO THE BUYER AAL-JAY, INC.; (2) CONTINUING HEARING ON
MOTION FOR ORDER TO SHOW CAUSE WHY THIS COURT SHOULD NOT
HOLD PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001
TRUST IN CONTEMPT FOR VIOLATING THIS COURT'S SALE
ORDER; AND (3) DENYING DEFENDANTS' MOTION FOR INJUNCTIVE
RELIEF AND REQUEST FOR RELIEF FROM SPECIFIC PERFORMANCE
ORDER**

DATE OF HEARING: April 5, 2022

TIME OF HEARING: 9:00am

An Emergency Motion for First American Title Insurance Company to Turnover Funds in Escrow to the Buyer AAL-Jay, Inc. ("Motion for Turnover") and Motion for Order to Show Cause Why This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the Philip J. Fagan, Jr. 2001 Trust in Contempt for Violating This Court's Sale Order, On Order Shortened Time ("Motion for Order to Show Cause"), having been duly made by Plaintiff AAL-JAY, INC. ("Plaintiff", "AAL-JAY" or "Buyer"), by and through its counsel, Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP against Phillip J. Fagan, Jr. and Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST ("Defendants" or "Seller"), by and through its counsel, Allison R. Schmidt, Esq. of the law firm of Black & Wadhams, being

1 scheduled for hearing on shortened time on April 5, 2022, at 9:00 a.m. before
2 Department XXIV of the Eighth Judicial District Court, in and for Clark County,
3 Nevada, with Judge Erika Ballou presiding, and good cause appearing therefore,

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Turnover is
5 **GRANTED** in its entirety.

6 **IT IS FURTHER ORDERED** that First American Title Insurance
7 Company ("First American") is directed to turn over funds currently held in escrow
8 in the amount of \$170,000, that was deposited in connection with the purchase of
9 real property parcel located at the address 1 Grand Anacapi, Henderson, Nevada
10 89011, Assessor Parcel Number 160-22-810-011, to the accounts of the depositors
11 as directed by, Lail Leonard.

12 **IT IS FURTHER ORDERED** that First American is hereby discharged
13 from further liability with respect to the funds turned over to the Buyer in
14 compliance with this Court's Order Granting Buyer's Emergency Motion for
15 Specific Performance of Purchase Agreement, on an Order Shortening Time,
16 entered by this Court on August 26, 2021.

17 **IT IS FURTHER ORDERED** that in response to Defendants' request for
18 clarification of the Specific Performance Order, that Phillip J. Fagan, Jr. and Trustee
19 of the PHILIP J. FAGAN, JR. 2001 TRUST is compelled to comply with this
20 Court's Specific Performance Order, and is compelled to satisfy all lien payoffs for
21 liens existing at the time the Purchase Agreement was executed by Plaintiff as the
22 Buyer, and execute and shall execute all documents presented by Plaintiff or a title
23 company, to the extent applicable, in furtherance of closing the sale of the Property
24 to Plaintiff as the Buyer no later than thirty (30) days from the issuance of this order,
25 which compliance from Defendants is ordered by this Court no later than June 6,
26 2022, which documents include, but are not limited to, the following to effectuate
27 the transfer of title of the Property to Buyer in compliance with this Court's Specific
28 Performance Order:

1 **IT IS FURTHER ORDERED** that Defendants' Motion for Injunctive
2 Relief is hereby **DENIED** as there is no likelihood of success on the merits, and
3 Defendants' mortgage payments and any other payments made in connection with
4 the Property are a result of Defendants' refusal to comply with this Court's Specific
5 Performance Order.

6 **IT IS FURTHER ORDERED** that Defendants' request for relief from this
7 Court's Specific Performance Order pursuant to NRCP 60 is **DENIED** in its
8 entirety.

9 **IT IS SO ORDERED.**

10
11 DATED this _____ day of May, 2022.

12
13 Dated this 6th day of May, 2022

14 

15 _____
DISTRICT JUDGE

16 77A 966 91DE D837

17 Erika Ballou

18 District Court Judge
19
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/6/2022

15 Ogonna Brown	obrown@lewisroca.com
16 Diane Meeter	dmeeter@blackwadhams.law
17 Chris Yergensen	cyergensen@blackwadhams.law
18 Jerri Hunsaker	jhunsaker@blackwadhams.law
19 Jennifer Hess	jhess@lewisroca.com
20 Nicole Lord	nlord@lewisroca.com
21 Dibora Berhanu	dberhanu@lewisroca.com
22 Kim Lopez	klopez@lewisroca.com
23 OMB Calendar	ombcalendar@lewisroca.com
24 Allison Schmidt	aschmidt@blackwadhams.law
25 Allison Schmidt	aschmidt@blackwadhams.law
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Allison Schmidt

aschmidt@blackwadhams.law

EXHIBIT 5

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

PHILIP J. FAGAN, JR., an individual,
and as Trustee of the PHILIP J.
FAGAN, JR. 2001 TRUST,
,

Appellants,

v.

AAL-JAY, INC., a Nevada corporation;
CHRISTIANO DE CARLO, an
individual; and LAIL LEONARD, an
individual,

Respondents.

Appeal No. 84699
Dist. Ct. Case No. A-21-832379-C

**DECLARATION OF DR. PHILIP J.
FAGAN, JR. IN SUPPORT OF
EMERGENCY MOTION TO
REQUIRE BOND**

DR. PHILIP J. FAGAN, JR. declares and states as follows:

1. I am the appellant, as well as a trustee of the appellant trust, in the above-captioned action.
2. I make this declaration upon my own personal knowledge, except as to any facts stated upon information and belief, and as to those facts, I believe them to be true.
3. I am over the age of 18 and competent to give testimony in this matter, and would testify as stated herein if called to do so.
4. The Philip J. Fagan, Jr. 2001 Trust is the owner of the property located at 1 Grand Anacabri Dr. in Henderson, NV 89011.

- 1 5. Each month I am required to make the mortgage payment on the house
2 which is presently \$10,432.09 per month.
3
- 4 6. In addition to the mortgage payment, I am responsible for the Master and
5 Sub association monthly assessments, which total \$367.40 per month.
6
- 7 7. When I initially rented the property to AAL-JAY, Inc. I was unaware that
8 AAL-JAY, Inc. intended to allow a violent felon (Respondent Christiano
9 Decarlo) with numerous felony convictions and prison sentences to
10 reside in my home.
11
- 12 8. The respondents in this matter have lived in the home, without payment
13 of any rent, for approximately 18 months.
14
- 15 9. Though I attempted to evict the Respondents, the Justice Court deferred
16 the decision to the District Court in the case below (A-21-832379-C),
17 which would not allow the eviction to go forward and refused to require
18 any payment from Respondents, which is, in part, the basis for this
19 appeal.
20
- 21 10. I have had to continue making the mortgage payments out of pocket for
22 the duration of this litigation and appeal.
23
- 24 11. Additionally, Decarlo, without my consent, authorized work to be done
25 on the home and failed to pay for the work, resulting in a mechanic's lien
26 being recorded against the property, in the amount of approximately
27 \$3,600.
28

1 12. I have not been able to access my home, recover possession of my home,
2 exclude Respondents from my home, or insure, in any way, that the home
3 is not being damaged or neglected.
4

5 13. I recently learned that my family will immediately be incurring medical
6 costs totaling approximately \$40,000 per month, or \$480,000 per year.
7

8 14. Because these medical costs are a necessity, I will no longer be able to
9 afford the monthly payment on the subject property.
10

11 15. I am a physician, practicing in Nevada for over 50 years. As a business
12 owner, my credit score is imperative to my ability to earn a livelihood.
13

14 16. If the respondents are permitted to remain in my home without payment
15 of any sort for the duration of the litigation and appeals – an estimated 1-
16 3 more years – I will not be able to maintain the mortgage and will fall
17 into default and foreclosure.
18

19 17. Having a default or foreclosure on my credit will irreparably damage my
20 business, and impair my ability to provide for my family.
21

22 I DECLARE, UNDER PENALTY OF PERJURY, THE FOREGOING IS
23 TRUE AND CORRECT.

24 DATED this 18 day of July, 2022
25

26 s/ Philip J. Fagan

27 Dr. Philip J. Fagan
28

EXHIBIT 6

Inst #: 20210702-0001460
Fees: \$42.00
07/02/2021 12:30:21 PM
Receipt #: 4600186
Requestor:
Dobberstein Law Group
Recorded By: BGN Pgs: 2
Debbie Conway
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

AFTER RECORDING, MAIL TO:

Dobberstein Law Group
9480 S. Eastern Ave. Suite 225
Las Vegas, NV 89123

Assessor's Parcel Number: 160-22-810-011

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of the property:

1. The amount of the original contract is: \$3,616.00
2. The total amount of all changes and additions, if any, is: \$0
3. The total amount of all payments received to date is: \$0
4. The amount of the lien, after deducting all just credits and offsets, is: \$3,616.00
5. The name of the owner, if known, of the property is: Philip J. Fagan Jr. 2011 Trust
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: Christiano DeCarlo
7. A brief statement of the terms of payment of the lien claimant's contract is: all payments are due upon receipt or the approved payment schedule noted on the included estimate and subsequent completion of services rendered.

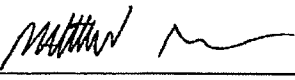
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8. A description of the property to be charged with the lien is: 1 Grand Anacapri Dr., Henderson, NV 89011 bearing APN: 160-22-810-011

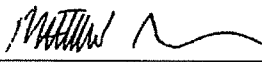
Dated this 7th day of June 2021.

Side Job Services Inc.


By: 
Matthew Resar
Title: President

State of NEVADA)
) ss.
County of CLARK)

Matthew Resar being first duly sworn on oath according to law, deposes and says: I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

By: 
Matthew Resar

Subscribed and sworn to before me this
7th day of the month of June of the year 2021.


Notary Public in and for the County and State

