

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

\* \* \* \*

LARISA MEREORA, an individual;  
THOMAS MULKINS, an individual;  
NINA GROZAV, an individual, ION  
NEAGU, an individual; ALISA  
NEAUGU, an individual; MARIA  
REYNOLDS, an individual, NNG LLC,  
a Nevada Limited Liability Company dba  
UNIVERSAL MOTORCARS;  
UNIVERSAL MOTORCAR LLC, a  
Nevada limited liability company dba  
UNIVERSAL MOTORCARS; DOES I  
through X and ROE BUSINESS  
ENTITIES through X, inclusive,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, CLARK  
COUNTY, AND THE HONORABLE  
NADIA KRALL,

Respondents,

And

SLC LLC, a Nevada limited liability  
company,  
Named Plaintiff in Lower Court Action,

CASE NO.: Electronically Filed  
Jul 05 2022 02:53 p.m.  
District Court Case No. A-21-835625-0  
Elizabeth A. Brown  
Clerk of Supreme Court

***Petition for Writ of Mandamus or Prohibition***

From the Eighth Judicial District Court, Family Division, Clark County  
Honorable Nadia Krall, District Court Judge

**APPENDIX**

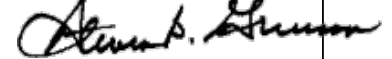
**VOL. 6**

**Bradley Hofland, Esq. (Bar #6343)**  
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**ATTORNEYS FOR PETITIONERS**

**CHRONOLOGICAL INDEX OF APPENDIX**

<b>Description</b>	<b>Date Filed</b>	<b>Vol.</b>	<b>Page No.</b>	<b>Bate No.</b>
Appendix of Exhibits in Support of Defendants' Reply to "Plaintiff/Counter-Defendant SLC LLC's Memorandum of Points and Authorities in Opposition to Defendants / Counter-Claimants Motion for Summary Judgment; and Request for Attorneys' Fees for Defending Improper Rule Request for Sanctions" (Part 1 – pages 1 to 250 of the document)	4/21/22	6	003-252	ROA001188- ROA001437



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*Attorneys for Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SLC LLC, a Nevada limited liability company,	)	CASE NO.: A-21-835625-C
	)	DEPT NO.: 4
	)	<b>ORAL ARGUMENT REQUESTED</b>
Plaintiff,	)	
	)	
vs.	)	<b>APPENDIX OF EXHIBITS IN</b>
	)	<b>SUPPORT OF DEFENDANTS'</b>
	)	<b>REPLY TO</b>
LARISA MEREORA, an individual;	)	<b>"PLAINTIFF/COUNTER-</b>
THOMAS MULKINS, an individual;	)	<b>DEFENDANT SLC LLC'S</b>
NINA GROZAV, an individual, ION	)	<b>MEMORANDUM OF POINTS</b>
NEAGU, an individual; MARIA	)	<b>AND AUTHORITIES IN</b>
REYNOLDS, an individual, NNG LLC,	)	<b>OPPOSITION TO DEFENDANTS /</b>
a Nevada Limited Liability Company dba	)	<b>COUNTER-CLAIMANTS</b>
UNIVERSAL MOTORCARS;	)	<b>MOTION FOR SUMMARY</b>
UNIVERSAL MOTORCAR LLC, a	)	<b>JUDGMENT; AND REQUEST</b>
Nevada limited liability company dba	)	<b>FOR ATTORNEYS' FEES FOR</b>
UNIVERSAL MOTORCARS; DOES I	)	<b>DEFENDING IMPROPER RULE</b>
through X and ROE BUSINESS	)	<b>REQUEST FOR SANCTIONS"</b>
ENTITIES through X, inclusive,	)	
	)	
Defendants.	)	

COMES NOW, the above-named Defendants, by and through their attorney,  
Bradley J. Hofland, Esq., with HOFLAND & TOMSHECK, and hereby submits

Appendix Of Exhibits In Support Of Defendants' Reply To "Plaintiff/Counter-Defendant SLC LLC's Memorandum Of Points And Authorities In Opposition To Defendants / Counter-Claimants Motion For Summary Judgment; And Request For Attorneys' Fees For Defending Improper Rule Request For Sanctions"

Exhibit	Description	Bate Stamp No.
A	Executed Stipulation for Settlement regarding Case No.'s D-18-575686-L, A-19-805955-C, and A-19-801513-P dated April 26, 2021	DEF000001-DEF000004
B	Response to Request for Admission Number 39 of Defendant SLC, LLC's Responses to Plaintiff's First Request for Admissions served on July 28, 2020	DEF000178
C	Defendant's Motion for Summary Judgment filed on March 13, 2022	DEF000219-DEF000260
D	Response to Interrogatory Number 30 of Defendant SLC LLC's Response to Plaintiff's First Set of Interrogatories served on July 30, 2020	DEF000185
E	SilverFlume Nevada Business Entity information for Samir LLC	DEF000261-DEF000265
F	SilverFlume Nevada Business Entity information for SLC LLC	DEF000266-DEF000273
G	Order Granting Defendant's Motion for Leave to Amend the Answer and Counterclaim filed in Case No. A-19-805955-C on October 10, 2020	DEF000274-DEF000280
H	Complaint for Damages and Demand for Jury Trial; Defendant Hamid Sheikhai's Answer, Counterclaim, and Cross Claims, and Demand for Jury Trial filed in Case No. A-19-805955-C on October 22, 2020	DEF000193-DEF000216
I	Plaintiff's Motion to Dismiss Defendant's Counterclaim and Cross Claims filed in Case No. A-19-805955-C on November 24, 2022	DEF000281-DEF000339
J	Defendant's Motion for Summary Judgment or in the Alternative, Partial Summary Judgment, Leave Amend, and for Stay filed in Case No. A-19-805955-C on December 4, 2020	DEF000340-DEF000485
K	Court Mins from January 7, 2021	DEF000486-DEF000487

L	Page(s) 88 and 135 of the Transcript from the January 7, 2021 Hearing in Case No. A-19-805955-C	DEF000492-DEF000493
M	Page(s) 27, 29, and 52 of the Transcript from the January 7, 2021 Hearing in Case No. A-19-805955-C	DEF000488-DEF000491
N	Page 42 of the Transcript from the January 7, 2021 Hearing in Case No. A-19-805955-C	DEF000494
O	Page 79 of the Transcript from the January 7, 2021 Hearing in Case No. A-19-805955-C	DEF000495
P	Page 87 and 5 of the Transcript from the January 7, 2021 Hearing in Case No. A-19-805955-C	DEF000496-DEF000497
Q	Stipulation and Order for Dismissal of Action filed in Case No. A-19-805955-C on May 21, 2021	DEF000005-DEF000016

Dated this 21<sup>st</sup> day of April, 2022.

HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland

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# EXHIBIT “A”

## STIPULATION FOR SETTLEMENT

Victor Botnari, an individual; Vitiok, LLC, a Nevada limited liability company (hereinafter, the "Botnari Parties")

Eighth Judicial District Court  
Case Nos.:

D-18-575686-L;  
A-19-0805955-C; and  
A-19-801513-P  
(collectively, the "Pending Lawsuits")

---

v.

Hamid Sheikhai, an individual; SLC LLC, a Nevada limited liability company; Stone & Stone, LLC, a Nevada limited liability company; Zohreh Amiryavari, an individual (hereinafter, the "Sheikhai Parties")

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The above identified parties having come on this date for a voluntary mediation, it is hereby stipulated that the above-identified matters are deemed settled pursuant to the following binding terms and conditions:

1. No Admission of Liability. The parties stipulate that the settlement does not constitute an admission of liability.
2. Initial Settlement Payment. Within fourteen (14) days of execution of a formal settlement agreement setting forth the terms and conditions herein, Hamid Sheikhai shall pay the sum of three hundred thousand dollars (\$300,000.00) to Victor Botnari (the "Initial Settlement Payment"), payable to the attorney-client trust account of Leventhal & Associates.
3. Additional Settlement Consideration. Commencing thirty (30) days after the Initial Settlement Payment, Hamid Sheikhai shall pay to Victor Botnari the sum of twenty-five thousand dollars (\$25,000.00) per month for twenty-four (24) consecutive months (each a "Monthly Settlement Payment"). Within thirty (30) days of the twenty-fourth Monthly Settlement Payment, Hamid Sheikhai shall pay to Victor Botnari the sum of three hundred thousand dollars (\$300,000.00) (the "Balloon Settlement Payment"). All Monthly Settlement Payments and the Balloon Settlement Payment shall be paid to the attorney-client trust account of Leventhal & Associates.
4. Sun Lake Property. The Sheikhai Parties shall sell or refinance the property known as 2964 Sun Lake Drive, Las Vegas, Nevada (the "Sun Lake Property"), within one hundred twenty (120) days of execution of the formal settlement agreement. In the event the Sheikhai Parties fail to sell or refinance the Sun Lake Property

## Stipulation for Settlement

as set forth above, the Balloon Settlement Payment shall increase to five hundred thousand dollars (\$500,000.00).

5. Acknowledgments. The parties hereby acknowledge and agree to the following:
  - a. The promissory note executed by Hamid Sheikhai in favor of Victor Botnari dated May 27, 2018, for the sum of \$1,000,000 is of no force and effect;
  - b. The Botnari Parties acknowledge/confirm they have no ownership interest in (1) Stone & Stone LLC, (2) SLC LLC, (3) Zip Zap Auto, (4) Busy Boots Auto, (5) Quantum Mechanics, and (6) Busy Bots Auto.
  - c. The Sheikhai Parties acknowledge/confirm they have no ownership interest in Vitiok, LLC, and Universal Motorcar, LLC, dba Universal Motorcars.
  - d. The Botnari Parties shall be obligated to pay all debts currently in their names;
  - e. The Sheikhai Parties shall be obligated to pay all debts currently in their names;
  - f. The Botnari Parties shall keep all assets titled in their respective names and do not have any joint or affiliated assets with the Sheikhai Parties;
  - g. The Sheikhai Parties shall keep all assets titled in their respective names and do not have any joint or affiliated assets with the Botnari Parties;
  - h. The Decree of Annulment entered in the Ninth Judicial District Court shall remain and stand and shall not be set aside;
  - i. Any and all orders issued in the Pending Lawsuits, including but not limited any preliminary injunction in Case No. A-19-905955-C, are hereby vacated and will not survive the dismissal of the Pending Lawsuits.
  - j. Hamid Sheikhai's Second Offer of Judgment served January 6, 2021, shall be of no force and effect; and
  - k. Hamid Sheikhai represents he owns 100% of SLC LLC, Zip Zap Auto, Busy Boots Auto, Quantum Mechanics, and Busy Bots Auto. Hamid Sheikhai represents that Sean Stone and Lauryn Stone own (by and through a trust) 100% of Stone & Stone, LLC, and Stone & Stone LLC, owns the Sun Lake Property.
6. Intellectual Property. The Botnari Parties shall be enjoined from and shall cease any use of the name "Zip Zap" for any and all purposes, including in connection with any business interests. Any right, title, or interest, in or to the name "Zip Zap" held by the Botnari Parties is hereby assigned to SLC LLC.
7. Further conditions of the settlement are as follows:

## Stipulation for Settlement

- a. Confidential Settlement. The parties agree that the terms of this settlement, the negotiations leading to the execution of this settlement, and the terms of this settlement shall be held in confidence and shall not be disclosed, communicated, offered into evidence in any legal proceedings or divulged to any person, other than those who must perform tasks to effectuate this settlement, except for the limited purpose of enforcement issues related to the terms and conditions herein.
  - b. Non-Disparagement. Each of the parties hereto expressly acknowledge, agrees, and covenants that they will not make or cause to be made any statements, comments, publication or communication, that would constitute disparagement of one another or that may be considered to be derogatory or detrimental to the good name or reputation of one another or their respective businesses.
  - c. Attorneys' Fees. Each party shall bear his/her/its/their own costs and attorney's fees.
  - d. Release and Waiver. Except as provided in this Stipulation for Settlement, the Botnari Parties and each of them hereby completely release and waive all claims known or unknown against the Sheikhai Parties and the Sheikhai Parties and each of them hereby completely release and waive all claims known or unknown against the Botnari Parties. The formal settlement agreement shall include a waiver of California Civil Code Section 1542.
  - e. Notice of Settlement. Upon execution of this Stipulation for Settlement, the parties shall jointly inform the Court in all Pending Lawsuits that the parties have reached a settlement and all hearing and other dates shall be vacated.
  - f. Dismissal of Actions. Within (5) days of payment of the Initial Settlement Payment, the parties shall jointly execute and file stipulations for dismissal, with each party to bear its own attorneys' fees and costs, of the Pending Lawsuits.
  - g. Covenant Not to Sue. The Botnari Parties agree not to institute any further legal proceedings to set aside the Decree of Annulment entered in the Ninth Judicial District Court.
8. The parties shall mutually cooperate and prepare a formal settlement agreement consistent with the terms of this Stipulation for Settlement. Within seven (7) days, counsel for the Sheikhai Parties shall deliver to counsel for the Botnari Parties a proposed draft of the formal settlement agreement. The Botnari Parties shall provide any comments within five (5) days of receipt of the proposed draft.
  9. This Stipulation for Settlement is intended to be binding and enforceable and is effective this 26th day of April 2021, and reflects the agreement between the parties to the Pending Lawsuits, and each of them. This Stipulation for Settlement is admissible and subject to disclosure solely for the purpose of establishing in court that an agreement has been reached by the parties for purposes of enforcing and interpreting that agreement.
  10. Venue, Governing Law, and Attorneys' Fees. Any dispute or litigation regarding this Stipulation for Settlement or the formal settlement agreement shall be exclusively filed in the Eighth Judicial District Court of Clark County, Nevada. The Court in *Botnari v. Stone & Stone, et al.*, Eighth Judicial District Court Case

## Stipulation for Settlement

No. A-19-801513-P, shall retain jurisdiction to enforce the terms of this Stipulation for Settlement and the formal settlement agreement. In any litigation to enforce the terms of this Stipulation for Settlement or the formal settlement agreement, the prevailing party in such litigation shall be entitled to recover their reasonable attorneys' fees and costs incurred in such litigation.

11. Signatory Authority. Each signatory for SLC LLC, Stone & Stone, LLC, and Vitiok, LLC, represents that they have authority to sign on behalf of their respective entities.

Dated: April 20, 2021

SLC LLC By: <u>/s/ Zohreh Amiryavari</u> Name: Zohreh Amiryavari Title: Manager	Vitiok, LLC By: <u>VICTOR BOTNARI</u> Name: <u>VICTOR BOTNARI</u> Title: <u>MANAGER</u>
Stone & Stone, LLC By: <u>/s/ Sean Stone</u> Name: Sean Stone Title: Manager	<u>BKNS</u> Victor Botnari, an individual
<u>[Signature]</u> Hamid Sheikhai, an individual	<u>/s/ Zohreh Amiryavari</u> Zohreh Amiryavari, an individual
APPROVED AS TO FORM AND CONTENT: <u>[Signature]</u> <u>Toussaint Ribbet</u> Counsel for the Sheikhai Parties	APPROVED AS TO FORM AND CONTENT: <u>[Signature]</u> <u>TODD LEVENTHAL, Esq.</u> Counsel for the Botnari Parties

# EXHIBIT “B”

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 35:** Admit. As discovery is still  
2 continuing, Defendant retains its right to supplement this request.

3 **REQUEST FOR ADMISSION NO. 36:** Admit that you did not have the permission to operate,  
4 profit from, or use the assets of Vitiok and Zip Zap Auto.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:** Deny. As discovery is still continuing,  
6 Defendant retains its right to supplement this request.

7 **REQUEST FOR ADMISSION NO. 37:** Admit that Vitiok has a right to all financial information  
8 of Zip Zap Auto.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:** Deny. As discovery is still continuing,  
10 Defendant retains its right to supplement this request.

11 **REQUEST FOR ADMISSION NO. 38:** Admit that Hamid is the individual who makes the  
12 decisions for SLC.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 38:** Admit. As discovery is still  
14 continuing, Defendant retains its right to supplement this request.

15 **REQUEST FOR ADMISSION NO. 39:** Admit that SLC only follows the directives and direction  
16 given by Hamid.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 39:** Admit. As discovery is still  
18 continuing, Defendant retains its right to supplement this request.

19 DATED this 28th day of July, 2020.

20 HUTCHISON & STEFFEN, PLLC

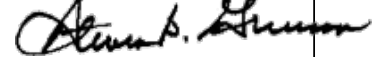
21 /s/Christian Orme

22 Jacob A. Reynolds (10199)

23 Christian M. Orme (10175)

24 Attorneys for Defendant SLC, LLC

# EXHIBIT “C”



**MOT  
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*Attorneys for Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SLC LLC, a Nevada limited liability company,	)	CASE NO.: A-21-835625-C
	)	DEPT NO.: 4
	)	ORAL ARGUMENT REQUESTED
Plaintiff,	)	
	)	
vs.	)	<b>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.</b>
	)	
LARISA MEREORA, an individual;	)	Date of Hearing:
THOMAS MULKINS, an individual;	)	Time of Hearing:
NINA GROZAV, an individual, ION	)	
NEAGU, an individual; ALISA	)	
NEAUGU, an individual; MARIA	)	
REYNOLDS, an individual, NNG LLC,	)	
a Nevada Limited Liability Company dba	)	
UNIVERSAL MOTORCARS;	)	
UNIVERSAL MOTORCAR LLC, a	)	
Nevada limited liability company dba	)	
UNIVERSAL MOTORCARS; DOES I	)	
through X and ROE BUSINESS	)	
ENTITIES through X, inclusive,	)	
Defendants.	)	

**TO ALL PARTIES IN INTEREST AND THEIR ATTORNEYS OF  
RECORD:**

COMES NOW, Defendants Larisa Mereora, Nina Grozav, Ion Neagu, Maria Reynolds, Alisa Neaugu, NNG LLC and Universal Motorcar LLC and hereby moves this Court for an Order granting summary judgment in favor of Defendants and against Plaintiff SLC, LLC, a Nevada Limited Liability Company ("SLC") because no genuine issues of material fact exist and Defendants are entitled to judgment as a matter of law, and moves the Court for an order:

1. Granting Defendants' motion for summary judgment;
2. Dismissing Plaintiff's complaint against Defendants with prejudice; and
3. Awarding Defendants' attorney's fees and costs for having to defend Plaintiff's frivolous complaint and the filing of the motion for summary judgment.

This motion is made and based on the following Memorandum of Points and Authorities, the declarations and exhibits, attached hereto, the papers and pleadings already on file herein, and any argument the Court may permit at the hearing of this matter.

Dated this 14<sup>th</sup> day of March, 2022.

HOFLAND TOMSHECK

By: /s/ Bradley J. Hofland

Bradley J. Hofland, Esq.

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1 Hamid Sheikhai (“Hamid”) and SLC filed their Stipulation for Dismissal of  
2 Action<sup>6</sup>, Hamid caused and instructed SLC to violate the above referenced  
3 stipulation and commence the instant litigation as a means of circumventing the  
4 terms of the Stipulation for Dismissal of Action, *with prejudice* (“Stipulation”), that  
5 he and SLC entered into.

6 Notably, the named Cross-Defendants in the above Stipulation are now the  
7 named Defendants in the instant action before this Court. The caption in the case  
8 dismissed *with prejudice* (case number A-19-805955-C) named the following  
9 parties:

10 LARISAMEREORA, an individual;  
11 THOMAS MULKINS, an individual;  
12 NINA GROZAV, an individual;  
13 ION NEAGU, an individual;  
14 ALISA NEAGU, an individual;  
15 NNG, LLC dba UNIVERSAL MOTORCARS; and  
16 DOES I through X, inclusive; and ROE BUSINESS  
17 ENTITIES I through X, inclusive,  
18 Cross-Defendants<sup>7</sup>

16 Yet, the named Defendants in the instant case name the *identical* parties, to  
17 wit:

18 LARISAMEREORA, an individual;  
19 THOMAS MULKINS, an individual;  
20 NINA GROZAV, an individual;  
21 ION NEAGU, an individual;  
22 ALISA NEAGU, an individual;  
23 NNG, LLC a Nevada limited liability company dba UNIVERSAL  
24 MOTORCARS;  
25 UNIVERSAL MOTORCAR LLC, a Nevada limited liability company  
26 dba UNIVERSAL MOTORCARS;  
27 DOES I through X, inclusive; and ROE BUSINESS

26 <sup>6</sup> *Hamid and SLC* prepared and filed their “Stipulation for Dismissal of Action” in  
case number A-19-805955-C on May 21, 2021.

27 <sup>7</sup> *See* Complaint for Damages and Demand for Jury Trial; Defendant Hamid  
28 Sheikhai’s Answer, Counterclaim, and Cross Claims, and Demand for Jury Trial  
(filed 10/22/2020)

ENTITIES I through X, inclusive,  
Defendants<sup>8</sup>.

The resurrected, and prohibited, claims for relief, are likewise identical to those that were *dismissed with prejudice*, to wit:

Case number A-19-805955-C (dismissed with prejudice)

1. Violation of Uniform Trade Secret Act NRS 600A)
2. False Light, Disparagement, Defamation, Defamation Per Se
3. Intentional Interference with Prospective Economic Advantage
4. Civil Conspiracy
5. Conversion/Trespass to Chattel
6. Restitution for Tax Liens
7. Abuse of Process
8. Breach of the Implied Covenant of Good Faith and Fair Dealing-Promissory Note)
9. Attorney's Fees and Costs<sup>9</sup>.

With the exception of unjust enrichment and deceptive trade practice, the same claims are brought in the instant action, which are prohibited by both the Stipulation for Dismissal and the Settlement, to wit:

1. Misappropriation of Trade Secrets (NRS §600A.030 et. seq) (Number 1 above)
2. Deceptive Trade Practices and Unfair Competition (NRS §598.0915) (same fact pattern) (disallowed by Settlement)
3. Defamation (Number 2 above)

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<sup>8</sup> See Complaint in this Action, filed 6/2/2021.

<sup>9</sup> See Complaint for Damages and Demand for Jury Trial; Defendant Hamid Sheikhai's Answer, Counterclaim, and Cross Claims, and Demand for Jury Trial (filed 10/22/2020)

1 4. Intentional Interference with Prospective Economic Advantage (Number  
2 3 above)

3 5. Civil Conspiracy (Number 4 above)

4 6. Conversion/Trespass to Chattel (Number 5 above)

5 7. Unjust enrichment (disallowed per the Settlement)<sup>10</sup>

6 Clearly, Hamid is seeking to litigate the same claims, against the same  
7 Defendants, albeit improperly, through SLC. SLC follows only Hamid's direction,  
8 and through Hamid's ill-judged maneuver, he believes he can litigate those claims  
9 that have been dismissed with prejudice. This Court must not allow the abuse of  
10 the legal system and this Court's judicial resources. The above referenced  
11 Settlement precludes this litigation, the Stipulation for Dismissal precludes this  
12 litigation, Court rules prohibit this litigation, and controlling precedent prohibit this  
13 litigation.

14 Notwithstanding the above, review of SLC's complaint confirms the claims  
15 asserted by SLC (which are the same as Hamid's earlier claims) are predicated  
16 upon a false claim that *SLC* "was at all relevant times and currently is the owner of  
17 Zip Zap Auto, including all equipment, assets, and intellectual property pertaining  
18 to Zip Zap Auto."<sup>11</sup> SLC knows that to be a lie because Hamid asserted the *same*  
19 claims in Case A-19-805955-C, wherein he affirmatively represented to the Court  
20 that *he—not SLC*—"retained 100% ownership and control of all equipment,  
21 miscellaneous assets, and intellectual property pertaining to Zip Zap Auto". *SLC*  
22 *did not dispute Hamid's representations to the Court*. Because SLC does not own  
23 Zip Zap Auto, SLC is unable to assert and maintain the claims in the instant  
24 complaint.

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27 <sup>10</sup> Significantly addressed by Hamid and SLC in Case Number A-19-805955-C,  
which was stipulated to be dismissed with prejudice.

28 <sup>11</sup> Instant Complaint, page 6, ¶ 44, submitted herewith as **Exhibit "C"** for the  
Court's convenience and reference.

1 The fact Hamid owns Zip Zap Auto, and that *SLC does not own Zip Zap*  
2 *Auto*, has been repeatedly maintained in multiple matters, before multiple courts.  
3 Among such representations are:

4 **Case D-18-575686-L** (made under penalty of perjury)

- 5 • “*His* [Hamid’s] automotive shop, Zip Zap Auto [not SLC’s]”<sup>12</sup>
- 6 • “*Hamid’s* [not SLC’s] *automotive business called Zip Zap Auto*”<sup>13</sup>
- 7 • “Victor’s name was only added to *Hamid’s assets (Zip Zap)*...”<sup>14</sup>
- 8 • “Sheikhai opened an auto shop under the name “Zip Zap Auto”<sup>15</sup>
- 9 • “one half of *Sheikhai’s* assets, including Zip Zap Auto”<sup>16</sup> (through SLC’s  
10 current counsel, Mr. Rabbat)
- 11 • “Botnari has launched a campaign to smear Sheikhai and *his* business  
[Zip Zap Auto] (*not* SLC’s)” (through SLC’s current counsel, Mr.  
12 Rabbat)<sup>17</sup>

13 **Case A-19-805955-C**, with Hamid and SLC named Defendants:

- 14 • “Hamid (not SLC) purchased [Zip Zap Auto] back from Jens Inc,  
15 including the name “Zip Zap”<sup>18</sup>
- 16 • “Hamid retained 100% ownership and control of all equipment,  
17 miscellaneous assets, and intellectual property pertaining to Zip Zap Auto.  
Hamid also owned the commercial building in which Zip Zap Auto was  
located.”<sup>19</sup>
- 18 • Zip Zap is “Hamid’s business (not SLC’s)”<sup>20</sup>
- 19 • Zip Zap is “Hamid’s business (not SLC’s)”<sup>21</sup>

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20 <sup>12</sup> Hamid’s Motion to Suspend Monthly Payments, filed 5/5/2020, page 5, lines 19-  
21 20, submitted herewith as **Exhibit “D”**.

22 <sup>13</sup> Hamid’s Opposition to Motion to Amend, filed 11/23/2020, page 5, line 17  
(emphasis provided), submitted herewith as **Exhibit “E”**.

23 <sup>14</sup> *Id.*, page 16, lines 7-8 (emphasis provided), submitted herewith as **Exhibit “F”**.

24 <sup>15</sup> Motion to Set Aside Offer of Judgment, Reset Trial, filed 3/31/2021 (*By SLC’s*  
25 *current counsel*, Mr. Rabbat), page 2, line 17, submitted herewith as **Exhibit “G”**.

26 <sup>16</sup> *Id.*, page 3, line 22 (emphasis provided), submitted herewith as **Exhibit “H”**.

27 <sup>17</sup> *Id.*, page 7, lines 12-13 (emphasis provided), submitted herewith as **Exhibit “I”**.

28 <sup>18</sup> Defendants Opposition to Plaintiff’s Motion for Preliminary Injunction, filed  
12/16/2019, page 7, lines 8-9, submitted herewith as **Exhibit “J”**.

<sup>19</sup> *Id.*, page 7, line 23, page 8, line 1, submitted herewith as **Exhibit “K”**.

<sup>20</sup> *Id.*, page 13, lines 10-14, submitted herewith as **Exhibit “L”**.

<sup>21</sup> Hamid’s Reply to Plaintiff’s Opposition to file Amended Answer, page 3, lines  
16-18, submitted herewith as **Exhibit “M”**.

- 1 • Despite allowing Vitiok to use the Zip Zap Auto name, SHEIKHAI  
2 (Hamid) retained 100% ownership and control of all equipment,  
3 miscellaneous assets, and intellectual property pertaining to Zip Zap  
4 Auto.<sup>22</sup>
- 5 • SHEIKHAI (Hamid) retained 100% ownership and control of all  
6 equipment, miscellaneous assets, and intellectual property pertaining to  
7 Zip Zap Auto<sup>23</sup>.
- 8 • Counterdefendants' misappropriation of Zip Zap auto's customer list was  
9 willfully and intentionally done to interfere and harm **SHEIKHAI's**  
10 (Hamid's) business, as well as to obtain an unfair competitive advantage  
11 for Counterdefendants<sup>24</sup>.
- 12 • At all times relevant, **SHEIKHAI** was the sole owner of all equipment  
13 contained inside Zip Zap Auto<sup>25</sup>.
- 14 • "looting Hamid's (not SLC's) Zip Zap auto"<sup>26</sup>
- 15 • "Plaintiff has stolen Mr. Sheikhai's customer list and used it to contact his  
16 customers to spread defamatory and disparaging messages about Mr.  
17 Sheikhai and his businesses [Zip Zap Auto]..."<sup>27</sup> Application for TPO,  
18 filed 10/26/2020 (**Joint filing by Hamid and SLC**), page 2, lines 9-11
- 19 • "As such, Mr. Sheikhai needs to file this action and to seek injunctive  
20 relief for Plaintiff to: (1) cease and desist posting and/or soliciting others  
21 to post disparaging reviews or comments regarding Mr. Sheikhai or any of  
22 his businesses [Zip Zap Auto]"<sup>28</sup> (**Joint filing by Hamid and SLC**)
- 23 • "Mr. Sheikhai needs to file this action...to: (1) cease and desist misuse of  
24 Mr. Sheikhai's customer list that was stolen by Plaintiff; (2) cease and  
25 desist posting and/or soliciting others to post disparaging reviews or  
26 comments regarding Mr. Sheikhai or any of his businesses; and (3) for  
27 removal of all disparaging posts made by Plaintiff, or anyone they have  
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<sup>22</sup> Motion to File Amended Answer to Counterclaim/Complaint for damages filed 10/22/2020, ¶ 32, submitted herewith as **Exhibit "N"**.

<sup>23</sup> *Id.*, ¶ 64, submitted herewith as **Exhibit "O"**.

<sup>24</sup> *Id.*, ¶ 72 (emphasis added), submitted herewith as **Exhibit "P"**.

<sup>25</sup> *Id.*, ¶ 111; submitted herewith as **Exhibit "Q"**, see also ¶¶ 23, 33, 63, 65, 95, 104, 105, and 107.

<sup>26</sup> Reply to Plaintiff's Opposition to Motion to File Amended Answer, filed 8/24/2020, page 3, line 17, submitted herewith as **Exhibit "R"**.

<sup>27</sup> Application for TPO, filed 10/26/2020, page 2, lines 9-11, submitted herewith as **Exhibit "S"**.

<sup>28</sup> *Id.*, lines 20-23, submitted herewith as **Exhibit "T"**.

solicited, regarding Mr. Sheikhai or any of his businesses.<sup>29</sup> (**Joint filing by Hamid and SLC**)

- “[I]n furtherance of this scheme to defraud both Mr. Sheikhai and the United States, he manipulated Mr. Sheikhai into adding his name to all *Mr. Sheikhai’s assets, specifically Zip Zap Auto*, which Mr. Botnari said would strengthen his immigration case although he promised Mr. Sheikhai, he would not try to take this or any other assets belonging to Mr. Sheikhai;”<sup>30</sup> (**Motion filed, and representations, by SLC**)
- “As such, Mr. Botnari is estopped from denying that he has no interest in *Mr. Sheikhai’s assets, which include Zip Zap Auto*.” See Vaile v. Eighth Judicial Dist. Court (Vaile I), 118 Nev. 262, 270, 44 P.3d 506, 514 (2002) (“a party who has stated an oath in a prior proceeding, ‘as in a pleading,’ that a given fact is true, may not be allowed to deny the same fact in a subsequent action.”) (**Motion filed, and representations, by SLC**)<sup>31</sup>
- This action is based on the same claims (ownership of *Mr. Sheikhai’s* assets, or Zip Zap Auto (**Motion filed, and representations, by SLC**)<sup>32</sup>
- “There was a failure of consideration related to Mr. Botnari’s acquisition of Mr. Sheikhai’s asset, Zip Zap Auto” (**Motion filed, and representations, by SLC**)<sup>33</sup>
- “On April 1, 2014, following *Hamid’s buy-back of Zip Zap Auto*”<sup>34</sup> (**Joint opposition with Hamid and SLC**)
- “*Hamid* allowed Vitiok to use the “Zip Zap Auto” name for business purposes”<sup>35</sup> (**Joint opposition with Hamid and SLC**)
- “Despite allowing Vitiok to use the Zip Zap Auto name, *Hamid* retained *100% ownership and control of all equipment, miscellaneous assets, and intellectual property pertaining to Zip Zap Auto*.”<sup>36</sup> (**Joint opposition with Hamid and SLC**)

<sup>29</sup> *Id.*, page 11, lines 11-15, submitted herewith as **Exhibit “U”**.

<sup>30</sup> Motion for Summary Judgment, filed 12/4/2020, page 2, lines 7-11, submitted herewith as **Exhibit “V”**.

<sup>31</sup> *Id.*, page 13 of 28, lines 17-21 (emphasis provided), submitted herewith as **Exhibit “W”**.

<sup>32</sup> *Id.*, lines 27-28 (emphasis provided), submitted herewith as **Exhibit “X”**.

<sup>33</sup> *Id.*, page 23 of 28, lines 10-11 (emphasis provided), submitted herewith as **Exhibit “Y”**.

<sup>34</sup> Opposition to Motion to Dismiss, filed 12/11/2020, page 3 of 20, lines 9-10.

<sup>35</sup> *Id.*, lines 22-23 (emphasis provided), submitted herewith as **Exhibit “Z”**.

<sup>36</sup> *Id.*, p.4 of 20, lines 1-3 (emphasis provided), submitted herewith as **Exhibit “AA”**.

- 1 • “On or about June 6, 2018, *Hamid* resumed control of Zip Zap Auto,  
2 which included using the name, equipment and premises that had  
3 previously been leased by Mr. Botnari and Vitiok”<sup>37</sup> (**Joint opposition**  
4 **with Hamid and SLC**)
- 5 • “Additionally, the Amended Answer pled that, [d]espite allowing Vitiok  
6 to use the Zip Zap Auto name, *Hamid retained 100% ownership and*  
7 *control of all equipment, miscellaneous assets, and intellectual property*  
8 *pertaining to Zip Zap Auto. Id. at ¶ 27.*”<sup>38</sup>(**Joint opposition with Hamid**  
9 **and SLC**)
- 10 • “*Mr. Sheikhai* has also pled that the false and defamatory statements were  
11 made against both himself and Zip Zap Auto. Therefore, the Motion’s  
12 argument for lack of standing is contradicted by the contents of the  
13 Amended Answer. Also, the Amended Answer includes averment that  
14 *Mr. Sheikhai is the owner of Zip Zap Auto, which also provides him*  
15 *standing to bring the claim.*”<sup>39</sup> (**Joint opposition with Hamid and SLC**)
- 16 • “Second, the Amended Answer includes the following averments of fact:  
17 93. Counterdefendants, entered into a conspiracy with each other,  
18 and potentially others, to defame, disparage, and otherwise  
19 interfere with *Hamid’s* business.  
20 94. Counterdefendants, acted in concert to steal equipment owned  
21 by Hamid, and to steal *Hamid’s* customer list.  
22 95. In furtherance of the conspiracy, Counterdefendants contacted  
23 *Hamid’s* customers, using the stolen customer list, to defame,  
24 disparage, and hold *Hamid* in a false light in front of his  
25 customers.  
26 See Amended Answer at p. 15, ¶¶ 93-95.” (**Joint opposition with**  
27 **Hamid and SLC**)<sup>40</sup>
- 28 • “Here, the Motion identifies the allegations made by Mr. Sheikhai include  
that *he is the sole owner* of the equipment, furniture and furnishings  
stolen by Vitiok and Mr. Botnari [from Zip Zap Auto] (citations  
omitted)”<sup>41</sup>.

<sup>37</sup> *Id.*, p.5 of 20, lines 20-21 (emphasis provided), submitted herewith as **Exhibit “BB”**.

<sup>38</sup> *Id.*, page 15 of 20, lines 1-3 (emphasis provided), submitted herewith as **Exhibit “CC”**.

<sup>39</sup> *Id.*, lines 11-15(emphasis provided), submitted herewith as **Exhibit “DD”**.

<sup>40</sup> *Id.*, page 16 of 20, lines 13-20 (emphasis provided), submitted herewith as **Exhibit “EE”**.

<sup>41</sup> *Id.*, page 17 of 20, lines 14-16 (emphasis provided), submitted herewith as **Exhibit “FF”**.

1       **Discovery Responses**

- 2       • “*I own 100% of SLC, LLC, Zip Zap Auto*, Busy Boots, Busy Bots, and  
3       Quantum Mechanics.”<sup>42</sup>  
4       • “*I* always owned the name Zip Zap Auto”<sup>43</sup>  
5       • “He never owned Zip Zap Auto or the name; that has always been owned  
6       by *me* (not SLC).”<sup>44</sup>

7       **Admissions from SLC**

- 8       • Admit that *Hamid* is the individual who makes the decisions for SLC.  
9       Admit.<sup>45</sup>  
10      • Admit that SLC *only* follows the directives and direction given by Hamid.  
11      Admit.<sup>46</sup>

12      **SLC’s Responses to Interrogatories:**

- 13      • “Hamid Sheikhai retained the authority to enter into contracts and  
14      authorize payments on behalf of SLC, LLC.”<sup>47</sup>  
15      • “SLC, LLC never purchased Zip Zap Auto.”<sup>48</sup>  
16      • “Hamid Sheikhai executed documents related to Hamid’s singular  
17      ownership of Zip Zap Auto.”<sup>49</sup>  
18      • “Hamid Sheikhai is the sole owner of SLC, LLC.”<sup>50</sup>  
19      • “SLC, LLC does not own Zip Zap Auto, Mr. Sheikhai owns the name.”<sup>51</sup>

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21      <sup>42</sup> Hamid’s Response to Interrogatories, Number 1, (emphasis provided), submitted  
22      herewith as **Exhibit “GG”**.

23      <sup>43</sup> Hamid’s Response to Interrogatories, Number 15, (emphasis provided),  
24      submitted herewith as **Exhibit “HH”**.

25      <sup>44</sup> Hamid’s Response to Interrogatories, Number 21, (emphasis provided),  
26      submitted herewith as **Exhibit “II”**.

27      <sup>45</sup> SLC’s Responses to Request for Admissions No. 38 (emphasis provided),  
28      submitted herewith as **Exhibit “JJ”**.

29      <sup>46</sup> SLC’s Responses to Request for Admissions No. 39 (emphasis provided),  
30      submitted herewith as **Exhibit “KK”**.

31      <sup>47</sup> SLC’s Responses To Interrogatories, Number 2, submitted herewith as **Exhibit**  
32      **“LL”**.

33      <sup>48</sup> SLC’s Responses To Interrogatories, Number 15 (emphasis provided), submitted  
34      herewith as **Exhibit “MM”**.

35      <sup>49</sup> SLC’s Responses To Interrogatories, Number 17 (emphasis provided), submitted  
36      herewith as **Exhibit “NN”**.

37      <sup>50</sup> SLC’s Responses To Interrogatories, Number 24 (emphasis provided), submitted  
38      herewith as **Exhibit “OO”**.

- “Hamid received 100% of all profits and losses.”<sup>52</sup>
- Detail the legal interest you had to Zip Zap Auto, and detail the documentation you rely upon in claiming such an interest. Response: **SLC, LLC does not own Zip Zap Auto. Hamid Sheikhai owns Zip Zap Auto since 1999.**<sup>53</sup>

In light of the prior admissions and representations made before other District Courts set forth above, sworn and under penalty of perjury, the statement in Plaintiff’s complaint that:

44. Plaintiff was at all relevant times and currently is the owner of Zip Zap Auto, including all equipment, assets, and intellectual property pertaining to Zip Zap Auto.

is patently and proven to be false. In addition to the multitude of evidence above, in the Stipulation for Settlement (“Settlement”), Hamid again represented and confirmed that he owns 100% of SLC, LLC<sup>54</sup>. As established above, Hamid represented and maintained that *he* (Hamid) owns 100% of SLC, LLC<sup>55</sup>, as did SLC, LLC.(Plaintiff)<sup>56</sup> Hamid also admitted that *he* (Hamid) performs the day-to-day operations of SLC, LLC.<sup>57</sup>; SLC, LLC. (Plaintiff) made the same admissions.<sup>58</sup> SLC, LLC. (Plaintiff) also admitted that it *only* follows the directives and direction

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<sup>51</sup> SLC’s Responses To Interrogatories, Number 28, submitted herewith as **Exhibit “PP”**.

<sup>52</sup> SLC’s Responses To Interrogatories, Number 30 (emphasis provided), submitted herewith as **Exhibit “QQ”**.

<sup>53</sup> SLC’s Responses To Interrogatories, Number 34 (emphasis provided), submitted herewith as **Exhibit “RR”**.

<sup>54</sup> **Exhibit “A”**, page 2, ¶ k (“Hamid Sheikhai represents he owns 100% of SLC LLC”).

<sup>55</sup> See Exhibit “GG”, see also Hamid’s Response to Interrogatories number 30 submitted herewith as **Exhibit “SS”**.

<sup>56</sup> See **Exhibit “OO”**.

<sup>57</sup> See Hamid’s Response to Request for Admissions, number 2, Case A-19-805955-C, submitted herewith as **Exhibit “TT”**.

<sup>58</sup> See SLC, LLC’s Response to Request for Admissions, number 4, Case A-19-805955-C, submitted herewith as **Exhibit “UU”**.

1 given by Hamid.<sup>59</sup> SLC, LLC. also admitted that it *does not* own Zip Zap Auto  
2 (“Zip Zap”).<sup>60</sup>

3 Continuing, both Hamid and SLC, LLC participated in the above referenced  
4 Settlement<sup>61</sup> and “completely release[d] and waive[d] all claims known or unknown  
5 against Botnari Parties<sup>62</sup>. The Sheikhai Parties were all parties where Hamid was a  
6 named party against any of the Botnari parties; the Botnari Parties were all parties  
7 where Hamid was not included as an opposing party. As a result of the inclusion of  
8 *all* parties, the Settlement included a dismissal of *all lawsuits* in their entirety<sup>63</sup>—  
9 rather than the dismissal of a singular Defendant. This understanding and  
10 agreement was subsequently confirmed with the Stipulations for Dismissal of  
11 Actions that were subsequently prepared and filed in each *action*<sup>64</sup>—effectively  
12 closing the subject cases in their entirety. Notably, counsel for SLC, LLC. (Yes,  
13 Plaintiff’s *current* counsel) prepared the Stipulation for Dismissal of *Actions* in all  
14 those cases.

15 As a result of the dismissal of all actions, the Stipulation necessarily  
16 pertained to all parties named within those named lawsuits. Notwithstanding,  
17 Hamid has chosen to *ignore* the Stipulation and file a lawsuit that is *disallowed* by,  
18 and in *violation* of, the very Stipulation, directing SLC, LLC to commence the  
19 baseless and impermissible suit and name all those that Hamid previously named as  
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21 <sup>59</sup> See Exhibit “KK”.

22 <sup>60</sup> See Exhibit “PP”.

23 <sup>61</sup> See Exhibit “A”.

24 <sup>62</sup> *Id.*, page 3.

25 <sup>63</sup> *Id.*

26 <sup>64</sup> Stipulation for Dismissal of Action, Case No. A-19-805955-C, was filed May 21,  
27 2021—the resulting *case* status is “**Dismissed**”; the Stipulation for Dismissal of  
28 Action, Case No. A-19-801513-P, was filed May 28, 2021—an order dismissing  
the entire lawsuit was filed May 28, 2021 and the resulting case status is also  
“**Dismissed**”; and the Stipulation and Order to Dismiss Action, Case No. D-18-  
575686-L, was filed May 27, 2021, and the resulting case status in that action is  
also “**Dismissed**”.

1 cross-defendants in Case No. A-19-805955-C<sup>65</sup>.

2 Hamid is, without a doubt, abusing the legal system. Hamid, and SLC, LLC.,  
3 who does only what Hamid instructs them to do, knows that the instant action is  
4 frivolous. Hamid/SLC, LLC. is now filing suit against individuals that were  
5 forever dismissed by way of Settlement and Stipulation. Review of the instant  
6 complaint filed by SLC, LLC. confirms SLC, LLC is claiming ownership of Zip  
7 Zap Auto, but SLC, LLC has already admitted it ***does not own Zip Zap Auto.***<sup>66</sup>  
8 Since SLC, LLC did not own Zip Zap Auto, or its name, SLC, LLC cannot seek  
9 relief pertaining to the assets, equipment, customer lists, or anything else allegedly  
10 owned by Zip Zap Auto. SLC, LLC is obviously lying and is estopped from  
11 asserting a contrary, and knowingly false, position in support of a lawsuit designed  
12 to harass and harm the named defendants.

13 SLC, LLC. also alleges that it maintained the management and operations of  
14 Zip Zap Auto, but SLC, LLC and Hamid have both represented and maintained that  
15 ***Hamid, and only Hamid,*** operated the day-to-day operations of Zip Zap Auto<sup>67</sup>.  
16 SLC, LLC. is again misrepresenting the truth and is estopped from asserting a  
17 position contrary to the truth in order to abuse the legal process and maintain a  
18 frivolous suit.

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23 <sup>65</sup> With the exclusion of Victor Botnari (who has not been personally named, but is  
24 falsely identified throughout as the “manager”) (*See* Settlement, Exhibit “A”). A  
25 true and correct copy of the Complaint for Damages and Demand for Jury Trial;  
26 Defendant Hamid Sheikhai’s Answer, Counterclaim, and Cross Claims, and  
27 Demand for Jury Trial is submitted herewith as **Exhibit “VV”**.

28 <sup>66</sup> **See Exhibit “PP”**.

<sup>67</sup> *See* SLC, LLC.’s Response to Request for Admission, numbers 5 & 6, Case A-  
19-805955-C, submitted herewith as **Exhibit “WW”**, and Hamid’s Response to  
Request for Admission, number 3, Case A-19-805955-C, submitted herewith as  
**Exhibit “XX”**.

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**III.**  
**Legal Analysis**

***A. Standards for a motion for summary judgment.***

The standard for granting summary judgment is a familiar one. A district court should grant summary judgment when “there are no genuine issues as to any material fact and... the moving party is entitled to judgment as a matter of law.”<sup>68</sup> “[A] genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.”<sup>69</sup> Also, a “material fact” is a fact “that might affect the outcome of the suit under the governing law.”<sup>70</sup>

Pursuant to N.R.C.P. 56, summary judgment “*shall* be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” N.R.C.P. 56(c) (emphasis supplied).

“There is *no* genuine issue of material fact if the party opposing the motion ‘fails to make an adequate showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’”<sup>71</sup> Notably, issues of material fact *must* be supported by evidence, and conclusory allegations that are unsupported *cannot* defeat a motion for summary judgment.<sup>72</sup>

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<sup>68</sup>NRC.P. 56(c); *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993); *Bird v. Casa Royale West*, 97 Nev. 67, 69 (1981); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 610 (1995).

<sup>69</sup> *Riley v. OPP IX, L.P.*, 112 Nev. 826, 830, 919 P.2d 1071, 1074 (1996), citing *Valley Bank v. Marble*, 105 Nev. 366, 266, 775 P.2d 1278, 1279 (1989).

<sup>70</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986).

<sup>71</sup> *Taylor v. List*, 880 F.2d 1040, 1045 (1989), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); see also *Ray v. Continental W. Ins. Co.*, 920 F. Supp. 1094, 1097 (1994) (emphasis supplied).

<sup>72</sup> *Taylor*, at 880 F.2d at 1045; *Ray*, 920 F. Supp. At 1097 (emphasis supplied).

1 With respect to burdens of proof and persuasion in the summary judgment  
2 context, Nevada courts have adopted the federal approach as outlined in *Celotex v.*  
3 *Catrett*, 477 U.S. 317 (1986)<sup>73</sup>. Specifically, the party moving for summary  
4 judgment bears the initial burden of production to show the absence of a genuine  
5 issue of material fact<sup>74</sup>. Upon such a showing, *the party opposing summary*  
6 *judgment assumes a burden of production to show the existence of a genuine*  
7 *issue of material fact*<sup>75</sup>.

8 The manner in which each party may satisfy its burden of production  
9 depends on which party will bear the burden of persuasion on the challenged claim  
10 at trial<sup>76</sup>. If the moving party will bear the burden of persuasion, that party must  
11 present evidence that would entitle it to a judgment as a matter of law in the  
12 absence of contrary evidence<sup>77</sup>. But if the non-moving party will bear the burden of  
13 persuasion at trial, the party moving for summary judgment may satisfy the burden  
14 of production by either (1) submitting evidence that negates an essential element of  
15 the non-moving party's claim or (2) pointing out ... that there is an absence of  
16 evidence to support the non-moving party's case<sup>78</sup>. In such instances, in order to  
17 defeat summary judgment, the non-moving party must transcend the pleading and,  
18 by affidavit or other admissible evidence, introduce specific facts that show a  
19 genuine issue of material fact<sup>79</sup>.

20 Although the Court must view the facts in the light most favorable to the  
21 nonmoving party, the nonmoving party may not rest on "the mere allegations or  
22 denials of his pleading"<sup>80</sup> but *must* "set forth specific facts demonstrating the  
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24 <sup>73</sup> See *Cuzze v. Univ. and Comm. Col. Sys of NV*, 172 P.3d 131, 134 (2007)

25 <sup>74</sup> *Id.*

26 <sup>75</sup> *Id.*

27 <sup>76</sup> *Id.*

28 <sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Anderson, supra*, 477 U.S. at 248.

1 existence of a genuine issue for trial or have summary judgment entered against  
2 him.”<sup>81</sup>

3 Indeed, the nonmoving party may *not* rely on “the gossamer threads of  
4 whimsy, speculation and conjecture.”<sup>82</sup> When the nonmoving party bears the  
5 burden of persuasion, the moving party can submit evidence that negates an  
6 element of the nonmoving party’s claim or point out the lack of evidence to support  
7 the nonmoving party’s claims<sup>83</sup>. The nonmoving party is unable to successfully  
8 rebut the motion for summary judgment unless he is able to point to facts supported  
9 by the record which demonstrate a genuine issue of material fact<sup>84</sup>. In this case,  
10 **Plaintiff** is unable to meet its burden.

11 The Nevada Rules of Civil Procedure Rule 56(c) governing Summary  
12 Judgment provides in its pertinent part:

13 The judgment sought *shall be rendered forthwith* if the pleadings,  
14 depositions, answers to interrogatories, and admissions on file,  
15 together with the affidavits, if any show that there is no genuine issue  
16 as to any material fact and that the moving party is entitled to a  
judgment as a matter of law. (Emphasis added)

17 The United States Supreme Court has explained that the “[s]ummary  
18 judgment procedure is properly regarded not as a disfavored procedural shortcut,  
19 but rather as an integral part of the [procedural process] as a whole, which [is]  
20 designed ‘to secure the just, speedy and inexpensive determination of every

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21 <sup>81</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005); *see also*  
22 *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (non-  
23 moving party must do more than just show there is some “metaphysical doubt”; the  
non-moving party must show genuine issues for trial).

24 <sup>82</sup> *Id.*; *see also Anderson, supra*, 477 U.S. at 252 (holding a mere “scintilla” of  
evidence will not suffice to meet that burden).

25 <sup>83</sup> *Cuzze*, 123 Nev. at 602-3.

26 <sup>84</sup> *See Thames v. LVH Corp.*, 211 Fed. Appx. 618 (9<sup>th</sup> Cir. 2006) (non-moving party  
must set forth “affirmative admissible evidence establishing a triable issue of fact”);  
27 *see also Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9<sup>th</sup> Cir. 2002) (party  
28 opposing summary judgment cannot establish triable issue of fact by relying on  
inadmissible evidence or unauthenticated documents).

1 action.”<sup>85</sup> (See *Celotex*, 477 at 327; *Wood* at 1030). Although the Supreme Court  
2 was quoting from the Federal Rules of Civil Procedure, the Nevada Courts are  
3 likewise admonished to construe and administer available procedural mechanisms  
4 “to secure the just, speedy, and inexpensive determination of every action.” (See  
5 NRC P 1).

6 ***B. The Complaint filed by Plaintiff flagrantly violates the duty of***  
7 ***candor that is owed this Court and disregards the requisite***  
8 ***fundamental legal basis that must exist to seek relief against the***  
9 ***Defendants.***

10 Standing “concerns whether the party seeking relief has sufficient interest in  
11 the litigation.”<sup>86</sup> It is “the legal right to set judicial machinery in motion.”<sup>87</sup> NRC P  
12 17(a) mandates that “[e]very action shall be prosecuted in the name of the real party  
13 in interest.” “A real party in interest is one who possesses the right to enforce the  
14 claim and has a significant interest in the litigation.”<sup>88</sup> “Due to this limitation, a  
15 party generally has standing *only* to assert *only its own rights* and *cannot* raise the  
16 claims of a third party not before the court.”<sup>89</sup> Thus, “[t]he inquiry into whether a  
17 party is a real party in interest overlaps with the question of standing.”<sup>90</sup>

18 The law is clear that *a party bringing a lawsuit has the burden to establish*  
19 *the elements of standing*<sup>91</sup>. “Standing is determined as of the time the action is  
20 brought.”<sup>92</sup> Notably, the elements of standing are not merely pleading

21 <sup>85</sup> See *Celotex*, 477 at 327; *Wood* at 1030

22 <sup>86</sup> *Heller v. Legis. of State of Nev.*, 120 Nev. 456, 460, 93 P.3d 746, 749 (2004)  
23 (quoting *Smith v. Snyder*, 267 Conn. 456, 839 A.2d 589, 594 (2004)). *Schwartz v.*  
24 *Lopez*, 132 Nev.732, 382 P.3d 886 (2016); *Morency v. State Dep’t of Educ.*, 137  
25 Nev. Adv. Op. 63, 496 P.3d 584 (2021).

26 <sup>87</sup> *Heller v. Legislature of State of Nev.*, 120 Nev. 456, 93 P.3d 746 (2004).

27 <sup>88</sup> *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 252 P.3d 206 (2011).

28 <sup>89</sup> *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court of Nev.*, 128 723,  
291 P.3d 128 (2012) (emphasis provided).

<sup>90</sup> *Arguello*, *supra*.

<sup>91</sup> See *Utah Ass’n of Counties v. Bush*, 455 F.3d 1094, 1100 (2006); *United*  
*Safeguard Distribs. Ass’n v. Safeguard Bus. Sys.*, 2016 U.S. Dist. LEXIS 65674.

<sup>92</sup> *Id.* at 1099.

1 requirements<sup>93</sup>, and Plaintiffs' burden to prove standing is elevated at the summary  
2 judgment stage, where a "plaintiff can no longer rest on such mere allegations, but  
3 must set forth by affidavit or other evidence specific facts."<sup>94</sup> Additionally,  
4 Plaintiffs must demonstrate that they have standing as to each form of relief  
5 sought.<sup>95</sup>

6 In addition to the constitutional requirement of standing, courts have adopted  
7 prudential standing limitations, which impose different demands than injury in  
8 fact<sup>96</sup>. As it pertains to, and disposes of the instant action, prudential standing  
9 principles prohibit a plaintiff from litigating the rights and interests of others. As  
10 noted in *Wilderness, supra*, a plaintiff "must assert his own legal rights and  
11 interests, and cannot rest his claim to relief on the legal rights or interests of third  
12 parties"<sup>97</sup>. Plaintiff's impropriety of the instant action and plaintiff's inability to  
13 maintain this action is further confirmed given the earlier dismissal of all claims  
14 and causes of actions, known or unknown.

15 In this case, Plaintiff, has no dealings with Defendants. While Hamid  
16 Sheikhai may have had agreements or sought relief against the Defendants in prior  
17 lawsuits filed in Clark County – those lawsuits involving Defendants concerning  
18 Zip Zap Auto were dismissed with prejudice. Plaintiff, has no right to receive,  
19 demand, or resurrect claims dismissed with prejudice by simply filing a new law

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21 <sup>93</sup> *Valley View Health Care, Inc. v. Chapman*, 992 F. Supp 2d 1016 (9<sup>th</sup> Cir. 2014)  
22 (holding "[t]he standing elements are "not merely pleading requirements" but are an  
23 "indispensable part of the plaintiff's case" and "must be supported at each stage of  
24 litigation in the same manner as any other essential element of the case.").

25 <sup>94</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Pitre v. Wal-Mart Stores,*  
26 *Inc.*, 2019 U.S. Dist. LEXIS 181052.

27 <sup>95</sup> *WildEarth Guardians v. Public Service*, 690 F.3d 1174, 1182 (2012) ("[A]  
28 plaintiff must demonstrate standing separately for each form of relief sought.");  
*State of Utah v. Babbitt*, 137 F.3d 1193, 1204 (10<sup>th</sup> Cir. 1998) (finding plaintiffs  
"have not alleged a distinct identifiable injury for each cause of action"); *Summers*  
*v. Earth Island Inst.*, 555 U.S. 488 (2009).

<sup>96</sup> *See Wilderness Soc'y v. Kane Cnty.*, 632 F.3d 1162, 1168 (2011).

<sup>97</sup> *Id.* at 1168; *See also* NRCP 17.

1 suit **now** alleging Zip Zap Auto is owned by Plaintiff<sup>98</sup> when Plaintiff **admitted** to  
2 the fact it **did not own** Zip Zap Auto<sup>99</sup> in response to written discovery and multiple  
3 representations to the court, and Hamid represented repeatedly, in all courts and  
4 pleadings, that he, and he alone—not SLC, owned Zip Zap Auto<sup>100</sup>.

5 Simply **now** claiming ownership of Zip Zap Auto in a pleading, when  
6 ownership of Zip Zap Auto was previously disavowed by Plaintiff, and repeatedly  
7 affirmed by Hamid, is legally insufficient to confer standing upon Plaintiff nor does  
8 the false allegation create any sort of cognizable claim against the Defendants.  
9 Indeed, *the question of standing focuses on the party seeking adjudication rather*  
10 *than the issues sought to be adjudicated*<sup>101</sup> Plaintiff is not only unable to present  
11 evidence necessary to preserve any of its seven claims contained in the underlying  
12 complaint against Defendants, it is judicially estopped from doing so.

13 Indeed, “[u]nder the doctrine of judicial estoppel, a party may be estopped  
14 merely by the fact of having alleged or admitted in his pleadings in a former  
15 proceeding the contrary of the assertion sought to be made.”<sup>102</sup> Whether judicial  
16 estoppel applies is a question of law<sup>103</sup>. The primary purpose of judicial estoppel is  
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18

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19 <sup>98</sup> The complaint filed by Plaintiff reads:

20 44. Plaintiff was at all relevant times and currently is the owner of  
21 Zip Zap Auto, including all equipment, assets, and intellectual  
22 property pertaining to Zip Zap Auto.

23 <sup>99</sup> See SLC, LLC.’s Response to Interrogatories, number 28, Case A-19-805955-C,  
submitted herewith as **Exhibit “A”**.

24 <sup>100</sup> See Statement of Facts and references set forth therein, *supra*.

25 <sup>101</sup> *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) (citing *Harman v.*  
*City and County of San Francisco*, 7 Cal.3d 150, 101 Cal.Rptr. 880, 496 P.2d 1248,  
1254 (1972)).

26 <sup>102</sup> *Sterling Builders, Inc. v. Fuhrman*, 80 Nev. 543, 549, 396 P.2d 850, 854  
(1964) (quoting 31 C.J.S. Estoppel § 121 at 649).

27 <sup>103</sup> *NOLM, LLC v. County of Clark*, 100 P.3d 658, 663 (Nev. 2004) (citing *Kitty–*  
28 *Anne Music Co. v. Swan*, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800  
(Ct.App.2003)).

1 to protect the judiciary's integrity, *Id.* (citation omitted), and a court may invoke the  
2 doctrine at its discretion. *Id.* (citation omitted).

3 Courts have long held the doctrine generally applies “when “(1) the same  
4 party has taken two positions; (2) the positions were taken in judicial or quasi-  
5 judicial administrative proceedings; (3) the party was successful in asserting the  
6 first position (i.e., the tribunal adopted the position or accepted it as true); (4) the  
7 two positions are totally inconsistent; and (5) the first position was not taken as a  
8 result of ignorance, fraud, or mistake.” *Id.* The record confirms that each element  
9 firmly applies in this case and this Court should not hesitate to apply the doctrine  
10 and preserve the integrity of this Court and the legal system as a whole.

11 In addition to the above, Plaintiff/SLC is barred from denying that which it  
12 has already admitted—and thus, unable to stave off summary judgment as a matter  
13 of law. “[A]n admitting party is barred from denying that which it has already  
14 admitted<sup>104</sup>. The general rule “is that a party cannot create an issue of fact by an  
15 affidavit contradicting his prior deposition testimony.”<sup>105</sup> Continuing, “[I]f a party  
16 who has been examined at length on deposition could raise an issue of fact simply  
17 by submitting an affidavit contradicting his own prior testimony, this would greatly  
18 diminish the utility of summary judgment as a procedure for screening out sham  
19 issues of fact.”<sup>106</sup> In this case, SLC maintained a contrary position with actual  
20 filings with the court and with formal discovery requests. SLC is disallowed, as a  
21 matter of law, of now asserting a contrary position to maintain a suit on behalf of a  
22 third party, Hamid—not only because of NRCP 17 and controlling precedent, but

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24 <sup>104</sup> *La-Tex Partn. v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex*  
25 *Investigations & Sec. Inc.*, 93 Nev. 627, 632, 572 P.2d 921, 924 (1977)  
(commenting on the application of Nev. R. Civ. Pro. 36).

26 <sup>105</sup> *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) (citations  
omitted).

27 <sup>106</sup> *Id.* (quoting *Foster v. Arcata Associates*, 772 F.2d 1453, 1462 (9th Cir.1985),  
28 *cert. denied*, 475 U.S. 1048, 106 S.Ct. 1267, 89 L.Ed.2d 576 (1986) (additional  
citations omitted)).

1 because of the enforceability of the Settlement and Stipulation to Dismiss  
2 referenced herein.<sup>107</sup>

3 In *Carolina Alliance for Fair Employment v. South Carolina Dept. of*  
4 *Labor, Licensing, and Regulation*,<sup>108</sup> **summary judgment against plaintiffs who**  
5 **lacked standing to pursue claims** was affirmed. As noted by the Court, “A  
6 complete failure of proof concerning an essential element of the non-moving  
7 party’s case **necessarily renders all other fact immaterial.**”<sup>109</sup> *Id.*

8 Given the above, the seven claims raised by SLC are not viable, cannot stand,  
9 and summary judgment is not only warranted, it is necessary to comply with court  
10 rules, controlling precedent, and maintain the integrity of the legal system. Taken  
11 individually, those claims for relief sought by SLC are:

12 **(1) First Claim for Relief; Violation of Trade Secret Act**

13 In Nevada, the elements for establishing a misappropriation  
14 of trade secrets claim include: “(1) a valuable trade secret; (2) misappropriation of  
15 the trade secret. . . ; and (3) the requirement that the misappropriation be wrongful  
16 because it was made in breach of an express or implied contract or by a party with  
17 a duty not to disclose.”<sup>110</sup> SLC falsely asserts standing by alleging it owns Zip Zap  
18 Auto; the irrefutable facts, admissions, and representations, prove otherwise.

19 As established above, SLC was **not**, at all relevant times, the owner of Zip  
20 Zap Auto and the “confidential customer list” **does not** belong to SLC. SLC’s  
21 representations are patently false and sanctionable. As noted above, a complete  
22 failure of proof concerning an essential element of the nonmoving party’s case  
23 necessarily renders all other facts immaterial<sup>111</sup>. Defendants had no interaction or  
24

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25 <sup>107</sup> See **Exhibits “A” and “B”**, respectively.

26 <sup>108</sup> 523 S.E.2d 795, 800 (1999).

27 <sup>109</sup> *Id.*; see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986).

28 <sup>110</sup> *Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000) (footnotes  
omitted).

<sup>111</sup> *Celotex*, 477 U.S. at 323.

1 relationship with SLC, and SLC cannot satisfy, indeed, is estopped and barred  
2 from, satisfying the essential elements of this claim. Summary Judgment is  
3 warranted.

4 **Second Claim for Relief; Deceptive Trade Practices and Unfair**  
5 **Competition.**

6 Notably, SLC references NRS 598.0915 in support of the above claim, and  
7 asserts standing by falsely alleging it is the owner of Zip Zap Auto, including all  
8 equipment, assets, and intellectual property pertaining to Zip Zap Auto (and Zip  
9 Zap's customer list), which is patently false. *SLC cannot prove it owns Zip Zap*  
10 *Auto, and is estopped and barred from claiming such ownership.* As noted above,  
11 a complete failure of proof concerning an essential element of the nonmoving  
12 party's case necessarily renders all other facts immaterial<sup>112</sup>.

13 Additionally, not only does SLC *not* own Zip Zap Auto, its equipment,  
14 assets, its intellectual property, or its customer list, it *does not* have any affiliation  
15 with Zip Zap Auto. SLC does not receive any financial benefit from Zip Zap Auto  
16 (as SLC admitted, all profits and losses are attributed to Hamid), nor does SLC  
17 have any financial responsibility to Zip Zap Auto. Accordingly, SLC cannot  
18 establish any deceptive trade practice, cannot establish any competition, and most  
19 importantly, cannot establish any damages or entitlement to recovery. Accordingly,  
20 Summary Judgment is warranted.

21 **Third Claim for Relief: Defamation**

22 Again, SLC's claim is predicated upon a false allegation that they own Zip  
23 Zap Auto. Of course, it has been firmly established that SLC *does not* own Zip Zap  
24 Auto, its equipment, assets, its intellectual property, or its customer list, nor does it  
25 have any affiliation with Zip Zap Auto. A complete failure of proof concerning an

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27 <sup>112</sup> *Celotex*, 477 U.S. at 323.  
28

1 essential element of the nonmoving party's case necessarily renders all other facts  
2 immaterial<sup>113</sup>.

3 Notwithstanding, it is significant to note SLC does not allege Defendants  
4 made any defamatory statements mentioning or identifying SLC, nor can they  
5 provide any such proof. SLC does not "do business", nor do they "compete", and  
6 SLC does not benefit or profit from Zip Zap Auto. Thus, their claims cannot  
7 survive summary judgment.

8 **Fourth Claim for Relief: Intentional Interference with Prospective**  
9 **Economic Advantage**

10 In order to establish a claim of interference with prospective business  
11 advantage, the plaintiff must prove the following elements by a preponderance of  
12 the evidence:

- 13 1. A prospective contractual relationship between the plaintiff and  
any third parties;
- 14 2. The defendant's knowledge of this prospective relationship;
- 15 3. The intent to harm the plaintiff by preventing the relationship;
- 16 4. The absence of privilege or justification by the defendant; and
- 17 5. Actual harm to the plaintiff as a result of the defendant's conduct<sup>114</sup>.

18 As established by the record, and herein, SLC doesn't own Zip Zap Auto,  
19 SLC isn't a business, and SLC doesn't have any contractual relationships with any  
20 third parties. Moreover, SLC cannot prove any harm because of defendant's  
21 conduct. As such, SLC cannot prove the essential elements of the claim. A  
22 complete failure of proof concerning an essential element of the nonmoving party's  
23 case necessarily renders all other facts immaterial<sup>115</sup>.

24  
25 <sup>113</sup> *Celotex*, 477 U.S. at 323.

26 <sup>114</sup> *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev.  
27 1304, 971 P.2d 1251 (1998); *Wichinsky v. Mosa*, 109 Nev. 84, 847 P.2d 727  
28 (1993); *Leavitt v. Leisure Sports, Incorporation.*, 103 Nev. 81, 734 P.2d 1221  
(1987).

<sup>115</sup> *Celotex*, 477 U.S. at 323.

1                   **Fifth Claim for Relief: Civil Conspiracy**

2                   Civil conspiracy is a claim that "consists of a combination of two or more  
3 persons who, by some concerted action, intend to accomplish an unlawful objective  
4 for the purpose of harming another, and damage results from the act or acts."<sup>116</sup> To  
5 state a claim for civil conspiracy under Nevada law, a plaintiff must allege (1) the  
6 commission of an underlying tort; and (2) an agreement between the defendants to  
7 commit that tort."<sup>117</sup> Furthermore, a claim for civil conspiracy must be pled with  
8 particular specificity as to "the manner in which a defendant joined in the  
9 conspiracy and how he participated in it."<sup>118</sup>

10                  Aside from the failure to adequately and sufficiently plead the above  
11 elements, even with detailed and false and false allegations that would perhaps  
12 survive initial scrutiny, the facts in this case are irrefutable that SLC **does not** have  
13 a business, SLC **does not** have customers, SLC **does not** have a customer list, SLC  
14 **does not** own Zip Zap Auto, and SLC **does not** own any of the equipment or assets  
15 of Zip Zap Auto. As a result, SLC has sustained no damage and is unable to prove  
16 the essential elements of this claim. Again, a complete failure of proof concerning  
17 an essential element of the nonmoving party's case necessarily renders all other  
18 facts immaterial<sup>119</sup>.

19                   **Sixth Claim for Relief: Conversion / Trespass to Chattel**

20                  Proving The elements of conversion are (1) the plaintiff's ownership or right  
21 to possession of the property; (2) the defendant's conversion by wrongful act  
22

23 \_\_\_\_\_  
24 <sup>116</sup> *Consolidated-Generator Nevada, Inc. v. Cummins Engine Co., Inc.*, 971 P.2d  
1251, 1256 (Nev. 1998).

25 <sup>117</sup> *Lalatag v. Money First Fin. Servs., Inc.*, No. 2:09-cv-02268-LRH-RJJ, 2010 WL  
26 2925875, at \*2 (D. Nev. July 20, 2010) (citing *GES, Inc. v. Corbitt*, 21 P.3d 11,  
15 (Nev. 2001)).

27 <sup>118</sup> *Arroyo v. Wheat*, 591 F. Supp. 141, 144 (D. Nev. 1984).

28 <sup>119</sup> *Celotex*, 477 U.S. at 323.

1 inconsistent with the property rights of the plaintiff; and (3) damages<sup>120</sup>. Trespass  
2 to chattels may occur when a person intentionally uses or intermeddles with a  
3 chattel in the possession of another<sup>121</sup>. SLC is unable to prove those essential  
4 elements.

5 Indeed, review of SLC's complaint confirms the alleged "equipment"  
6 belonged to Zip Zap Auto—*not* SLC<sup>122</sup>. It is vital, to sustain both claims of relief,  
7 for SLC to own and be lawfully in possession of the subject  
8 property/chattel/equipment. However, the evidence firmly proves SLC *does not*  
9 have a business, SLC *does not* have customers, SLC *does not* have a customer list,  
10 SLC *does not* own Zip Zap Auto, and SLC *does not* own any of the equipment or  
11 assets of Zip Zap Auto. As repeatedly represented and admitted by Hamid *and*  
12 SLC, "*Hamid retained 100% ownership and control of all equipment,*  
13 *miscellaneous assets, and intellectual property pertaining to Zip Zap Auto.*"<sup>123</sup>  
14 (Joint representations of Hamid and SLC) and as expressly admitted by SLC  
15 "*SLC, LLC does not own Zip Zap Auto*"<sup>124</sup>

16 The absence of ownership is fatal to SLC's claims. SLC's inability to show  
17 damages is likewise fatal. A complete failure of proof concerning an essential  
18 element of the nonmoving party's case necessarily renders all other facts  
19 immaterial<sup>125</sup>. Defendants are entitled to summary judgment.  
20  
21  
22  
23

24 <sup>120</sup> *Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav. & Loan Ass'n (In*  
25 *re Emery)*, 317 F.3d 1064 (9th Cir. Cal. 2003)

26 <sup>121</sup> See Restatement (Second) of Torts § 217 (1965).

27 <sup>122</sup> See instant complaint, pages 12-13, ¶¶ 92-97.

28 <sup>123</sup> See **Exhibit "AA"**; see also **Exhibits "D" through "RR"**.

<sup>124</sup> See **Exhibit "PP"** (emphasis provided).

<sup>125</sup> *Celotex*, 477 U.S. at 323.

1           **Seventh Claim for Relief: Unjust Enrichment**

2           “Unjust enrichment exists when the plaintiff confers a benefit on the  
3 defendant, the defendant appreciates such benefit, and there is “acceptance and  
4 retention by the defendant of such benefit under circumstances such that it would be  
5 inequitable for him to retain the benefit without payment of the value thereof.””<sup>126</sup>

6           Like all the other claims, SLC is unable to stave off Defendants’ motion for  
7 summary judgment. Like all the other claims, SLC maintains its claim based upon  
8 its alleged ownership of Zip Zap Auto, when the facts and evidence in this case  
9 make it incontrovertible that SLC **does not** own Zip Zap Auto—and SLC expressly  
10 make such representations and admissions in a prior judicial hearing and in prior  
11 judicial filings.

12           Clearly, SLC **does not** have a business, SLC **does not** have customers, SLC  
13 **does not** have a customer list, SLC **does not** own Zip Zap Auto, and SLC **does not**  
14 own any of the equipment or assets of Zip Zap Auto. SLC had absolutely **no**  
15 dealings with any of the named defendants, and **SLC cannot present any evidence**  
16 **that SLC provided the named Defendants any benefit whatsoever.** A complete  
17 failure of proof concerning an essential element of the nonmoving party’s case  
18 necessarily renders all other facts immaterial<sup>127</sup>.

19           In closing, SLC is precluded from bring the instant complaint against the  
20 defendants because of the Settlement it entered into, the Stipulation for Dismissal  
21 with prejudice entered into by SLC. Because SLC is not a business, does not own  
22 Zip Zap Auto, and does not have any **ownership and control of any equipment,**  
23 **miscellaneous assets, intellectual property, or customer list(s) pertaining to Zip**  
24 **Zap Auto**—and is judicially estopped and barred from claiming otherwise, and  
25

26 \_\_\_\_\_  
27 <sup>126</sup> *Certified Fire Prot. Inc. v. Precision Constr. Inc.*, 128 Nev. 371, 283 P.3d 250  
28 (2012) citing *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272,  
1273 (1981).

<sup>127</sup> *Celotex*, 477 U.S. at 323.

1 because SLC cannot assert the rights of third parties pursuant to NRCP 17 and  
2 controlling precedent, SLC is therefore unable to prevent defendants from summary  
3 judgment against all claims and having this action dismissed in its entirety.

4 ***C. Defendants are entitled to an award of attorney's fees and costs***  
5 ***for having to seek summary judgment on Plaintiff's frivolous***  
6 ***complaint.***

7 In the case at bar, Plaintiff has acted in bad faith. In their endeavor to  
8 manipulate this Court, Plaintiff not only violates the duty of candor that is owed to  
9 this Court, Plaintiff has violated NRCP 11. Quite frankly, Plaintiff's conduct  
10 mandates an award of attorney's fees to Defendants for having to defend and  
11 respond to such a frivolous pleading.

12 NRS 18.010 deals with awards of attorney's fees and provides in relevant  
13 part:

14 (b) Without regard to the recovery sought, when the court finds that  
15 the claim, counterclaim, cross-claim or third-party complaint or  
16 defense of the opposing party was brought or maintained without  
17 reasonable ground or to harass the prevailing party. ***The court shall***  
18 ***liberally construe the provisions of this paragraph in favor of***  
19 ***awarding attorney's fees in all appropriate situations.*** It is the intent  
20 of the Legislature that the court award attorney's fees pursuant to this  
21 paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
22 Rules of Civil Procedure in all appropriate situations ***to punish for and***  
23 ***deter frivolous or vexatious claims*** and defenses because such claims  
24 and defenses overburden limited judicial resources, hinder the timely  
25 resolution of meritorious claims and increase the costs of engaging in  
26 business and providing professional services to the public. (Emphasis  
27 supplied).

28 Additionally, EDCR 7.60 provides, in relevant part:

(b) The court may, after notice and an opportunity to be heard, impose  
upon an attorney or a party any and all sanctions which may, under the  
facts of the case, be reasonable, including the imposition of fines, costs  
or attorney's fees when an attorney or a party without just cause:

(1) ***Presents to the court a motion*** or an opposition to a motion ***which***  
***is obviously frivolous, unnecessary or unwarranted.***

(3) So multiplies the proceedings in a case as to increase costs  
unreasonably and vexatiously. (Emphasis supplied).

1  
2  
3 In this case, there was no basis to file the complaint and no basis to oppose  
4 Defendants' motion for summary judgment. Plaintiff apparently believes it can  
5 ignore court rules and controlling precedent in order to manipulate this Court and  
6 the legal system as a whole. Such a belief is misguided, and such a tactic ill-  
7 judged.

8 Further, NRS 7.085 also provides this Court with the requisite authority to  
9 make Defendants whole for the malicious and baseless litigation costs that she has  
10 incurred defending Plaintiff's frivolous filing. Therein, it states:

11 1. If a court finds that an attorney has:

12 (a) Filed, maintained or defended a civil action or proceeding in any  
13 court in this State and such action or defense is ***not well-grounded in***  
14 ***fact*** or is not warranted by existing law or by an argument for  
changing the existing law that is made in good faith; or

15 (b) Unreasonably and vexatiously extended a civil action or  
16 proceeding before any court in this State,

17 the court shall require the attorney personally to pay the additional  
18 costs, expenses and attorney's fees reasonably incurred because of such  
conduct.

19 ***2. The court shall liberally construe the provisions of this section in***  
20 ***favor of awarding costs, expenses and attorney's fees in all***  
21 ***appropriate situations.*** It is the intent of the Legislature that the court  
22 award costs, expenses and attorney's fees pursuant to this section and  
23 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
24 Procedure in all appropriate situations to punish for and deter frivolous  
25 or vexatious claims and defenses because such claims and defenses  
overburden limited judicial resources, hinder the timely resolution of  
26 meritorious claims and increase the costs of engaging in business and  
27 providing professional services to the public. (emphasis added).  
28

NRCP 11 also enables this Court to impose sanctions if any pleading, written  
motion, or other paper is filed that is being filed for any improper purpose, such as  
to "***harass, cause unnecessary delay, or needlessly increase the cost of litigation.***"

1 The Nevada Supreme Court, in *Watson Rounds*, held that NRC 11 and NRS  
2 7.085 each represent a distinct, independent mechanism for sanctioning  
3 misconduct. 131 Nev. at 791.

4 Lastly, in *Barney v. Mt. Rose Heating & Air Conditioning*, 192 P.3d 730, 736  
5 (2008) citing *Brunzell v. Golden Gate National Bank*, 85 Nev 345, 455 P.2d 31  
6 (1969), the Court enumerated factors that the district court should consider in  
7 awarding attorney fees, with no one factor controlling, as follows:

- 8 (1) the advocate's qualities, including ability, training, education,  
experience, professional standing, and skill;
- 9 (2) the character of the work, including its difficulty, intricacy,  
10 importance, as well as the time and skill required, the responsibility  
11 imposed, and the prominence and character of the Parties when  
affecting the importance of the litigation;
- 12 (3) the work performed, including the skill, time, and attention given  
to the work; and
- 13 (4) the result--whether the attorney was successful and what benefits  
14 were derived.

15 Defendants' counsel met the factors outlined in *Brunzell*. Defendants'  
16 counsel is qualified and has considerable experience, ability and training in the  
17 field of family law and civil litigation. It is the responsibility of Defendants'  
18 counsel to finalize outstanding issues to ensure the rights of Defendants are  
19 preserved and litigated, to ensure the Orders of the Court are proper, and that the  
20 legal system is not manipulated. Defendants' counsel was attentive to work  
performed.

21 Accordingly, based upon the foregoing, it is not only fair, but also  
22 reasonable under the circumstances that Plaintiff and/or his counsel, be  
23 responsible for Defendants' reasonable attorney fees and costs in the sum of  
24 \$5,000.00 pursuant to NRS §18.010, EDCR 7.60, the additional authority cited  
25 herein, and the holding of *Brunzell*.

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**V.**  
**Conclusion**

Defendants are entitled to summary judgment because Plaintiff lacks constitutional and prudential standing. In sum, Plaintiff is prevented, as a matter of court rule and controlling precedent, from commencing and maintaining the instant action. Based on the foregoing, Defendants respectfully request this Court enter an order:

1. Granting Defendants' motion for summary judgment;
2. Dismissing Plaintiff's complaint against Defendants with prejudice; and
3. Awarding Defendants' attorney's fees and costs for having to defend Plaintiff's frivolous complaint and the filing of the motion for summary judgment.

Dated this 14<sup>th</sup> day of March, 2022.

HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland

Bradley J. Hofland, Esq.  
State Bar of Nevada No. 6343  
228 South 4th Street, First Floor  
Las Vegas, Nevada 89101  
Attorneys for Defendants

1  
2                   **DECLARATION OF BRADLEY J. HOFLAND**

3           I, Bradley J. Hofland, declare under penalty of perjury under the laws of the  
4 State of Nevada that the following is true and correct.

- 5           1.     I am counsel for the Defendants in the foregoing action.
- 6           2.     Attached and Marked as Exhibit “A” in the Appendix of Exhibits are  
7 true and correct copies of the cited provisions contained in the  
8 Executed Stipulation for Settlement regarding Case No.’s D-18-  
9 575686-L, A-19-805955-C, and A-19-801513-P dated April 26, 2021.
- 10          3.     Attached and Marked as Exhibit “B” in the Appendix of Exhibits are  
11 true and correct copies of the cited provisions contained in the  
12 Stipulation and Order for Dismissal of Action filed in Case No. A-19-  
13 805955-C on May 21, 2021.
- 14          4.     Attached and Marked as Exhibit “C” in the Appendix of Exhibits are  
15 true and correct copies of the cited provisions contained in the  
16 Complaint filed on June 2, 2021.
- 17          5.     Attached and Marked as Exhibit “D” in the Appendix of Exhibits are  
18 true and correct copies of the cited provisions contained in the Motion  
19 to Suspend Monthly Payments to Defendant filed in Case No. D-18-  
20 575686-L on May 5, 2020.
- 21          6.     Attached and Marked as Exhibit “E” in the Appendix of Exhibits are  
22 true and correct copies of the cited provisions contained in Plaintiff’s  
23 Opposition to Defendant’s Motion to Amended of Make Additional  
24 Findings of Fact; to Alter or Amend the Judgment; to Set Evidentiary  
25 Hearing to Address Plaintiff’s Fraud; and to Correct Clerical Error(s)  
26 of the Court, and Related Relief and Countermotion for Attorney’s  
27 Fees and Costs filed in Case No. D-18-575686-L on November 23,  
28 2020.

- 1       7.     Attached and Marked as Exhibit “F” in the Appendix of Exhibits are  
2       true and correct copies of the cited provisions contained in Page 16,  
3       Lines 7-8 of Plaintiff’s Opposition to Defendant’s Motion to Amended  
4       of Make Additional Findings of Fact; to Alter or Amend the Judgment;  
5       to Set Evidentiary Hearing to Address Plaintiff’s Fraud; and to Correct  
6       Clerical Error(s) of the Court, and Related Relief and Countermotion  
7       for Attorney’s Fees and Costs filed in Case No. D-18-575686-L on  
8       November 23, 2020.
- 9       8.     Attached and Marked as Exhibit “G” in the Appendix of Exhibits are  
10      true and correct copies of the cited provisions contained in the Motion  
11      to Set Aside Offer of Judgment, Reset Trial, and Re-Open Discovery;  
12      Declaration of Hamid Sheikhai filed in Case No. D-18-575686-L on  
13      March 31, 2021.
- 14      9.     Attached and Marked as Exhibit “H” in the Appendix of Exhibits are  
15      true and correct copies of the cited provisions contained in Page 3,  
16      Line 22 of Motion to Set Aside Offer of Judgment, Reset Trial, and  
17      Re-Open Discovery; Declaration of Hamid Sheikhai filed in Case No.  
18      D-18-575686-L on March 31, 2021.
- 19      10.    Attached and Marked as Exhibit “I” in the Appendix of Exhibits are  
20      true and correct copies of the cited provisions contained in Page 7,  
21      Lines 12-13 of Motion to Set Aside Offer of Judgment, Reset Trial,  
22      and Re-Open Discovery; Declaration of Hamid Sheikhai filed in Case  
23      No. D-18-575686-L on March 31, 2021.
- 24      11.    Attached and Marked as Exhibit “J” in the Appendix of Exhibits are  
25      true and correct copies of the cited provisions contained in  
26      Defendant’s Opposition to Plaintiff’s Motion for Preliminary  
27      Injunction and countermotion for Attorney’s Fees and Costs filed in  
28      Case No. A-19-805955-C on December 16, 2019.

- 1 12. Attached and Marked as Exhibit “K” in the Appendix of Exhibits are  
2 true and correct copies of the cited provisions contained in Page 7, line  
3 23 and Page 8, line 1 of Defendant’s Opposition to Plaintiff’s Motion  
4 for Preliminary Injunction and countermotion for Attorney’s Fees and  
5 Costs filed in Case No. A-19-805955-C on December 16, 2019.
- 6 13. Attached and Marked as Exhibit “L” in the Appendix of Exhibits are  
7 true and correct copies of the cited provisions contained in Page 13,  
8 lines 10 -14 of Defendant’s Opposition to Plaintiff’s Motion for  
9 Preliminary Injunction and countermotion for Attorney’s Fees and  
10 Costs filed in Case No. A-19-805955-C on December 16, 2019.
- 11 14. Attached and Marked as Exhibit “M” in the Appendix of Exhibits are  
12 true and correct copies of the cited provisions contained in Page 3, line  
13 16-18 of Defendant, Hamid Sheikhai’s Reply to Plaintiff’s Opposition  
14 to motion to File Amended Answer and Counterclaim and  
15 Countermotion for Attorney’s Fees and Costs filed in Case No. A-19-  
16 805955-C on August 24, 2022.
- 17 15. Attached and Marked as Exhibit “N” in the Appendix of Exhibits are  
18 true and correct copies of the cited provisions contained in Paragraph  
19 32 of Complaint for Damages and Demand for Jury Trial; Defendant  
20 Hamid Sheikhai’s Answer, Counterclaim and Crossclaims, and  
21 Demand for Jury Trial filed in Case No. A-19-805955-C on October  
22 22, 2022.
- 23 16. Attached and Marked as Exhibit “O” in the Appendix of Exhibits are  
24 true and correct copies of the cited provisions contained in Paragraph  
25 64 of Complaint for Damages and Demand for Jury Trial; Defendant  
26 Hamid Sheikhai’s Answer, Counterclaim and Crossclaims, and  
27 Demand for Jury Trial filed in Case No. A-19-805955-C on October  
28 22, 2022.

- 1 17. Attached and Marked as Exhibit “P” in the Appendix of Exhibits are  
2 true and correct copies of the cited provisions contained in Paragraph  
3 72 of Complaint for Damages and Demand for Jury Trial; Defendant  
4 Hamid Sheikhai’s Answer, Counterclaim and Crossclaims, and  
5 Demand for Jury Trial filed in Case No. A-19-805955-C on October  
6 22, 2022.
- 7 18. Attached and Marked as Exhibit “Q” in the Appendix of Exhibits are  
8 true and correct copies of the cited provisions contained in Paragraphs  
9 111, 23, 33, 63, 65, 95, 104, 105, and 107 of Complaint for Damages  
10 and Demand for Jury Trial; Defendant Hamid Sheikhai’s Answer,  
11 Counterclaim and Crossclaims, and Demand for Jury Trial filed in  
12 Case No. A-19-805955-C on October 22, 2022.
- 13 19. Attached and Marked as Exhibit “R” in the Appendix of Exhibits are  
14 true and correct copies of the cited provisions contained in Page 3, line  
15 17 of Defendant, Hamid Sheikhai’s Reply to Plaintiff’s Opposition to  
16 Motion to File Amended Answer and Counterclaim and  
17 Countermotion for Attorney’s Fees and Costs filed in Case No. A-19-  
18 805955-C on August 24, 2020.
- 19 20. Attached and Marked as Exhibit “S” in the Appendix of Exhibits are  
20 true and correct copies of the cited provisions contained in Page 2,  
21 lines 9-11 of Application for Temporary Protection Order filed in Case  
22 No. A-19-805955-C on October 26, 2020.
- 23 21. Attached and Marked as Exhibit “T” in the Appendix of Exhibits are  
24 true and correct copies of the cited provisions contained in Page 2,  
25 lines 20-23 of Application for Temporary Protection Order filed in  
26 Case No. A-19-805955-C on October 26, 2020.
- 27 22. Attached and Marked as Exhibit “U” in the Appendix of Exhibits are  
28 true and correct copies of the cited provisions contained in Page 11,

lines 11-15 of Application for Temporary Protection Order filed in Case No. A-19-805955-C on October 26, 2020.

23. Attached and Marked as Exhibit “V” in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Page 2, lines 7-11 of Motion for Summary Judgment, or in the Alternative, Partial Summary Judgement, Leave to Amend and for Stay filed in Case No. A-19-805955-C on December 4, 2020.

24. Attached and Marked as Exhibit “W” in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Page 13, lines 17-21 of Motion for Summary Judgment, or in the Alternative, Partial Summary Judgement, Leave to Amend and for Stay filed in Case No. A-19-805955-C on December 4, 2020.

25. Attached and Marked as Exhibit “X” in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Page 13, lines 27-28 of Motion for Summary Judgment, or in the Alternative, Partial Summary Judgement, Leave to Amend and for Stay filed in Case No. A-19-805955-C on December 4, 2020.

26. Attached and Marked as Exhibit “Y” in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Page 23, lines 10-11 of Motion for Summary Judgment, or in the Alternative, Partial Summary Judgement, Leave to Amend and for Stay filed in Case No. A-19-805955-C on December 4, 2020.

27. Attached and Marked as Exhibit “Z” in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Page 3, lines 9-10 of Joint Opposition to Plaintiff’s Motion to Dismiss Defendant’s Counterclaim and Crossclaims filed in Case No. A-19-805955-C on December 11, 2022.

- 1 28. Attached and Marked as Exhibit “AA” in the Appendix of Exhibits are  
2 true and correct copies of the cited provisions contained in Page 4,  
3 lines 1-3 of Joint Opposition to Plaintiff’s Motion to Dismiss  
4 Defendant’s Counterclaim and Crossclaims filed in Case No. A-19-  
5 805955-C on December 11, 2022.
- 6 29. Attached and Marked as Exhibit “BB” in the Appendix of Exhibits are  
7 true and correct copies of the cited provisions contained in Page 5,  
8 lines 20-21 of Joint Opposition to Plaintiff’s Motion to Dismiss  
9 Defendant’s Counterclaim and Crossclaims filed in Case No. A-19-  
10 805955-C on December 11, 2022.
- 11 30. Attached and Marked as Exhibit “CC” in the Appendix of Exhibits are  
12 true and correct copies of the cited provisions contained in Page 15,  
13 lines 1-3 of Joint Opposition to Plaintiff’s Motion to Dismiss  
14 Defendant’s Counterclaim and Crossclaims filed in Case No. A-19-  
15 805955-C on December 11, 2022.
- 16 31. Attached and Marked as Exhibit “DD” in the Appendix of Exhibits are  
17 true and correct copies of the cited provisions contained in Page 15,  
18 lines 11-15 of Joint Opposition to Plaintiff’s Motion to Dismiss  
19 Defendant’s Counterclaim and Crossclaims filed in Case No. A-19-  
20 805955-C on December 11, 2022.
- 21 32. Attached and Marked as Exhibit “EE” in the Appendix of Exhibits are  
22 true and correct copies of the cited provisions contained in Page 16,  
23 lines 13-20 of Joint Opposition to Plaintiff’s Motion to Dismiss  
24 Defendant’s Counterclaim and Crossclaims filed in Case No. A-19-  
25 805955-C on December 11, 2022.
- 26 33. Attached and Marked as Exhibit “FF” in the Appendix of Exhibits are  
27 true and correct copies of the cited provisions contained in Page 17,  
28 lines 14-16 of Joint Opposition to Plaintiff’s Motion to Dismiss

Defendant's Counterclaim and Crossclaims filed in Case No. A-19-805955-C on December 11, 2022.

34. Attached and Marked as Exhibit "GG" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Interrogatory Number 1 of Defendant, Hamid Sheikhai's Response to plaintiff's First Set of Interrogatories served on July 30, 2020.

35. Attached and Marked as Exhibit "HH" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Interrogatory Number 15 of Defendant, Hamid Sheikhai's Response to Plaintiff's First Set of Interrogatories served on July 30, 2020.

36. Attached and Marked as Exhibit "II" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Interrogatory Number 21 of Defendant, Hamid Sheikhai's Response to Plaintiff's First Set of Interrogatories served on July 30, 2020.

37. Attached and Marked as Exhibit "JJ" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Request for Admission Number 38 of Defendant SLC, LLC's Responses to Plaintiff's First Request for Admissions served on July 28, 2020.

38. Attached and Marked as Exhibit "KK" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Request for Admission Number 39 of Defendant SLC, LLC's Responses to Plaintiff's First Request for Admissions served on July 28, 2020.

39. Attached and Marked as Exhibit "LL" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Interrogatory Number 2 of Defendant SLC LLC's Response to Plaintiff's First Set of Interrogatories served on July 30, 2020.

- 1 40. Attached and Marked as Exhibit “MM” in the Appendix of Exhibits  
2 are true and correct copies of the cited provisions contained in  
3 Response to Interrogatory Number 15 of Defendant SLC LLC’s  
4 Response to Plaintiff’s First Set of Interrogatories served on July 30,  
5 2020.
- 6 41. Attached and Marked as Exhibit “NN” in the Appendix of Exhibits are  
7 true and correct copies of the cited provisions contained in Response to  
8 Interrogatory Number 17 of Defendant SLC LLC’s Response to  
9 Plaintiff’s First Set of Interrogatories served on July 30, 2020.
- 10 42. Attached and Marked as Exhibit “OO” in the Appendix of Exhibits are  
11 true and correct copies of the cited provisions contained in Response to  
12 Interrogatory Number 24 of Defendant SLC LLC’s Response to  
13 Plaintiff’s First Set of Interrogatories served on July 30, 2020.
- 14 43. Attached and Marked as Exhibit “PP” in the Appendix of Exhibits are  
15 true and correct copies of the cited provisions contained in Response to  
16 Interrogatory Number 28 of Defendant SLC LLC’s Response to  
17 Plaintiff’s First Set of Interrogatories served on July 30, 2020.
- 18 44. Attached and Marked as Exhibit “QQ” in the Appendix of Exhibits are  
19 true and correct copies of the cited provisions contained in Response to  
20 Interrogatory Number 30 of Defendant SLC LLC’s Response to  
21 Plaintiff’s First Set of Interrogatories served on July 30, 2020.
- 22 45. Attached and Marked as Exhibit “RR” in the Appendix of Exhibits are  
23 true and correct copies of the cited provisions contained in Response to  
24 Interrogatory Number 34 of Defendant SLC LLC’s Response to  
25 Plaintiff’s First Set of Interrogatories served on July 30, 2020.
- 26 46. Attached and Marked as Exhibit “SS” in the Appendix of Exhibits are  
27 true and correct copies of the cited provisions contained in Response to  
28

Interrogatory Number 30 of Defendant, Hamid Sheikhai's Response to Plaintiff's First Set of Interrogatories served on July 30, 2020.

47. Attached and Marked as Exhibit "TT" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Request for Admission Number 2 of Defendant, Hamid Sheikhai's Response to Plaintiff's First Request for Admission served on July 30, 2020.

48. Attached and Marked as Exhibit "UU" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Request for Admission Number 4 of Defendant SLC, LLC's Amended Responses to Plaintiff's First Request for Admission served on July 28, 2020.

49. Attached and Marked as Exhibit "VV" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in the Complaint for Damages and Demand for Jury Trial; Defendant Hamid Sheikhai's Answer, Counterclaim, and Cross Claims, and Demand for Jury Trial filed in Case No. A-19-805955-C on October 22, 2020.

50. Attached and Marked as Exhibit "WW" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Admissions Numbers 5 and 6 of Defendant SLC, LLC's Amended Responses to Plaintiff's First Request for Admission served on July 28, 2020.

51. Attached and Marked as Exhibit "XX" in the Appendix of Exhibits are true and correct copies of the cited provisions contained in Response to Request for Admission Number 3 of Defendant, Hamid Sheikhai's Response to Plaintiff's First Request for Admissions served on July 30, 2020.

1 Pursuant to Nevada Revised Statute 53.045, I declare under the penalty of  
2 perjury that the foregoing is true and correct to the best of my knowledge and  
3 belief.

4 DATED this 14<sup>th</sup> day of March, 2022.

5 /s/ **Bradley J. Hofland**  
6 Bradley J. Hofland

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# EXHIBIT “D”

1 admissible evidence. As discovery is ongoing, Defendant retains the right to amend this  
2 response.

3 **INTERROGATORY NO. 30:** Describe and identify, in detail all benefits, including wages,  
4 compensation, loans, advances, and services, that Hamid has received from or through you.

5 **RESPONSE TO INTERROGATORY NO. 30:** Objection. The Interrogatory is overly broad  
6 and not properly limited in scope and time. Moreover, the Interrogatory is not narrowly  
7 tailored to lead to the discovery of admissible evidence. Without waiving the foregoing  
8 objection, Defendant responds as follows: Hamid received 100% of all profits and losses. As  
9 discovery is ongoing, Defendant retains the right to amend this response.  
10

11 **INTERROGATORY NO. 31:** Describe and identify, in detail all benefits, including wages,  
12 compensation, loans, advances, and services, that Zohreh has received from or through you.

13 **RESPONSE TO INTERROGATORY NO. 31:** Objection. The Interrogatory is overly broad  
14 and not properly limited in scope and time. Moreover, the Interrogatory is not narrowly  
15 tailored to lead to the discovery of admissible evidence. Without waiving the foregoing  
16 objections, Defendant responds as follows: Zohreh Amiryavari received a check for \$1,500 per  
17 month as a 1099 Employee. As discovery is ongoing, Defendant retains the right to amend this  
18 response.  
19

20 **INTERROGATORY NO. 32:** If your response to Request for Admissions Nos. 3 and/or 4 is  
21 anything other than an unqualified “admit” then explain in detail the type of business you operate,  
22 including the date you began operating business, the name under which you operate(d) your  
23 business, and what person(s) made the day to day and other decisions related to said business(es).

24 **RESPONSE TO INTERROGATORY NO. 32:** Objection. The Interrogatory calls for a  
25 lengthy narrative response more suited for a deposition. Moreover, the Interrogatory is overly  
26 broad, not properly limited in time and scope, and is not narrowly tailored to lead to the  
27  
28

# EXHIBIT “E”

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

SAMIR LLC

**Entity Number:**

E0084452011-0

**Entity Type:**

Domestic Limited-Liability Company (86)

**Entity Status:**

Dissolved

**Formation Date:**

02/14/2011

**NV Business ID:**

NV20111105940

**Termination Date:**

Perpetual

**Annual Report Due Date:**

2/29/2016

**Series LLC:****Restricted LLC:****REGISTERED AGENT INFORMATION**

**Name of Individual or Legal Entity:**

SAMIR H. SHEIKHAI

**Status:**

Active

**CRA Agent Entity Type:****Registered Agent Type:**

Non-Commercial Registered Agent

**NV Business ID:****Office or Position:****Jurisdiction:****Street Address:**

3230 N. DURANGO DRIVE, LAS VEGAS, NV, 89129, USA

**Mailing Address:****Individual with Authority to Act:****Fictitious Website or Domain Name:****OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	HAMID SHEIKHAI	5960 THIROIS CIRCLE, LAS VEGAS, NV, 89146, USA	02/09/2015	Active

Page 1 of 1, records 1 to 1 of 1

[Filing History](#)[Name History](#)[Mergers/Conversions](#)

4/19/22, 11:04 AM

SilverFlume Nevada's Business Portal to start/manage your business

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**FILING HISTORY****ENTITY INFORMATION****Entity Name:**

SAMIR LLC

**Entity Number:**

E0084452011-0

**Entity Type:**

Domestic Limited-Liability Company (86)

**Entity Status:**

Dissolved

**Formation Date:**

02/14/2011

**NV Business ID:**

NV20111105940









**Termination Date:**

Perpetual

**Annual Report Due Date:**

2/29/2016

**Series LLC:****Restricted LLC:****FILING HISTORY DETAILS**

File Date	Effective Date	Filing Number	Document Type	Amendment Type	Source	View
11/16/2015	11/16/2015	20150503636-71	Dissolution		Internal	
02/09/2015	02/09/2015	20150060925-70	Annual List		External	
02/05/2014	02/05/2014	20140089922-27	Annual List		External	
01/26/2013	01/26/2013	20130051876-43	Annual List		External	
03/23/2012	03/23/2012	20120202731-90	Amended List		External	
02/09/2012	02/09/2012	20120093714-59	Annual List		External	
03/04/2011	03/04/2011	20110167839-08	Initial List		External	
02/14/2011	02/14/2011	20110112672-43	Articles of Organization		External	
Page 1 of 1, records 1 to 8 of 8						

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# EXHIBIT “F”

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

SLC LLC

**Entity Number:**

E0184832016-2

**Entity Type:**

Domestic Limited-Liability Company (86)

**Entity Status:**

Active

**Formation Date:**

04/22/2016

**NV Business ID:**

NV20161240529

**Termination Date:**

Perpetual

**Annual Report Due Date:**

4/30/2022

**Series LLC:****Restricted LLC:****REGISTERED AGENT INFORMATION**

**Name of Individual or Legal Entity:**

ROBERT RABBAT

**Status:**

Active

**CRA Agent Entity Type:****Registered Agent Type:**

Non-Commercial Registered Agent

**NV Business ID:****Office or Position:****Jurisdiction:****Street Address:**

11920 S. HIGHLANDS PARKWAY, SUITE 103, Las Vegas, NV, 89141, USA

**Mailing Address:****Individual with Authority to Act:****Fictitious Website or Domain Name:****OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	Hamid Sheikhai	10524 Visibility Court, Las Vegas, NV, 89129, USA	07/10/2021	Active

Page 1 of 1, records 1 to 1 of 1

[Filing History](#)[Name History](#)[Mergers/Conversions](#)[Return to Search](#)[Return to Results](#)

4/19/22, 11:08 AM

SilverFlume Nevada's Business Portal to start/manage your business

**FILING HISTORY****ENTITY INFORMATION****Entity Name:**

SLC LLC

**Entity Number:**

E0184832016-2

**Entity Type:**

Domestic Limited-Liability Company (86)

**Entity Status:**

Active

**Formation Date:**

04/22/2016

**NV Business ID:**

NV20161240529

**Termination Date:**

Perpetual

**Annual Report Due Date:**

4/30/2022

**Series LLC:****Restricted LLC:****FILING HISTORY DETAILS**

File Date	Effective Date	Filing Number	Document Type	Amendment Type	Source	View
07/10/2021	07/10/2021	20211602203	Amendment to Articles of Organization Be...	Manager Change, Manager Change, Manager Change	External	
02/22/2021	02/22/2021	20211252089	Certificate of Acceptance by Registered ...		External	
02/22/2021	02/22/2021	20211252087	Annual List		External	
04/07/2020	04/07/2020	20200593117	Annual List		External	
04/23/2019	04/23/2019	20190174831-36	Annual List		External	
10/29/2018	10/29/2018	20180471831-15	Noncommercial Registered Agent-Statement...		Internal	
10/26/2018	10/26/2018	20180465490-59	Amended List		External	
04/10/2018	04/10/2018	20180164019-62	Annual List		External	
05/20/2017	05/20/2017	20170219809-79	Annual List		External	
04/22/2016	04/22/2016	20160182238-53	Initial List		External	

Page 1 of 1, records 1 to 10 of 10

## FILING DATE SNAPSHOT AS OF: 07/10/2021

Business Details		Name Changes		Principal Office		Registered Agent	
Officer Information		Shares					
Date	Title	Name	Attention	Address1/Address2/City/State/Zip/Country			
02/22/2021	Managing Member	ZOHREH AMIRYAVARI		3230 N Durango Drive, c/o Quantum Mechanics, Las Vegas, NV, 89129, USA			

Page 1 of 1, records 1 to 1 of 1

[Back](#)

[Return to Search](#)

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**FILING HISTORY****ENTITY INFORMATION****Entity Name:**

SLC LLC

**Entity Number:**

E0184832016-2

**Entity Type:**

Domestic Limited-Liability Company (86)

**Entity Status:**

Active

**Formation Date:**

04/22/2016

**NV Business ID:**

NV20161240529

**Termination Date:**

Perpetual

**Annual Report Due Date:**

4/30/2022

**Series LLC:****Restricted LLC:****FILING HISTORY DETAILS**

File Date	Effective Date	Filing Number	Document Type	Amendment Type	Source	View
07/10/2021	07/10/2021	20211602203	Amendment to Articles of Organization Be...	Manager Change, Manager Change, Manager Change	External	
02/22/2021	02/22/2021	20211252089	Certificate of Acceptance by Registered ...		External	
02/22/2021	02/22/2021	20211252087	Annual List		External	
04/07/2020	04/07/2020	20200593117	Annual List		External	
04/23/2019	04/23/2019	20190174831-36	Annual List		External	
10/29/2018	10/29/2018	20180471831-15	Noncommercial Registered Agent-Statement...		Internal	
10/26/2018	10/26/2018	20180465490-59	Amended List		External	
04/10/2018	04/10/2018	20180164019-62	Annual List		External	
05/20/2017	05/20/2017	20170219809-79	Annual List		External	
04/22/2016	04/22/2016	20160182238-53	Initial List		External	

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# EXHIBIT “G”

**ORDR**  
**WILICK LAW GROUP**  
MARSHAL S. WILICK, ESQ.  
Nevada Bar No. 2515  
3591 E. Bonanza Road, Suite 200  
Las Vegas, NV 89110-2101  
Phone (702) 438-4100; Fax (702) 438-5311  
[email@willicklawgroup.com](mailto:email@willicklawgroup.com)  
Attorneys for Defendant Hamid Sheikhai

**IN THE EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

VITIOK, LLC, a Nevada Limited Liability Company,  
Plaintiff,

vs.

SLC, LLC, a Nevada Limited Liability Company;  
HAMID SHEIKHAI, an individual, ZOHREH  
AMIRYAVARI, an individual, and DOES I through X  
and ROE CORPORATIONS I through X, inclusive,  
Defendants.

CASE NO: A-19-805955-C  
DEPT. NO: 22

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
LEAVE TO AMEND THE ANSWER  
AND COUNTERCLAIM**

DATE OF HEARING: 8/25/20  
TIME OF HEARING: 8:30 a.m.

This matter was set for hearing on August 25, 2020, before the Honorable Susan Johnson, District Court Judge, Department 22, on *Defendant Hamid Sheikhai's Motion to File an Amended Answer and Counterclaim*, Plaintiff Vitiok, LLC's *Plaintiff's Opposition to Defendant Hamid Sheikhai's Motion to File Amended Answer and Counterclaim and Countermotion for Attorney's Fees and Costs*, and *Defendant, Hamid Sheikhai's, Reply to Plaintiff's Opposition to Motion to File Amended Answer and Counterclaim and Countermotion for Attorney's Fees and Costs*.

Hamid Sheikhai was present and represented by his counsel, Marshal S. Willick, Esq. of the WILICK LAW GROUP; Michael Matthis, Esq., of MICHAEL B. LEE, P.C., was present, on behalf of

SLC, LLC and Zohreh Amiryavari; Victor Botnari, owner of Vitiok, LLC, was present and represented by his counsel, Todd Leventhal, Esq., of LEVENTHAL & ASSOCIATES and Brad Hofland, Esq., of HOFLAND & TOMSHECK.

Upon review of the pleadings, argument of counsel and for good cause shown, this Honorable Court makes the following findings and Orders:

1. District courts have the discretion to grant leave to amend a pleading. *Stephens v. Southern Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Before trial, leave should be freely given to a party to amend its pleadings. NEV. R. CIV. PRO. 15(a)(2). “[I]n the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant - the leave sought should be freely given.” *Stephens*, 89 Nev. at 105-06, 507 P.2d at 139. The moving party must attach a copy of a proposed amended pleading to any motion to amend the pleading. EIGHTH JUD. DIST. CT. R. 2.30(a). “Unless otherwise permitted by the court, every pleading to which an amendment is submitted as a matter of right, or has been allowed by order of the court, must be re-typed or re-printed and filed so that it will be complete in itself, including exhibits, without reference to the superseded pleading.” *Id.* Furthermore, the amended pleading must contain copies of all exhibits referred to in such amended pleadings. *Id.* at 2.30(b).
2. The Court grants *Defendant Hamid Sheikhai’s Motion to Amend the Answer and Counterclaim* as modified.
3. Upon the entry of this *Order*, Hamid shall be permitted to file his *Amended Answer and Counterclaim*; provided, however, that there shall not be a separate cause of action for attorney’s fees because requests for attorneys fees are prayers for relief, rather than causes of action.

\*\*\*\*\*

4. The *Amended Answer and Counterclaim* shall include the named parties only; any other potential cross-defendants shall initiate third-party action(s) related to the claims pled herein.

DATED this 9th day of October, 2020.

Dated this 10th day of October, 2020



DISTRICT COURT JUDGE

30A 54F 34BE 61C7

Susan Johnson

District Court Judge

Approved as to Form and Content:  
LEVENTHAL AND ASSOCIATES, PLLC

Respectfully Submitted By:  
WILICK LAW GROUP

/s/ Lorien K. Cole

/s/ Todd M. Leventhal

MARSHAL S. WILICK, ESQ.

Nevada Bar No. 2515

LORIEN K. COLE, ESQ.

Nevada Bar No. 11912

3591 East Bonanza Road, Suite 200

Las Vegas, Nevada 89110-2101

*Attorneys for Hamid Sheikhai*

TODD M. LEVENTHAL, ESQ.

Nevada Bar No. 8543

626 South Third Street

Las Vegas, NV 89101

*Attorney for Plaintiff*

MICHAEL B. LEE, P.C.

/s/ Michael B. Lee

MICHAEL B. LEE, ESQ.

Nevada Bar No. 10122

MICHAEL MATTHIS, ESQ.

Nevada Bar No. 14582

1820 E. Sahara Avenue, Suite 110

Las Vegas, Nevada 89104

Telephone: (702) 477.7030

Facsimile: (702) 477.0096

[mike@mblnv.com](mailto:mike@mblnv.com)

*Attorneys for Defendants Zoreh Amiryavari and SLC, LLC*

P:\wp19\SHEIKHAI,H\CVDRAFTS22\Order Granting Leave to Amend Answer and Counterclaim.wpd/my

## Reception

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**From:** Mallory Yeargan  
**Sent:** Friday, October 09, 2020 8:53 AM  
**To:** Reception  
**Subject:** FW: Order from August 25 hearing - Dept 22

**From:** Brad Hofland <BradH@hoflandlaw.com>  
**Sent:** Friday, September 18, 2020 3:26 PM  
**To:** Lorien Cole <lorien@willicklawgroup.com>; Leventhal and Associates <leventhalandassociates@gmail.com>  
**Cc:** Marshal Willick <marshal@willicklawgroup.com>; mike@mblnv.com; 'Michael Matthis' <matthis@mblnv.com>; Mallory Yeargan <mallory@willicklawgroup.com>  
**Subject:** RE: Order from August 25 hearing - Dept 22

Lorien

You have consent to affix Mr. Leventhal's and my signature to the proposed Order.

Please send me over a copy of the JCCR/ICCR for me to review.

Bradley J. Hofland, Esq.  
Hofland & Tomsheck  
228 S. 4<sup>th</sup> St. 1<sup>st</sup> Floor  
Las Vegas, NV 89101  
Telephone (702) 895-6760  
Facsimile (702) 731-6910

*Hofland & Tomsheck*

ATTORNEYS AND COUNSELORS AT LAW

**NOTICE:** The above information is for the sole use of the intended recipient and contains information belonging to Hofland & Tomsheck, which is confidential and may be legally privileged. If you are not the intended recipient, or believe that you have received this communication in error, you are hereby notified that any printing, copying, distribution, use or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately (1) notify the sender by reply e-mail; (2) call our office at (702) 895-6760 to inform the sender of the error; and (3) destroy all copies of the original message, including ones on your computer system and all drives.

In accordance with Internal Revenue Service Circular 230, we advise you that if this e-mail contains any tax advice, such tax advice was not intended or written to be used and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.

**From:** Lorien Cole <lorien@willicklawgroup.com>  
**Sent:** Friday, September 11, 2020 1:24 PM  
**To:** Brad Hofland <BradH@hoflandlaw.com>; Leventhal and Associates <leventhalandassociates@gmail.com>  
**Cc:** Marshal Willick <marshal@willicklawgroup.com>; mike@mblnv.com; 'Michael Matthis' <matthis@mblnv.com>; Mallory Yeargan <mallory@willicklawgroup.com>  
**Subject:** Order from August 25 hearing - Dept 22

## Reception

---

**From:** Mallory Yeargan  
**Sent:** Friday, October 09, 2020 8:35 AM  
**To:** Reception  
**Subject:** FW: Order from August 25 hearing - Dept 22

**From:** Mike Lee <mike@mblnv.com>  
**Sent:** Friday, September 11, 2020 1:43 PM  
**To:** Lorien Cole <lorien@willicklawgroup.com>; bradh@hoflandlaw.com; Leventhal and Associates <leventhalandassociates@gmail.com>  
**Cc:** mike@mblnv.com; Marshal Willick <marshal@willicklawgroup.com>; 'Michael Matthis' <matthis@mblnv.com>; Mallory Yeargan <mallory@willicklawgroup.com>  
**Subject:** RE: Order from August 25 hearing - Dept 22

Approved. Consent to you affixing my e signature.

Sent from my Verizon, Samsung Galaxy smartphone

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Vitiok LLC, Plaintiff(s)

CASE NO: A-19-805955-C

7 vs.

DEPT. NO. Department 22

8 SLC, LLC, 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 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: 10/10/2020

15 Debbie Hicks

debbie@douglascrawfordlaw.com

16 Douglas Crawford

doug@douglascrawfordlaw.com

17 Lorien Cole

lorien@willicklawgroup.com

18 Marshal Willick

marshal@willicklawgroup.com

19 Reception Reception

email@willicklawgroup.com

20 Bradley Hofland

Bradh@hoflandlaw.com

21 Michael Matthis

matthis@mblnv.com

22 Mallory Yeargan

Mallory@willicklawgroup.com

23 Todd Leventhal

Leventhalandassociates@gmail.com

24 Maribel Godinez

Maribel@toddleventhal.com

25 Michael Lee

mike@mblnv.com

26  
27  
28 DEF000279

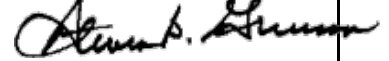
ROA001265

1	Dina DeSousa Cabral	DinaD@hoflandlaw.com
2		
3	Leilanny Espinoza	Leilanny@douglascrawfordlaw.com
4	Nikki Woulfe	clerk@hoflandlaw.com
5	Emma Forte	emma@toddleventhal.com
6	Victor Botnari	12vb34@protonmail.com
7	Anna Stein	bhassistant@hoflandlaw.com
8	Kevin Wong	kevin@douglascrawfordlaw.com
9	Gary Segal	gary@douglascrawfordlaw.com
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DEF000280

ROA001266

# EXHIBIT “H”



ANS  
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Phone (702) 438-4100; Fax (702) 438-5311  
[email@willicklawgroup.com](mailto:email@willicklawgroup.com)  
Attorneys for Defendant/Counterclaimant/Crossclaimant HAMID SHEIKAHI

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VITIOK, LLC, a Nevada Limited Liability Company,  
Plaintiff,

vs.

SLC, LLC, a Nevada Limited Liability Company;  
HAMID SHEIKHAI, an individual, ZOHREH  
AMIRYAVARI, an individual, and DOES I through X  
and ROE CORPORATIONS I through X, inclusive,

Defendants.

CASE NO: A-19-805955-C  
DEPT. NO: XXII

**COMPLAINT FOR DAMAGES  
AND DEMAND FOR JURY TRIAL;  
DEFENDANT HAMID  
SHEIKHAI'S ANSWER,  
COUNTERCLAIM, AND CROSS  
CLAIMS, AND DEMAND FOR  
JURY TRIAL**

HAMID SHEIKHAI, individually,  
Counterclaimant,

vs.

VITIOK, LLC, a Nevada Limited Liability Company,  
Counter-Defendant.

HAMID SHEIKHAI, individually,  
Crossclaimant,

vs.

VICTOR BOTNARI, an individual; LARISA  
MEREORA, an individual; THOMAS MULKINS, an  
individual; NINA GROZAV, an individual; ION  
NEAGU, an individual; ALISA NEAGU, an individual;  
NNG, LLC dba UNIVERSAL MOTORCARS; and  
DOES I through X, inclusive; and ROE BUSINESS  
ENTITIES I through X, inclusive,

Cross-Defendants

Defendant, Hamid Sheikhai, (“Hamid”), by and through his counsel, the Willick Law Group,  
and Defendant, SLC, LLC, by and through its counsel, Hutchison Steffen, hereby respond to the  
allegations set forth in Plaintiff, Vitiok, LLC’s (“Vitiok”) Complaint, and Counterclaim, as follows.

## **ANSWER**

### **THE PARTIES**

1. Responding to Paragraphs 1, 2, 4, 5, 6, 8, 14, and 15 of the Complaint, Defendants lack  
sufficient information or belief to enable them to either admit or deny allegations contained in said  
Paragraph, and based thereon, Defendants deny the allegations contained therein.

2. Responding to Paragraphs 3, 7, 9, and 10 of the Complaint, Defendants admit the allegations  
contained therein.

3. Responding to Paragraphs 11, 12, 13, 16, and 17 of the Complaint, Defendants deny the  
allegations contained in said Paragraph.

## **I.**

### **FIRST CLAIM FOR RELIEF**

(Unjust Enrichment)

4. Answering Paragraphs 18-26 of the Complaint, these answering Defendants repeat and  
incorporate by reference each and every claim, allegation, and denial contained in the answers to  
Paragraphs 1-17 as fully set forth herein.

5. Answering Paragraphs 18-26, Defendants deny the allegations contained in said Paragraphs.

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**II.**

**SECOND CLAIM FOR RELIEF**

(Intentional Interference with Economic Interest)

6. Answering paragraphs 27-37 of the Complaint, these answering Defendants repeat and incorporate by reference each and every claim, allegation, and denial contained in the answers to paragraphs 1-26 as fully set forth herein.

7. Answering Paragraphs 27-37, Defendants deny the allegations contained in said Paragraphs.

**III.**

**THIRD CLAIM FOR RELIEF**

(Civil Conspiracy)

8. Answering paragraphs 38-42 of the Complaint, these answering Defendants repeat and incorporate by reference each and every claim, allegation, and denial contained in the answers to paragraphs 1-37 as fully set forth herein.

9. Answering Paragraphs 38-42, Defendants deny the allegations contained in said Paragraphs.

**IV.**

**FOURTH CLAIM FOR RELIEF**

(Injunction)

10. Answering paragraphs 43-49 of the Complaint, these answering Defendants repeat and incorporate by reference each and every claim, allegation, and denial contained in the answers to paragraphs 1-42 as fully set forth herein.

11. Answering Paragraphs 43-49, Defendants deny the allegations contained in said Paragraphs.

1 **V.**

2 **FIFTH CLAIM FOR RELIEF**

3 (Declaratory Relief)

4 12. Answering paragraphs 50-57 of the Complaint, these answering Defendants repeat and  
5 incorporate by reference each and every claim, allegation, and denial contained in the answers to  
6 paragraphs 1-49 as fully set forth herein.

7 13. Answering Paragraphs 50-57, Defendants deny the allegations contained in said Paragraphs.  
8

9 **VI.**

10 **SIXTH CLAIM FOR RELIEF**

11 (Accounting)

12 14. Answering paragraphs 58-62 of the Complaint, these answering Defendants repeat and  
13 incorporate by reference each and every claim, allegation, and denial contained in the answers to  
14 paragraphs 1-57 as fully set forth herein.

15 15. Answering Paragraphs 102-115, Defendants specifically and generally deny the allegations  
16 contained in said Paragraphs.  
17

18 **AFFIRMATIVE DEFENSES**

19 1. The Plaintiff is barred from seeking recovery in this action by virtue of Plaintiff's own  
20 unclean hands.

21 2. At all times, the Plaintiff could have, by the exercise of reasonable diligence, limited the  
22 Plaintiff's damages, if any, as a result of the act, transactions, and/or omissions alleged in the  
23 Complaint. The Plaintiff failed or refused to do so, which constitutes a failure to mitigate damages.

24 3. The Plaintiff is barred from asserting each and every of the purported causes of action  
25 contained in the Complaint by reason of the Plaintiff's waiver.

26 4. The Plaintiff is guilty of unreasonable delay in bringing this action against the Defendants  
27 which delay has caused prejudice to Defendants and, therefore, the Plaintiff's Complaint is barred  
28

1 by the equitable doctrine of laches.

2 5. Plaintiff, for valuable consideration, released and forever discharged Defendants from any  
3 and all liability to Plaintiff for any and all claims of Plaintiff against Defendants arising out of the  
4 subject transaction and/or occurrence which is the subject matter of Plaintiff's causes of action  
5 herein.

6 6. The Plaintiff's Complaint is barred by accord and satisfaction.

7 7. The Plaintiff's Complaint is barred by the doctrine of res judicata and/or collateral estoppel.

8 8. The Plaintiff's Complaint is barred by claim or issue preclusion.

9 9. The relief sought by the Plaintiff would constitute unjust enrichment.

10 10. Defendants allege that the Complaint and each and every cause of action therein is barred by  
11 NRS Section 111.220 namely the Statute of Frauds, and the statute of limitations contained in NRS  
12 11.207.

13 11. Plaintiff failed to act in good faith in complying with its obligation under the law and its  
14 contract(s) with Defendants and/or third parties.

15 12. The standards of conduct that Plaintiff seeks to impose against Defendants are not lawful.

16 13. Plaintiff's Complaint is barred because any actions taken by Defendants were proper,  
17 legitimate, and based upon good faith and were not motivated by hatred or ill-will or with the  
18 deliberate intent to injure Plaintiff.

19 14. These answering Defendants allege that the allegations contained in the Complaint failed to  
20 state a cause of action against these answering Defendant upon which relief can be granted.

21 15. These answering Defendants allege that this Court lacks jurisdiction to consider the claims  
22 of the Plaintiff and further alleges that this Court lacks jurisdiction to consider this action

23 16. That it has been necessary for these answering Defendants to employ the services of an  
24 attorney to defend this action and a reasonable sum should be allowed these answering Defendants  
25 for attorney's fees, together with costs expended in this action..

26 17. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein  
27 insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer,  
28

1 and therefore, these answering Defendants reserve the right to amend the Answer to allege additional  
2 affirmative defenses if subsequent investigation so warrants.

3  
4 **COUNTERCLAIM AND CROSS-CLAIM FOR DAMAGES**  
5 **AND DEMAND FOR JURY TRIAL**

6 Plaintiff HAMID SHEIKHAI (“SHEIKHAI”), by and through his counsel of record, Michael  
7 B. Lee, P.C., hereby counterclaims against Counterdefendant VITIOK, LLC (“Vitiok”), and cross-  
8 claims against VICTOR BOTNARI (“Botnari”), LARISA MEREORA (“Mereora”), THOMAS  
9 MULKINS (“Mulkins”), NINA GROZAV (“GROZAV”), ION NEAGU (“NEAGU”), ALISA  
10 NEAGU, and NNG, LLC dba UNIVERSAL MOTORCARS (“Universal Motorcars”) (collectively  
11 referred to as “Counterdefendants”) as follows:

12  
13 **DEMAND FOR JURY TRIAL**

14 1. SHEIKHAI demands a jury trial.

15  
16 **JURISDICTIONAL AND PARTY ALLEGATIONS**

17 2. The District Courts of Nevada has subject matter jurisdiction over this matter because this  
18 action concerns issues of Nevada law.

19 3. This Court has jurisdiction over this matter pursuant to Nev. Const. art. VI, § 6, as this Court  
20 has original jurisdiction over matters involving title to property.

21 4. The District Courts of Clark County has subject matter jurisdiction this action because the  
22 matters at issue took place in Clark County, Nevada.

23 5. The District Courts of Clark County have personal jurisdiction of Plaintiff/Counterdefendant  
24 Botnari because at all times relevant he is and was a resident of Clark County.

25 6. Upon information and belief, the District Courts of Clark County have personal jurisdiction  
26 of Counterdefendant Mereora because, at all times relevant, she is and was a resident of Clark  
27 County.  
28

1 7. Upon information and belief, the District Courts of Clark County have personal jurisdiction  
2 of Counterdefendant Mulkins because, at all times relevant, he is and was a resident of Clark County.

3 8. Upon information and belief, the District Courts of Clark County have personal jurisdiction  
4 of Counterdefendant Grozav because, at all times relevant, she is and was a resident of Clark County.

5 9. Upon information and belief, the District Courts of Clark County have personal jurisdiction  
6 of Counterdefendants Neagu and Alisa Neagu because, at all times relevant, he and she were and are  
7 residents of Clark County

8 10. The District Courts of Clark County have personal jurisdiction of Plaintiff/Counterdefendant  
9 Vitiok because it is a licensed Nevada limited liability company doing business in Clark County,  
10 Nevada.

11 11. The District Courts of Clark County have personal jurisdiction of Defendant Universal  
12 Motorcars because it is a licensed Nevada limited liability company doing business in Clark County,  
13 Nevada.

14 12. The District Courts of Clark County have personal jurisdiction of SHEIKHAI because at all  
15 times relevant he is and was a resident of Clark County.

16 13. At all times relevant, SHEIKHAI is an individual who entered into an agreement with  
17 Defendants for activity in Clark County, Nevada. As such, this Honorable Court has *in rem*  
18 jurisdiction over this matter.

19  
20 **ROES AND DOES ALLEGATIONS**

21 14. SHEIKHAI is informed and believes, and therefore alleges, that the true names and  
22 capacities, whether individual, corporate, associate or otherwise of DOES 1 through 10 and ROE  
23 CORPORATIONS 1 through 10 are unknown. SHEIKHAI sues them by these fictitious names.  
24 Counterdefendants designated as DOES are responsible in some manner and are responsible for the  
25 events and happenings described in SHEIKHAI's Counterclaim that proximately caused damages  
26 to SHEIKHAI as alleged herein.

27 15. SHEIKHAI is informed and believes that Defendant designated as a ROE CORPORATION  
28

1 is likewise responsible in some manner for the events and happenings described in the Complaint  
2 which proximately caused the damages to SHEIKHAI as alleged herein. SHEIKHAI is informed  
3 and believes that Defendant designated as DOES and ROE CORPORATIONS in some way are  
4 related to this action. SHEIKHAI will ask leave of Court to amend the Complaint to insert the true  
5 names and capacities of DOES and ROE CORPORATIONS and state appropriate charging  
6 allegations, when that information has been ascertained.

### 7 8 **GENERAL ALLEGATIONS**

9 16. SHEIKHAI established the “Zip Zap Auto” name in 1999 at 3405 Clayton Rd., Concord, CA  
10 94519. SHEIKHAI sold this business in 2009, prior to moving Las Vegas, and years before ever  
11 meeting Plaintiff/Counterdefendant Botnari.

12 17. In 2011, SHEIKHAI moved to Las Vegas, NV and started a new Zip Zap Auto in February  
13 2011, located at 3230 N. Durango Dr., Las Vegas, NV 89129 (“Zip Zap Auto”).

14 18. SHEIKHAI met Mr. Botnari in 2011 after SHEIKHAI’s ex-wife called SHEIKHAI to ask  
15 if he could give Mr. Botnari a job at one of his auto shops.

16 19. SHEIKHAI’s ex-wife explained that Victor Botnari was an immigrant from Moldova who  
17 was homeless and jobless that feared being deported based on a failed immigration petition.

18 20. SHEIKHAI empathized with Mr. Botnari’s situation as SHEIKHAI is an immigrant from Iran  
19 who came to the United States, worked hard, and became a successful businessman.

20 21. Mr. Botnari began working for SHEIKHAI in 2011 and seemed to be a good employee,  
21 quickly gaining SHEIKHAI’s trust.

22 22. In March 2013, SHEIKHAI sold Zip Zap Auto to Jens, Inc.

23 23. In March 2014, SHEIKHAI purchased Zip Zap Auto back from Jens, Inc., including the name  
24 “Zip Zap.”

25 24. On April 1, 2014, following SHEIKHAI’s buy-back of Zip Zap Auto, SHEIKHAI appointed  
26 Mr. Botnari as manager of Zip Zap Auto.

27 25. From about April 2014 to May 2018, Vitiok leased the Zip Zap Auto commercial building  
28

1 from SHEIKHAI for \$10,000.00 per month, which Mr. Botnari paid until May 2018.

2 26. On May 4, 2014, SHEIKHAI and Mr. Botnari were married in Nevada; however, the  
3 marriage was never consummated and was ultimately annulled on March 31, 2018.

4 27. Following the marriage, SHEIKHAI purchased the real property 2964 Sun Lake Dr., Las  
5 Vegas, NV 89128 ("Sun Lake Property"), which SHEIKHAI also paid to have completely furnished.

6 28. Mr. Botnari moved into the Sun Lake Property, but told SHEIKHAI that his culture would  
7 not allow SHEIKHAI to live with him. Instead, Mr. Botnari's girlfriend and coworker/employee,  
8 Counterdefendant Mereora, moved in with Mr. Botnari at the Sun Lake Property.

9 29. In May 2014, SHEIKHAI helped Mr. Botnari set up Vitiok, LLC ("Vitiok") by setting up  
10 bank accounts, submitting a fictitious business name application and allowing Vitiok to use the "Zip  
11 Zap Auto" name for business purposes.

12 30. The purpose of SHEIKHAI's aid in setting up Vitiok was so that Mr. Botnari and Vitiok  
13 could obtain a Department of Motor Vehicles ("DMV") Garage and Smog Station licenses to  
14 increase revenue of Zip Zap Auto.

15 31. SHEIKHAI had a Smog Technician licenses in 2013, but it was revoked following a series  
16 of errors made by Mr. Botnari who was improperly using SHEIKHAI's Smog Technician License  
17 username/password.

18 32. Despite allowing Vitiok to use the Zip Zap Auto name, SHEIKHAI retained 100% ownership  
19 and control of all equipment, miscellaneous assets, and intellectual property pertaining to Zip Zap  
20 Auto.

21 33. On May 4, 2018, following the annulment of SHEIKHAI's and Mr. Botnari's marriage, Mr.  
22 Botnari transferred all of his assets and extinguished any interest he had in any of SHEIKHAI's  
23 business affiliations, including Zip Zap Auto, to SHEIKHAI.

24 34. On May 27, 2018, SHEIKHAI executed, and Mr. Botnari accepted, a Promissory Note to pay  
25 Mr. Botnari \$1 Million, together with interest at a rate of 12% per annum, commencing June 15,  
26 2018, and calling for interest-only payments at a rate of \$10,000.00 per month until the principal was  
27 paid ("Promissory Note").  
28

1 35. Following the execution of the Promissory Note, Mr. Botnari and SHEIKHAI agreed that,  
2 by May 31, 2018, Mr. Botnari would go to the DMV to file a change in management and close out  
3 his license at the DMV Emissions Lab for the Smog Station part of Zip Zap Auto.

4 36. Despite the agreement, Mr. Botnari purposefully avoided SHEIKHAI during the last week  
5 of May 2018.

6 37. On May 31, 2018, Mr. Botnari had his friend and key employee, Counterdefendant Mereora,  
7 tell SHEIKHAI that Mr. Botnari was in Los Angeles, CA awaiting a flight to Moldova.

8 38. On June 1, 2018, Mr. Botnari messaged SHEIKHAI to say that he did not file the change in  
9 management or close out his Smog Station license as agreed, and that he was at the airport in Los  
10 Angeles awaiting his flight to Moldova.

11 39. However, Mr. Botnari was not in Los Angeles as advised, nor did he travel back to Moldova.  
12 Rather, Mr. Botnari never left Las Vegas between May 27, 2018 and June 5, 2018.

13 40. On June 5, 2018, after not receiving any contact from Mr. Botnari, SHEIKHAI prepared and  
14 filed eviction notices for abandonment of the three properties for which Mr. Botnari had keys, but  
15 were owned by SHEIKHAI, including: Zip Zap Auto and the Sun Lake Property.

16 41. On June 6, 2018, SHEIKHAI went to serve the evictions papers, but upon arrival,  
17 Counterdefendants Mereora, Mulkins, and/or Neagu, along with other employees of Mr. Botnari,  
18 were packing up and removing equipment from Zip Zap Auto, including, but not limited to: Zip Zap  
19 Auto's computer and hard drive containing Zip Zap Auto's customer list and other trade secrets.

20 42. Similarly, Counterdefendants Mereora, Mulkins, and/or Neagu also removed the furniture  
21 and furnishings from the Sun Lake Property, claiming those items to be Mr. Botnari's property.

22 43. Counterdefendants Mereora, Mulkins, and Neagu were all employees of Mr. Botnari, and  
23 acting under his control and direction, at the time the equipment, goods, and other items were  
24 removed from Zip Zap Auto.

25 44. Counterdefendants Mereora, Mulkins, and Neagu were all employees of Mr. Botnari, and  
26 acting under his control and direction, at the time the furniture and other furnishings were removed  
27 from the Sun Lake Property.  
28

1 45. On or about June 6, 2018, Counterdefendant Mereora voluntarily handed SHEIKHAI the  
2 keys to Zip Zap Auto and the Sun Lake Property.

3 46. Unbeknownst to SHEIKHAI, in early May 2018, Mr. Botnari gave his girlfriend,  
4 Counterdefendant Nina Grozav, \$130,000.00 in cash to purchase and open a competitor auto shop,  
5 “Universal Motorcars.”

6 47. Upon information and belief, although Ms. Grozav was listed as a “manager” of Universal  
7 Motorcars, Mr. Botnari had control of Universal Motorcars and handled the day-to-day operation of  
8 the business.

9 48. The other listed manager for Universal Motorcars is Alisa Neagu who, upon information and  
10 belief, has a familial relationship with Counterdefendant Ion Neagu.

11 49. The equipment stolen from Zip Zap Auto was taken by Counterdefendants Botnari, Mereora,  
12 Mulkins, and Neagu to Universal Motorcars, including the computer hard drive containing Zip Zap  
13 Auto’s customer list and other trade secrets.

14 50. Counterdefendants then made unsolicited calls to Zip Zap Auto’s customers to disparage and  
15 defame Zip Zap Auto while promoting Mr. Botnari’s competing business.

16 51. The equipment that was not stolen from Zip Zap Auto’s premises by Counterdefendants but  
17 left behind was in a state of disrepair and required replacement by SHEIKHAI upon his resuming  
18 control of Zip Zap Auto.

19 52. SHEIKHAI spent about \$75,000.00 replacing or repairing the equipment damaged/stolen  
20 from Zip Zap Auto by Counterdefendants.

21 53. On or about June 6, 2018, SHEIKHAI resumed control of Zip Zap Auto, which included  
22 using the name, equipment and premises that had previously been leased by Mr. Botnari and Vitiok.

23 54. Upon resuming control of Zip Zap Auto, SHEIKHAI discovered that Mr. Botnari had been  
24 keeping two sets of books, hiding roughly half of the gross sales by backdating repair orders.

25 55. Mr. Botnari and Vitiok were audited and assessed over \$104,000.00 in back taxes by the  
26 Nevada Department of Taxation.

27 56. Mr. Botnari paid only \$40,000.00 of the back-taxes and requested that SHEIKHAI loan him  
28

1 \$40,000 by paying writing a check directly to Nevada Department of Taxation.

2 57. Mr. Botnari then disappeared without paying the remainder of the tax obligation or repaying  
3 SHEIKHAI the \$40,000.00 paid on Mr. Botnari's and Vitiok's behalf.

4 58. In order for SHEIKHAI to resume control of Zip Zap Auto, SHEIKHAI was forced to cure  
5 Mr. Botnari and Vitiok's remaining tax obligation of roughly \$24,000.00.

6  
7 **FIRST CLAIM FOR RELIEF**

8 (Violation of Uniform Trade Secret Act NRS 600A)

9 59. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 58, inclusive, as if  
10 fully set forth at this point and incorporates them herein by reference.

11 60. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
12 if fully set forth at this point and incorporates them herein by reference in support of this cause of  
13 action.

14 61. In 1999, SHEIKHAI established the trade name "Zip Zap Auto" in Concord, California.

15 62. In 2011, SHEIKHAI moved to Las Vegas, Nevada and opened a new Zip Zap Auto located  
16 at 3230 N. Durango Dr., Las Vegas, NV 89129.

17 63. Although SHEIKHAI sold Zip Zap Auto in March 2013, SHEIKHAI re-purchased the  
18 business a year later in March 2014, including the name Zip Zap Auto.

19 64. SHEIKHAI had an agreement with Mr. Botnari, that Mr. Botnari's business, Vitiok, LLC,  
20 which SHEIKHAI helped Mr. Botnari create, could lease the Zip Zap Auto premises and utilize the  
21 name Zip Zap Auto.

22 65. Mr. Botnari and Vitiok understood that this agreement was a strictly a lease agreement and  
23 that SHEIKHAI retained 100% ownership and control of all equipment, miscellaneous assets, and  
24 intellectual property pertaining to Zip Zap Auto.

25 66. Mr. Botnari's understanding of the aforementioned agreement was confirmed by his payment  
26 of \$10,000.00 per month to SHEIKHAI between April 2014 and May 2018, the same time Mr.  
27 Botnari and Vitiok were utilizing the Zip Zap Auto location, equipment, and trade name.  
28

67. Upon abandoning Zip Zap Auto, Counterdefendants Botnari, Mereora, Mulkins and/or Neagu removed the computer and hard drive from Zip Zap Auto, which contained Zip Zap Auto's customer list.

68. Zip Zap Auto's customer list is confidential and has independent economic value for not being generally known, and not being readily ascertainable by proper means by the public or any other persons who could obtain commercial or economic value from their disclosure or use.

69. SHEIKHAI took adequate measures to maintain the customer list as trade secret not readily available for use by others.

70. Counterdefendants, and each of them, intentionally, and with reason to believe that their actions would cause injury to SHEIKHAI, misappropriated and exploited the trade secret information through use, disclosure, or non-disclosure of the use of the trade secret for Counterdefendants' own use and personal gain.

71. Counterdefendants' misappropriation of Zip Zap Auto's customer list is wrongful because Counterdefendants knew of their duty not to disclose/abscond with the customer list, but did so anyway.

72. Counterdefendants' misappropriation of Zip Zap auto's customer list was willfully and intentionally done to interfere and harm SHEIKHAI's business, as well as to obtain an unfair competitive advantage for Counterdefendants.

73. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in an amount in excess of \$15,000, said amount to be determined at trial.

74. Based on the intentional, willful, and malicious conduct of Counterdefendants, punitive damages should be awarded at the discretion of the court.

75. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

## SECOND CLAIM FOR RELIEF

(False Light, Disparagement, Defamation, Defamation Per Se)

76. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 75, inclusive, as if fully set forth at this point and incorporates them herein by reference.

77. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as if fully set forth at this point and incorporates them herein by reference in support of this cause of action.

78. “A statement is defamatory when, under any reasonable definition[, ] such charges would tend to lower the subject in the estimation of the community and to excite derogatory opinions against him and to hold him up to contempt.” See *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993) (quotation marks and citation omitted).

79. “[I]f the defamatory communication imputes a ‘person’s lack of fitness for trade, business, or profession,’ or tends to injure the SHEIKHAI in his or her business, it is deemed defamation per se and damages are presumed.” See *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009).

80. Whether a statement constitutes fact or opinion is determined by assessing “whether a reasonable person would be likely to understand the remark as an expression of the source’s opinion or as a statement of existing fact.” See *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (quotation marks and citation omitted).

81. Although a statement of opinion is not actionable, a mixed-type statement—e.g., a statement of opinion that implies the existence of undisclosed, defamatory facts—is actionable. *Id.* at 113, 17 P.3d at 426.

82. Counterdefendants Botnari, Mereora, Mulkins and/or Neagu, on behalf of Vitiok, called Zip Zap Auto customers, from the customer list stolen from the Zip Zap auto hard drive, and made defamatory and disparaging claims against Zip Zap Auto and SHEIKHAI with the intent to siphon those customers from Zip Zap Auto and to Mr. Botnari’s competing venture, Universal Motorcars.

83. Counterdefendants Botnari, Mereora, Mulkins, and/or Neagu, on behalf of Vitiok, made the false and disparaging statements to interfere with the good will associated with SHEIKHAI in the

1 automotive repair industry.

2 84. SHEIKHAI did not consent to Counterdefendants' actions.

3 85. The concerted actions of Counterdefendants alleged here invaded SHEIKHAI's right of  
4 privacy by placing him in a false light before the general public, his customers, and his competitors.

5 86. The comments and statements made concerned SHEIKHAI and his business.

6 87. The comments and statements made by Counterdefendants were untrue, false, and  
7 defamatory, and Counterdefendants asserted them as matters of fact and in a way that constituted  
8 defamation per se.

9 88. No privilege exists related to the statements and comments made by Counterdefendants.

10 89. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in an  
11 amount in excess of \$15,000, said amount to be determined at trial.

12 90. Based on the intentional, willful, and malicious behavior of Counterdefendants, and each of  
13 them, punitive damages should be awarded at the discretion of the court.

14 91. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
15 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

16  
17 **THIRD CLAIM FOR RELIEF**

18 (Intentional Interference with Prospective Economic Advantage)

19 92. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 92, inclusive, as if  
20 fully set forth at this point and incorporates them herein by reference.

21 93. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
22 if fully set forth at this point and incorporates them herein by reference in support of this cause of  
23 action.

24 94. Counterdefendants Botnari, Mereora, Mulkins, and/or Neagu, on behalf of Vitiok, called Zip  
25 Zap Auto customers, from the customer list stolen from the Zip Zap auto hard drive, and made  
26 defamatory and disparaging claims against Zip Zap Auto with the intent to siphon those customers  
27 from Zip Zap Auto and to Mr. Botnari's competing venture, Universal Motorcars.  
28

1 95. Counterdefendants' acts were intended or designed to disrupt SHEIKHAI's business to gain  
2 a prospective economic advantage.

3 96. Counterdefendants' actions have disrupted or were intended to disrupt SHEIKHAI's business  
4 by, among other things, diverting customers away from him.

5 97. Counterdefendants had no legal right, privilege, or justification for their conduct.

6 98. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged, and will  
7 continue to suffer damages, in an amount in excess of \$15,000, said amount to be determined at trial.

8 99. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
9 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

10  
11 **FOURTH CLAIM FOR RELIEF**

12 (Civil Conspiracy)

13 100. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 99, inclusive, as if  
14 fully set forth at this point and incorporates them herein by reference.

15 101. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
16 if fully set forth at this point and incorporates them herein by reference.

17 102. "Actionable civil conspiracy arises where two or more persons undertake some concerted  
18 action with the intent 'to accomplish an unlawful objective for the purpose of harming another,' and  
19 damage results." See *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335 P.3d  
20 190, 198 (2014) (quoting *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304,  
21 1311, 971 P.2d 1251, 1256 (1998)).

22 103. Even if "an act done by an individual is not actionable because justified by his rights, such  
23 act becomes actionable when done in pursuance of a combination of persons actuated by malicious  
24 motives, and not having the same justification as the individual." See *Eikelberger v. Tolotti*, 96 Nev.  
25 525, 527-28, 611 P.2d 1086, 1088 (1980).

26 104. Counterdefendants, and each of them, entered into a conspiracy with each other, and  
27 potentially others, to defame, disparage, and otherwise interfere with SHEIKHAI's business.  
28

1 105. Counterdefendants, and each of them, acted in concert to steal equipment owned by  
2 SHEIKHAI, and to steal SHEIKHAI's customer list.

3 106. In furtherance of the conspiracy, Counterdefendants Botnari, Mereora, and/or Mulkins  
4 contacted SHEIKHAI's customers, using the stolen customer list, to defame, disparage, and hold  
5 SHEIKHAI in a false light in front of his customers.

6 107. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in excess  
7 of \$15,000.00, not including interest, attorneys' fees, and costs, the exact amount to be determined  
8 at trial.

9 108. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent it, and it is  
10 entitled to fair and reasonable attorneys' fees associated with protecting those rights.

11  
12 **FIFTH CLAIM FOR RELIEF**

13 (Conversion/Trespass to Chattel)

14 109. SHEIKHAI repeats and realleges the allegations set forth in paragraphs 1 through 108 above,  
15 as if fully set forth herein.

16 110. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
17 if fully set forth at this point and incorporates them herein by reference in support of this cause of  
18 action.

19 111. At all times relevant, SHEIKHAI was the sole owner of all equipment contained inside Zip  
20 Zap Auto.

21 112. At no time were Counterdefendants Vitiok, Botnari, Mereora, Mulkins or Neagu the legal  
22 or equitable owner of any of the equipment contained inside Zip Zap Auto.

23 113. Similarly, at no time were Counterdefendants Botnari, Mereora, Mulkins, or Neagu the legal  
24 or equitable owner of the furniture and furnishings attached to, or kept inside of, the Sun Lake  
25 Property.

26 114. Counterdefendants Botnari, Mereora, Mulkins and Neagu intentionally disposed of,  
27 destroyed, ruined, damaged, absconded with, spoiled, and otherwise converted the equipment from  
28

1 Zip Zap Auto for the benefit of themselves and Counterdefendant Vitiok, and in derogation of  
2 SHEIKHAI's rights to the same.

3 115. Counterdefendants Botnari, Mereora, Mulkins, and Neagu intentionally disposed of,  
4 destroyed, ruined, damaged, absconded with, spoiled, and otherwise converted the furniture and  
5 furnishing from the Sun Lake Property for their own benefit, and in derogation of SHEIKHAI's  
6 rights to the same.

7 116. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in an  
8 amount in excess of \$15,000, said amount to be determined at trial.

9 117. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
10 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

## 11 12 **SIXTH CAUSE OF ACTION**

13 (Restitution for Tax Liens)

14 118. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 117, inclusive, as  
15 if fully set forth at this point and incorporates them herein by reference.

16 119. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
17 if fully set forth at this point and incorporates them herein by reference in support of this cause of  
18 action.

19 120. Counterdefendants Botnari and Vitiok's illegal and improper conduct in underreporting their  
20 sales and use tax caused a tax lien in the approximate amount of \$104,000.00 to be filed against  
21 Botnari and/or Vitiok.

22 121. Counterdefendant Botnari acknowledged the tax lien as his sole responsibility and obligation  
23 by paying a portion of the tax lien.

24 122. Counterdefendant Botnari further acknowledged the tax lien as his sole responsibility and  
25 obligation by requesting a loan from SHEIKHAI to pay a portion of the tax lien.

26 123. Counterdefendants Botnari and Vitiok failed to pay the entire amount of the tax lien.

27 124. As a result, SHEIKHAI was assessed to pay the remainder of the tax lien following the  
28

1 \$40,000.00 payment by Mr. Botnari and subsequent \$40,000.00 payment by SHEIKHAI.

2 125. In total, SHEIKHAI paid the approximate sum of \$64,000.00 in satisfaction of the tax lien.

3 126. Mr. Botnari has not repaid SHEIKHAI either the \$40,000.00 loaned to him, or the additional  
4 \$24,000.00 that SHEIKHAI was forced to incur.

5 127. Counterdefendants Botnari and Vitiok received a benefit by way of SHEIKHAI's payment  
6 of the tax lien.

7 128. Counterdefendants Botnari and Vitiok accepted and retained the benefit under circumstances  
8 that would be inequitable for Counterdefendants Botnari and Vitiok to retain the benefit without  
9 payment of value for the same.

10 129. Counterdefendants Botnari and Vitiok's retention of the benefit is to the derogation of  
11 SHEIKHAI's rights in equity.

12 130. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in an  
13 amount in excess of \$15,000, said amount to be determined at trial.

14 131. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
15 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

## 17 SEVENTH CAUSE OF ACTION

18 (Abuse of Process)

19 132. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 131, inclusive, as  
20 if fully set forth at this point and incorporates them herein by reference.

21 133. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
22 if fully set forth at this point and incorporates them herein by reference in support of this cause of  
23 action.

24 134. On November 22, 2019, Counterdefendant Vitiok filed a complaint for damages against  
25 SHEIKHAI personally, among other individuals and entities affiliated with SHEIKHAI, in case  
26 number A-19-805955-C.

27 135. Also, on November 22, 2019, Counterdefendant Botnari filed a complaint for damages  
28

1 against SHEIKHAI personally, among other individuals and entities affiliated with SHEIKHAI, in  
2 case number A-19-801513-P.

3 136. Both of the aforementioned cases filed on November 22, 2019, attempt to litigate the same  
4 issues, parties, and entities already in controversy in the family court case number D-18-575686-L,  
5 which had been in litigation for a year and a half prior to filing of the aforementioned complaints.

6 137. The aforementioned complaints not only lacked legal merit, but were already the subject of  
7 litigation between the parties.

8 138. Counterdefendants' Botnari and Vitiok's purpose in filing the aforementioned complaints  
9 was to harass SHEIKHAI and deplete his funds so that he could not afford to defend the family law  
10 case and in an effort to have SHEIKHAI default on the promissory note between SHEIKHAI and  
11 Mr. Botnari.

12 139. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in an  
13 amount in excess of \$15,000, said amount to be determined at trial.

14 140. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
15 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

## 17 **EIGHTH CAUSE OF ACTION**

18 (Breach of the Implied Covenant of Good Faith and Fair Dealing – Promissory Note)

19 141. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 140, inclusive, as  
20 if fully set forth at this point and incorporates them herein by reference.

21 142. SHEIKHAI repeats and realleges the allegations in Paragraphs 13 through 58, inclusive, as  
22 if fully set forth at this point and incorporates them herein by reference in support of this cause of  
23 action.

24 143. SHEIKHAI and Mr. Botnari were parties to a contract, i.e. the Promissory Note.

25 144. Under the Promissory Note, Mr. Botnari owed a duty of good faith and fair dealing to  
26 SHEIKHAI.

27 145. Mr. Botnari breached that duty by filing cases A-19-805955-C and A-19-801513-P against  
28

1 SHEIKHAI, not for any legitimate purpose, but to drain SHEIKHAI's funds in an attempt to force  
2 SHEIKHAI to default on his payments to Mr. Botnari under the Promissory Note.

3 146. Both of the aforementioned cases filed on November 22, 2019, attempt to litigate the same  
4 issues, parties, and entities already in controversy in the family court case number D-18-575686-L,  
5 which had been in litigation for a year and a half prior to filing of the aforementioned complaints.

6 147. The aforementioned complaints not only lacked legal merit, but were already the subject of  
7 litigation between the parties.

8 148. As a direct and proximate result of the foregoing, SHEIKHAI has been damaged in an  
9 amount in excess of \$15,000, said amount to be determined at trial.

10 149. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
11 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

## 12 13 **NINTH CAUSE OF ACTION**

### 14 **(Attorneys' Fees and Costs)**

15 150. SHEIKHAI repeats and realleges the allegations in Paragraphs 1 through 149, inclusive, as  
16 if fully set forth at this point and incorporates them herein by reference.

17 151. In order to prosecute this action, SHEIKHAI had to retain attorneys to represent him, and he  
18 is entitled to fair and reasonable attorneys' fees associated with protecting his rights.

19 152. SHEIKHAI is entitled to collect attorney fees as special damages in the complaint pursuant  
20 to Nevada Rule of Civil Procedure 9(g).

21 153. Attorneys' fees and costs are a "natural and proximate consequence of the injurious conduct"  
22 by Counterdefendants, and each of them.

23 154. SHEIKHAI pleads attorneys' fees and costs as a special cause of action to preserve the  
24 remedy to attorneys' fees and costs as required by Liu v. Christopher Homes, LLC, 321 P.3d 875  
25 (2014); Sandy Valley Assoc. v. Sky Ranch Estates Owners Ass'n, 117 Nev. 948, 956, 35 P.3d 964,  
26 969 (2001).

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**PRAYERS FOR RELIEF**

WHEREFORE, SHEIKHAI prays for judgment against Counterdefendants, jointly and severally, as follows:

- 155. For damages related to Violation of Uniform Trade Secret Act (NRS 600A) as stated above;
- 156. For damages related to False Light, Disparagement, Defamation, and Defamation Per Se as requested above;
- 157. For damages related to Intentional Interference with Prospective Economic Advantage as stated above;
- 158. For damages related to Civil Conspiracy as stated above;
- 159. For damages related to Conversion/Trespass to Chattel as stated above;
- 160. For Restitution of Tax Liens as stated above;
- 161. For damages related to Abuse of Process as stated above;
- 162. For damages related to Brach of the Implied Covenant of Good Faith and Fair Dealing as stated above;
- 163. For a finding that Counterdefendants Botnari, Mereora, Mulkins, Gozrav, Neagu, Vitiok, and Universal Motorcars are all alter egos of one another and engaged in civil conspiracy;
- 164. For attorneys’ fees and costs incurred herein;
- 165. For exemplary damages;
- 166. For such other and further relief as the Court may deem just and proper.

1 CONCLUSION

2 WHEREFORE, these answering Defendants demand judgment that Plaintiff  
3 /Counterdefendant takes nothing by way of the Complaint on file herein, for all relief requested in  
4 SHEIKHAI's Counterclaim and Cross-claims, and that these answering Defendants be awarded  
5 reasonable attorney's fees.

6 **DATED** this 22<sup>nd</sup> day of October, 2020

7 WILICK LAW GROUP

8  
9 */s/ Marshal S. Willick*

10 MARSHAL S. WILICK, ESQ.  
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15 Attorneys for SHEIKHAI

16  
17 MICHAEL B. LEE, P.C.

18 */s/ Michael B. Lee<sup>1</sup>*

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27 mike@mblnv.com  
28 Attorneys for Defendant ZOHREH AMIRYAVARI

<sup>1</sup> Michael Lee has granted us permission in writing to e-sign the document on his behalf.

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 22<sup>nd</sup> day of October, 2020, I caused the foregoing document to be served as follows:

- ☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.
- ☐ 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.
- ☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.
- ☐ Pursuant to NRCP 5(b)(2)(D), by email by duly executed consent for service by electronic means.
- ☐ By hand delivery with signed Receipt of Copy.
- ☐ By First Class, Certified U.S. Mail.
- ☐ By placing same to be deposited for mailing in the United States Mail, Certified, Return Receipt Requested, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

To the address, email address, and/or facsimile number indicated below:

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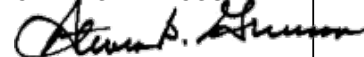
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# EXHIBIT “I”



**MOT**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

VITIOK LLC., A Nevada Limited  
Liability Company,

) CASE NO.: A-19-805955-C

) DEPT NO.: XXII

)

)

Plaintiff,

) ORAL ARGUMENT REQUESTED

)

)

vs.

) **PLAINTIFF'S MOTION TO**

) **DISMISS DEFENDANTS'**

) **COUNTERCLAIM AND CROSS**

) **CLAIMS.**

SLC, LLC., a Nevada Limited Liability  
Company; HAMID SHEIKHAI, an  
individual, ZOHREH AMIRYAVARI,  
an individual, and DOES I through X and  
ROE CORPORATIONS I through X,  
inclusive,

) Date of Hearing:

) Time of Hearing:

)

)

Defendants.

**TO ALL PARTIES IN INTEREST AND THEIR ATTORNEYS OF  
RECORD:**

COMES NOW, Plaintiff Vitiok, LLC., a Nevada Limited Liability Company  
("Vitiok"), *specially appearing Cross Defendant Victor Botnari* and hereby submits  
this motion to Dismiss the Defendants' Counterclaim and Crossclaims pursuant to  
NRCP 12(b)(5), NRCP 14, and moves the Court for an order:

1. Finding Victor Botnari (“Mr. Botnari”) is not a proper “Cross” (Third-Party) Defendant in this matter because a claim for Violation of Uniform Trade Secret Act NRS 600A, as alleged by Defendant and Crossclaimant, Hamid Sheikhai (“Hamid”), is not based on indemnification or contribution, as is required by NRCP 14, and naming him as a third-party defendant is impermissible as a matter of law.
2. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because claims for False Light, Disparagement, Defamation, and a Defamation Per Se, as alleged by Defendant and Crossclaimant, Hamid, are not based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.
3. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because a claim for Interference with Prospective Economic Advantage cannot be not based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.
4. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because a claim for Civil Conspiracy is not based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.
5. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because a claim for Conversion/Trespass to Chattel are not based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.
6. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because a claim for Restitution of Tax Liens does not exist and if a claim did exist, it could not be logically based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.

7. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because a claim for Abuse of Process is not based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.
8. Finding Mr. Botnari is not a proper “Cross” (Third-Party) Defendant in this matter because a Breach of Good Faith and Fair Dealing claim is not based on indemnification or contribution, as is required by NRCP 14 and naming him as a third-party defendant is impermissible as a matter of law.
9. Finding the First Claim for Relief - for Violation of Uniform Trade Secret Act 600A is without merit and must be dismissed as a matter of law.
10. Finding the Second Claim for Relief for False Light, Disparagement, Defamation, Defamation Per Se is dismissed as a matter of law.
11. Finding the Third Claim for Relief for Intentional Interference with Prospective Economic Advantage is without merit and must be dismissed as a matter of law.
12. Finding the Fourth Claim for Relief for Civil Conspiracy is without merit and must be dismissed as a matter of law.
13. Finding the Fifth Claim for Relief for Conversion / Trespass to Chattel are without merit and must be dismissed as a matter of law.
14. Finding the Sixth Claim for Relief for Restitution for Tax Liens is without merit and must be dismissed as a matter of law.
15. Finding the Seventh Claim for Relief for Abuse of Process is without merit and must be dismissed as a matter of law.
16. Finding the Eighth Claim for Relief for Breach of the Implied Good Faith and Fair Dealing is without merit and must be dismissed as a matter of law.

1 This motion is made and based on the following Memorandum of Points and  
2 Authorities, the declarations and exhibits, attached hereto, the papers and pleadings  
3 already on file herein, and any argument the Court may permit at the hearing of this  
4 matter.

5 Dated this 24<sup>th</sup> day of November, 2020.

6  
7 LEVENTHAL & ASSOCIATES, PLLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 As is clearly shown herein, Defendants' Amended Answer, Counterclaim,  
5 and Crossclaims is improperly plead as the Crossclaims/Third-Party claims  
6 included therein are not the type of claims that are allowed pursuant to Nevada  
7 Rules of Civil Procedure (hereinafter "NRCPP"), Rule 14. As such, Plaintiff and  
8 Third-Party Cross-Defendant Victor Botnari respectfully request that the Court  
9 dismiss Defendants' Counterclaims and Cross/Third-Party Complaint, in their  
10 entirety.

11 **II.**

12 **Statement of Facts**

13 The following are the facts relevant to this Motion to Dismiss:

14 1. Defendant Hamid Sheikhai agreed to sell Zip Zap Auto to Vitiok. Following  
15 that agreement, Vitiok entered into a Lease Agreement for the premises where Zip  
16 Zap Auto was being operated, to wit: 3230 N. Durango Road "3230 N. Durango"),  
17 Las Vegas, Nevada<sup>1</sup>.

18 2. Vitiok purchased Zip Zap Auto, an automobile repair business, from Samir  
19 LLC that was owned and operated by Hamid which was formally memorialized by  
20 way of Bill of Sale on June 1, 2014<sup>2</sup>. It is significant to note that when Hamid  
21 forgot about the Bill of Sale, and/or believed Vitiok did not have a copy of such  
22 document, Hamid/Counterclaimant had the audacity to represent to the Court that  
23 the sale and Vitiok's ownership of Zip Zap Auto, was "simply make[] up"<sup>3</sup>. The  
24 evidence—which Hamid/Counterclaimant undoubtedly hoped would remain  
25

26 <sup>1</sup> See Exhibit "1" submitted herewith for the Court's convenience and review.

27 <sup>2</sup> See Exhibit "2" submitted herewith for the Court's convenience and review.

28 <sup>3</sup> See Hamid's Reply to Plaintiff's opposition to Motion to file Amended Answer  
and Counterclaim, page 2, line3, filed 8/24/2020.

1 unavailable to the Court, proves an unsettling lack of candor on the part of  
2 Hamid/Counterclaimant.

3 3. On June 5, 2014, Vitiok registered “Zip Zap Auto” as a dba of **Vitiok**<sup>4</sup>.  
4 Thereafter, Vitiok assumed/resumed control and began operating “Zip Zap Auto” at  
5 3230 N. Durango Road “3230 N. Durango”), Las Vegas, Nevada. Hamid cannot  
6 dispute the above; in fact, Hamid subsequently executed a business declaration  
7 acknowledging Vitiok’s ownership of Zip Zap Auto<sup>5</sup> and confirmed the sale of Zip  
8 Zap Auto in latter correspondence<sup>6</sup>.

9 4. On June 4, 2018, Defendants, without purchasing Zip Zap Auto from Vitiok  
10 and having no ownership rights to Vitiok’s business of Zip Zap Auto,  
11 surreptitiously filed a fictitious firm name of Zip Zap Auto listing *Defendants* as the  
12 owner of Vitiok’s business<sup>7</sup>.

13 5. The very next day, June 5, 2018, after four years of building and running the  
14 business, including the development of a stellar reputation and considerable good  
15 will, Hamid<sup>8</sup>, wrongfully and under false pretenses, evicted Vitiok from 3230 N.  
16 Durango<sup>9</sup>, so that he could profit from the name of Zip Zap Auto and effort of  
17 Vitiok.

18 6. The following day, Hamid caused the locks on the premises to be changed,  
19 and without authority or permission, intentionally took possession and use of  
20 Vitiok’s tools, equipment, Vitiok’s *customer directory*, computer data base, good  
21

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22 <sup>4</sup> See Exhibit “3” submitted herewith for the Court’s convenience and review.

23 <sup>5</sup> See Exhibit “4” submitted herewith for the Court’s convenience and review.

24 <sup>6</sup> See Exhibit “5” submitted herewith for the Court’s convenience and review.

25 <sup>7</sup> See Exhibit “6” submitted herewith for the Court’s convenience and review.

26 <sup>8</sup> 3230 N. Durango was placed into Stone & Stone, a Nevada Limited Liability  
27 Company, along with multiple other properties (including those owned/purchased  
28 by Victor) of which Hamid and Victor had an interest. Hamid fraudulently  
represented to Victor that he had a 90% interest in Stone & Stone. The supporting  
documentation provided by Hamid was forged and altered by Hamid. Hamid was  
the manager of Stone & Stone and caused the wrongful eviction of Vitiok.

<sup>9</sup> See Exhibit “7” submitted herewith for the Court’s convenience and review.

1 will, and other assets, and began operating Vitiok's business under the name of Zip  
2 Zap Auto at 3230 N. Durango. Notably, Vitiok's customer list, pricing scheme, and  
3 other trade secrets were on the computer identified and acknowledged by Hamid<sup>10</sup>.

4 More importantly, after wrongfully evicting Vitiok, Hamid converted  
5 Vitiok's assets—including its customer list—for his own personal gain. In fact,  
6 Defendants **admit** they are in possession of **Vitiok's** "confidential customer list and  
7 pricing schemes"<sup>11</sup>—something that could only have resulted from the wrongful  
8 eviction and the taking of Vitiok's computer, yet refuse to return the equipment or  
9 provide Vitiok access to *its* property.

10 7. Hamid additionally went to DMV, without Plaintiff's knowledge or consent,  
11 filed an "Out of Business Notification" declaring Zip Zap Auto was out of  
12 business<sup>12</sup>.

13 8. As the sole owner of Zip Zap Auto, Vitiok is entitled to all rights and  
14 privileges afforded it and the exclusive use of the name "Zip Zap Auto" and its  
15 assets. The defendants conspired to defraud Vitiok and engaged in tortious conduct  
16 for their own gain. As a result, Vitiok commenced litigation to address the  
17 considerable damages they have caused Vitiok.

18 9. This matter commenced with Plaintiff filing of the underlying Complaint on  
19 November 22, 2019 against the named Defendants. Despite Defendants culpability,  
20 now, more than a year later, with trial currently set for March of 2021, Hamid files  
21 a baseless amended answer that contains frivolous counterclaims and impermissible  
22 cross/third-party claims, that must be dismissed in their entirety  
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26 <sup>10</sup> See Exhibit "4".

27 <sup>11</sup> Stated under penalty of perjury in Defendants' Motion for Protective Order, filed  
28 10/26/2020, page 10 of 12, lines 15-17.

<sup>12</sup> See Exhibit "8" submitted herewith for the Court's convenience and review.

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III.

Legal Analysis

1. Standard of Review.

Rule 12(b)(5) of the Nev. R. Civ. Pro. (hereinafter “NRCP”) permits dismissal of an action for “failure to state a claim upon which relief can be granted.” Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief<sup>13</sup>. To survive a motion to dismiss, the “allegations must be legally sufficient to constitute the elements of the claim asserted”<sup>14</sup> and must contain some set of facts which, if true, would entitle Plaintiff to relief<sup>15</sup>.

It is well recognized that “failure to state a claim upon which relief can be granted” may be made by motion<sup>16</sup>. When made, motions to dismiss should be granted when it appears beyond a doubt that the plaintiffs are entitled to no relief under any set of facts that could be proved in support of the claim<sup>17</sup>.

The law is clear that a complaint should be dismissed when it fails to “state a claim upon which relief can be granted.” NRCP 12(b)(5). Even the most liberal reading of Plaintiff’s complaint reveals a failure on its part to state a claim for which relief can be granted. NRCP 8(a) provides, in pertinent part, that in order to plead sufficiently the plaintiff must include, “(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.” In his complaint, a plaintiff must set forth

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<sup>13</sup> *Stockmeier v. Nevada Dep’t of Corrections*, 124 Nev. 30, 183 P.3d 133, 135 (2008) (quoting *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438, 439 (2002)).

<sup>14</sup> *Sanchez v. Wal-MartStores, Inc.*, 125 Nev. 818, 221 P.3d 1276, 1280 (2009).

<sup>15</sup> See *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634-35, 137 P.3d 1171, 1180 (2006).

<sup>16</sup> *Gull v. Hoalst*, 777 Nev. 54, 359 P.2d 383 (1961); NRCP 12(b)(5); see also *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (complaint must set forth sufficient facts to establish all necessary elements of a claim for relief... so that the adverse party has adequate notice of the nature of the claim and the relief sought).

<sup>17</sup> See *Pankopf v. Peterson*, 124 Nev. 43, 175 P.3d 910, 912 (2008).

1 “sufficient facts to establish all necessary elements of a claim for relief.” *Hay v.*  
2 *Hay*, 100 Nev 196, 198, 678 P.2d 672 (1984) quoting *Johnson v. Travelers, Ins.*  
3 *Co.*, 89 Nev 467, 472, 515 P.2d 68, 71 1973). While simple conclusions of law can  
4 at times be acceptable under this rule, the plaintiff still must prove enough  
5 information to give “fair notice of the nature and basis of the claim.” *Crucil v.*  
6 *Carson City*, 95 Nev 583, 585, 600 P.2d 216, 217 (1979).

7 The Nevada Supreme Court’s test to determine if the plaintiff’s allegations  
8 survive is whether the “allegations give fair notice of the *nature and basis of a*  
9 *legally sufficient claim* and the relief requested.”<sup>18</sup> Finally, while a court generally  
10 is not permitted to consider evidence or information outside the specific pleading  
11 before it, it is permitted to consider exhibits that are attached to the pleading<sup>19</sup>.

12 Because Defendants fail to state a claim upon which relief can be granted,  
13 and which would survive a motion for summary judgment, the counterclaims they  
14 seek to bring against Vitiok must be dismissed. Additionally, since Defendants  
15 cannot demonstrate that they have derivative claims against cross-defendant Victor  
16 Botnari, based on NRCP 14, Defendants’ third-party Complaint must also be  
17 dismissed in its entirety.

18 **A. COUNTERCLAIMANT’S REQUEST FOR JURY TRIAL**  
19 **IS DISALLOWED BY RULE OF THE COURT AND**  
20 **MUST BE REJECTED.**

21 As a threshold matter, the impropriety and legal insufficiency of  
22 Counterclaimant’s Amended Answer, Counterclaim, and Cross Claims, and  
23 Demand for Jury Trial is instantly revealed and confirmed through his very first  
24 paragraph (#1). Therein, Hamid “demands a jury trial”, but is not allowed such  
25 relief as a matter of law.

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26 <sup>18</sup> *Breliant v. Preferred Equities Corp.*, 109 Nev 842, 846, 858 P.2d 1258, 1260  
27 (1993) quoting *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984)  
28 (emphasis added).

<sup>19</sup> *Breliant*, 109 Nev. 842 at 847.

1 As it pertains to jury trials, NRCP 38 provides, in relevant part:

2 On any issue triable of right by a jury, a party may demand a jury trial  
3 by:

4 (1) serving the other parties with a written demand — which  
5 may be included in a pleading — at any time after the commencement  
6 of the action *and not later than the time of the entry of the order first  
7 setting the case for trial;*

8 (2) filing the demand in accordance with Rule 5(d); and

9 (3) unless the local rules provide otherwise, *depositing with  
10 the court clerk an amount of money equal to the fees to be paid the  
11 trial jurors for their services for the first day of trial.*

12 ...

13 (d) **Waiver; Withdrawal.**

14 (1) *A party's failure to properly file and serve a demand  
15 constitutes the party's waiver of a jury trial.*

16 (emphasis supplied).

17 In this case, the Court entered its Scheduling Order and Order Setting Civil  
18 Bench Trial on July 29, 2020—Hamid's Amended Answer/Demand was not filed  
19 until October 26, 2020—long after entry of the order first setting the case for trial.  
20 Hamid's failure to comply with NRCP 38 is fatal to the relief he now demands.

21 Continuing, Hamid did not comply with NRCP 38(b)(3) by depositing funds  
22 "equal to the fees to be paid the trial jurors for their services for the first day of  
23 trial" that must be filed with any demand. Given Hamid's absolute disregard of  
24 NRCP 38, he cannot demand, nor is not entitled to, a jury trial.

25 **B. DEFENDANT'S CROSS-CLAIMS FOR RELIEF,  
26 INCLUDED IN HIS CROSS-CLAIM COMPLIANT  
27 AGAINST VICTOR BOTNARI, MUST ALL FAIL AS A  
28 MATTER OF LAW AS THEY ARE NOT PROPER  
THIRD-PARTY CLAIMS AND THEREFORE CANNOT  
BE BROUGHT INTO THIS MATTER TO CAUSE  
PLAINTIFF TO UNNECESSARILY INCUR  
ATTORNEYS' FEES AND COSTS.**

As clearly seen herein, none of the cross claims included within Defendant's  
Cross-Claim are validly before this court as they are not proper third-party claims.

1 According to NRCP 14(a)(1):

2 A defending party, as a third-party plaintiff, may cause a  
3 summons and complaint to be served upon a person not a party to the  
4 action who is or may be liable to the third-party plaintiff for all or part  
5 of the plaintiff's claim against the third-party plaintiff."

6 As evidenced by the plain language of this Rule, there are two necessary  
7 components required for pursuing claims against non-parties via third-party  
8 practice: (1) Inclusion of a non-party; and (2) Allegations that the non-party is  
9 liable, in whole or in part, for the claims asserted against the defendant.  
10 Unfortunately for Defendants here, none of the claims alleged within their Cross-  
11 Claim meet these criteria.

12 In fact, as this Court knows, Rule 14 is based upon a theory of indemnity<sup>20</sup>.  
13 In other words, under NRCP 14, a defendant is permitted to defend the case and at  
14 the same time assert his [or her] right of indemnity against the party ultimately  
15 responsible for the damage<sup>21</sup>. Thus, it is well established that third-party complaints  
16 are not meant to assert ordinary claims against non-parties<sup>22</sup>.

17 Here, Defendants' Cross Claim Complaint fails, as their claims do not relate  
18 to indemnification and/or contribution and those that appear to allege these causes  
19 of action fail as a matter of law, since they are inapplicable to Defendants'  
20 allegations contained within the Complaint. Therefore, each and every claim

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21 <sup>20</sup> See *Reid v. Royal Ins. Co.*, 80 Nev. 137, 140, 390 P.2d 45, 46 (1964).

22 <sup>21</sup> *Id.* at 140-41; see also, *United States v. One 1977 Mercedes Benz*, 450 SEL, VIN  
23 11603302064538, 708 F.2d 444, 452 (9th Cir. 1983) (a third-party claim may be  
24 asserted **only when** the third party's liability is in some way dependent on the  
25 outcome of the main claim and the third party's liability is secondary or  
26 derivative)(emphasis supplied); *Local Ad Link, Inc. v. Adzzoo, LLC*, No. 2:09-CV-  
01564-GMN, 2010 WL 3636173, at \*3 (D. Nev. Sept. 9, 2010) (a defendant [may]  
27 implead a third-party **only if** that party may be liable for subrogation, contribution,  
28 or indemnification as against a plaintiff's claims against the defendant)(emphasis  
supplied).

<sup>22</sup> See *Lund v. Dist. Ct.*, 127 Nev. 358, 362-63, 255 P.3d 280, 283-84 (2011) (third-  
party complaints are reserved for indemnity and contribution claims, not ordinary  
claims against non-parties).

1 against Victor Botnari as a Cross-Claim Defendant is not a proper and each claim  
2 must be dismissed pursuant to NRCP 12(b)(5). Indeed, each of Defendants' claims  
3 for relief will be discussed below.

4 **1. Victor Botnari is not a proper Third-Party Defendant in this**  
5 **matter because a claim for Violation of Uniform Trade Secret Act**  
6 **NRS 600A is not based on indemnification or contribution, as is**  
7 **required by NRCP 14.**

8 According to Nevada law, a cause of action for Violation of Uniform Trade  
9 Secret Act, according to the Nevada Supreme Court in *Golden Rd. Motor Inn, Inc.*  
10 *v. Islam*, 132 Nev. 476, 484-85 (2016) [superseded by statute on other grounds]  
11 citing *MedioStream, Inc. v. Microsoft Corp.*, 869 F. Supp. 2d 1095, 1114 (N.D. Cal.  
12 2012) includes the following four elements: (1) the plaintiff is the owner of a valid  
13 trade secret; (2) the defendant acquired the trade secret from someone other than the  
14 plaintiff and (a) knew or had reason to know before the use or disclosure that the  
15 information was a trade secret and knew or had reason to know that the disclosing  
16 party had acquired it through improper means or was breaching a duty of  
17 confidentiality by disclosing it; or (b) knew or had reason to know it was a trade  
18 secret and that the disclosure was a mistake; (3) the defendant used or disclosed the  
19 trade secret without plaintiff's authorization; and (4) the plaintiff suffered harm as a  
20 direct and proximate result of the defendant's use or disclosure of the trade secret,  
21 or the defendant benefitted, from such use or disclosure.

22 As shown below, Cross claimant cannot demonstrate that he adhered to  
23 elements (1), (2) (3) or (4) above and therefore, his claims must fail as a matter of  
24 law. As detailed and shown above, ***none of the elements for a breach of Violation***  
25 ***of Uniform Trade Secret Act claim relate, in any way, to indemnification or***  
26 ***contribution.*** Thus, according to NRCP 14, Defendant's Cross-Claim Complaint  
27 against Victor Botnari for Violation of Uniform Trade Secret Act must be  
28 dismissed, as a matter of law, since Defendant's cause of action for Violation of  
Uniform Trade Secret Act cannot be asserted as a Third-Party claim.

1        **2. Victor Botnari is not a proper Cross-Claim Defendant in this**  
2        **matter because claims for False Light, Disparagement, Defamation,**  
3        **and a Defamation Per Se are not based on indemnification or**  
4        **contribution, as is required by NRCP 14.**

5        In order to establish a prima facie case of false light, a plaintiff must prove:  
6        (1) the defendant gave publicity to a matter concerning the plaintiff that placed the  
7        plaintiff before the public in a false light (at least an implicit false statement of  
8        objective fact); (2) the false light would be highly offensive to a reasonable person;  
9        (3) the defendant had knowledge of, or acted in reckless disregard as to, the falsity  
10       of the publicized matter and the false light in which the plaintiff would be placed  
11       (requiring actual malice); and (4) plaintiff suffered emotional harm<sup>23</sup>.

12       In order to establish a prima facie case of defamation, a plaintiff must prove:  
13       (1) a false and defamatory statement by defendant concerning the plaintiff; (2) an  
14       unprivileged publication to a third person; (3) fault, amounting to at least  
15       negligence; and (4) actual or presumed damages<sup>24</sup>.

16       The elements required to prove a cause of action for business disparagement  
17       differ from the elements required to prove classic defamation and defamation per  
18       se. In order to establish a prima facie case of false light, a plaintiff must prove: (1)  
19       a false and disparaging statement; (2) the unprivileged publication by the defendant;  
20       (3) malice; and (4) special damages<sup>25</sup>.

21       As shown above, *none of the elements for false light, disparagement,*  
22       *defamation, and defamation per se claims relate, in any way, to indemnification*

23       \_\_\_\_\_  
24       <sup>23</sup> *Flowers v. Carville*, 310 F.3d 118, 1132 (9th Cir. 2002); *Wood v. Hustler*  
25       *Magazine, Inc.*, 736 F.2d 1084, 1093 (5th Cir. 1984) (disclosure of stolen nude  
26       photos); *Vail v. Pioneer Mut. Life. Ins. Co.*, 2010 U.S. Dist. LEXIS 107994, \*5-6  
27       (D. Nev. July 20, 2011) (citing Restatement (Second) of Torts § 652); *Flowers v.*  
28       *Carville*, 266 F. Supp. 2d 1245, 1252 (D. Nev. 2003).

<sup>24</sup> *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993).

<sup>25</sup> *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385-87, 213  
P.3d 496, 504-05 (2009).

1 **or contribution.** Thus, according to NRCP 14, Defendant's Cross-Claim Complaint  
2 against Victor Botnari for false light, disparagement, defamation, and defamation  
3 per se must be dismissed, as a matter of law, since Defendants' cause of action for  
4 false light, disparagement, defamation, and defamation per se cannot be asserted as  
5 a Third-Party claim.

6 **3. Victor Botnari is not a proper Cross-Claim Defendant in this**  
7 **matter because a claim for Interference with Prospective Economic**  
8 **Advantage cannot be not based on indemnification or contribution,**  
**as is required by NRCP 14.**

9 In order to establish a prima facie case of defamation, a plaintiff must prove:  
10 (1) a prospective contractual relationship between plaintiff and a third party; (2)  
11 defendant has knowledge of the prospective relationship; (3) the intent to harm  
12 plaintiff by preventing the relationship; (4) the absence of privilege or justification  
13 by the defendants; (5) actual harm to plaintiff as a result of defendant's conduct;  
14 and (6) causation and damages<sup>26</sup>.

15 As shown above, ***none of the elements for Interference with Prospective***  
16 ***Economic Advantage claim relate, in any way, to indemnification or***  
17 ***contribution.*** Thus, according to NRCP 14, Defendant's Cross-Claim Complaint  
18 against Victor Botnari for Interference with Prospective Economic Advantage must  
19 be dismissed, as a matter of law, since Defendants' cause of action for Interference  
20 with Prospective Economic Advantage cannot be asserted as a Third-Party claim.  
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25 <sup>26</sup> *Custom Tel., Inc. v. Int'l Tele-Services, Inc.*, 254 F. Supp. 2d 1173, 1180-81  
26 (Nev. 2003); *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727 (1993); *Leavitt v.*  
27 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987). *Intention to*  
28 *interfere is the sine qua non of this tort.* *M&R Inv. Co. v. Goldsberry*, 101 Nev.  
620, 707 P.2d 1143, 1144 (1985); *Local Joint Exec. Bd. Of Las Vegas v. Stern*, 98  
Nev. 409, 651 P.2d 637, 638 (1982).

1        **4. Victor Botnari is not a proper Cross-Claim Defendant in this**  
2        **matter because a claim for Civil Conspiracy is not based on**  
3        **indemnification or contribution, as is required by NRCP 14.**

4        In order to establish a prima facie case of civil conspiracy, a plaintiff must  
5        prove: (1) a combination of two or more persons; (2) who intend to accomplish an  
6        unlawful objective together; (3) the association acts by a concert of action by  
7        agreement, understanding, or “meeting of the minds” regarding the objective and  
8        the means of pursuing it, whether explicit or by tacit agreement; (4) the association  
9        intends to accomplish an unlawful objective for the purpose of harming another; (5)  
10       commission of an unlawful act in furtherance of the agreement; and (6) causation  
11       and damages<sup>27</sup>. As shown above, *none of the elements for Interference with*  
12       *Prospective Economic Advantage relate, in any way, to indemnification or*  
13       *contribution*. Thus, according to NRCP 14, Defendant’s Cross-Claim Complaint  
14       against Victor Botnari for civil conspiracy must be dismissed, as a matter of law,  
15       since Defendants’ cause of action for civil conspiracy cannot be asserted as a Third-  
16       Party claim.

17       **5. Victor Botnari is not a proper Cross-Claim Defendant in this**  
18       **matter because a claim for Conversion/Trespass to Chattel are not**  
19       **based on indemnification or contribution, as is required by NRCP**  
20       **14.**

21       In order to establish a prima facie case of conversion / trespass to chattel, a

22       \_\_\_\_\_  
23       <sup>27</sup> *Boorman v. Nev. Memorial Cremation Society, Inc.*, 772 F.2d. 1309 (D. Nev.  
24       2011); *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003); *In re Koonce*,  
25       262 B.R. 850 (Bankr. D. Nev. 2001); *Ungaro v. Desert Palace, Inc.*, 732 F.Supp.  
26       1522, 1533, n3 (D. Nev. 1989); *Condos v. Conforte*, 596 F.Supp. 197, 201 (D. Nev.  
27       1984); *GES, Inc. v. Corbitt*, 17 Nev. 265, 270–71, 21 P.3d 11, 15 (2001);  
28       *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304,  
971 P.2d 1251 (Nev. 1998); *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1488, 970  
P.2d 98, 112 (1998); *Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 1287 (1989);  
*Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 303, 662 P.2d, 610, 622  
(1983); 16 Am. Jur. 2d Conspiracy § 57 (1998).

1 plaintiff must prove: (1) a distinct act of dominion wrongfully exerted over  
2 another's personal property; (2) in denial of, or inconsistent with his title or rights  
3 therein or in derogation, exclusion, or defiance of such title or rights<sup>28</sup>.  
4 Furthermore, "conversion generally is limited to those severe, major, and important  
5 interferences with the right to control personal property that justify requiring the  
6 actor to pay the property's full value."<sup>29</sup>

7 As shown above, *none of the elements for conversion / trespass to chattel*  
8 *relate, in any way, to indemnification or contribution*. Thus, according to NRCP  
9 14, Defendant's Cross-Claim Complaint against Victor Botnari for conversion /  
10 trespass to chattel must be dismissed, as a matter of law, since Defendants' cause of  
11 action for conversion / trespass to chattel cannot be asserted as a Third-Party claim.

12 **6. Victor Botnari is not a proper Cross-Claim Defendant in this**  
13 **matter because a claim for Restitution of Tax Liens does not exist**  
14 **and if a claim did exist, it could not be logically based on**  
**indemnification or contribution, as is required by NRCP 14.**

15 There is no claim for restitution of tax liens recognized by Nevada law and if  
16 a claim did exist, *it could not logically or lawfully relate, in any way, to*  
17 *indemnification or contribution*. Thus, according to NRCP 14, Defendant's Cross-  
18 Claim Complaint against Victor Botnari for restitution of tax lien must be  
19 dismissed, as a matter of law, since Defendants' cause of action for restitution of  
20 tax lien cannot be asserted as a Third-Party claim.

21 **7. Victor Botnari is not a proper Cross-Claim Defendant in this**  
22 **matter because a claim for Abuse of Process is not based on**  
23 **indemnification or contribution, as is required by NRCP 14.**

24 In order to establish a prima facie case of abuse of process, a plaintiff must  
25

26 <sup>28</sup> *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 910, 193  
P.3d 536, 542 (2008) (internal quotations omitted).

27 <sup>29</sup> *Edwards v. Emperor's Garden Rest*, 122 Nev. 317, 328-29, 130 P.3d 1280, 1287  
28 (2006).

1 prove: (1) filing of a lawsuit made with ulterior purpose other than to resolving a  
2 dispute; (2) Willful act in use the use of legal process (subsequent to the filing of  
3 the suit) not proper in the regular conduct of the proceeding; and (3) Damages as a  
4 direct result of abuse<sup>30</sup>.

5 As shown above, *none of the elements for abuse of process, in any way, to*  
6 *indemnification or contribution*. Thus, according to NRCP 14, Defendant's Cross-  
7 Claim Complaint against Victor Botnari for abuse of process must be dismissed, as  
8 a matter of law, since Defendants' cause of action for abuse of process cannot be  
9 asserted as a Third-Party claim.

10 **8. Victor Botnari is not a proper Cross-Claim Defendant in this**  
11 **matter because a Breach of Good Faith and Fair Dealing claim is**  
12 **not based on indemnification or contribution, as is required by**  
13 **NRCP 14.**

14 According to the Nevada Supreme Court in *Hilton Hotels v. Butch Lewis*  
15 *Productions*, 109 Nev. 1043, 1046-47 (1993), the cause of action for Breach of  
16 Good Faith and Fair Dealing requires that the Counterclaimants prove the following  
17 elements: (1) When one party performs a contract in a manner that is unfaithful to  
18 the purpose of the contract; (2) the justified expectations of the other party are thus  
19 denied; and (3) damages may be awarded against the party who does not act in  
20 good faith.

21 As shown above, *none of the elements for a breach of good faith and fair*  
22 *dealing claim relate, in any way, to indemnification or contribution*. Thus,  
23 according to NRCP 14, Defendant's Cross-Claim Complaint against Victor Botnari

24 \_\_\_\_\_  
25 <sup>30</sup> *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002); *Dutt v. Kremp*,  
26 111 Nev. 567, 894 P.2d 354, 360 (Nev. 1995) overruled on other grounds by  
27 *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002)); *Laxalt v.*  
28 *McClatchy*, 622 F.Supp. 737, 751 (1985) (citing *Bull v. McCuskey*, 96 Nev. 706,  
709, 615 P.2d 957, 960 (1980); *Nevada Credit Rating Bureau, Inc. v. Williams*, 88  
Nev. 601 (1972); 1 Am. Jur. 2d Abuse of Process.

1 for Breach of Good faith and Fair Dealing must be dismissed, as a matter of law,  
2 since Defendant's cause of action for Breach of Good Faith and Fair Dealing cannot  
3 be asserted as a Third-Party claim.

4 **9. Notwithstanding Third-Party Pleading allows for a Third-Party**  
5 **Complaint for equitable indemnification, Defendants' claim for**  
6 **equitable indemnity, in this matter, must fail as a matter of law since**  
7 **defendants cannot demonstrate a special relationship with the**  
8 **alleged Third-Party Defendants that would allow a claim for**  
9 **equitable indemnity.**

10 According to the Nevada Supreme Court in *Pack v. LaTourette*, 128 Nev.  
11 264, before an individual or entity can pursue a claim for equitable indemnity, the  
12 party seeking equitable indemnity against another party must show there is some  
13 preexisting legal relationship between them or some duty on the part of the Third-  
14 Party Defendant to protect Defendants. Further, equitable indemnity is a claim that  
15 is related to tort, not contract claims. In fact, according to *Pack*, the Nevada  
16 Supreme Court found as follows with regard to equitable indemnity claims:

17 Equitable indemnity, which "allows a defendant to seek recovery from  
18 other potential tortfeasors," is generally available to remedy the  
19 situation in which the defendant, "who has committed no independent  
20 wrong, is held liable for the loss of a plaintiff caused by another party."  
21 *Rodriguez v. Primadonna Company*, 216 P.3d 793, 801, 216 P.3d 793,  
22 801 (2009). Thus, Nevada's equitable indemnity law has long drawn a  
23 distinction between secondary and primary liability. "[I]n order for  
24 one tortfeasor to be in a position of secondary responsibility vis-a-vis  
25 another tortfeasor, and thus be entitled to indemnification, there must  
26 be a preexisting legal relation between them, or some duty on the part  
27 of the primary tortfeasor to protect the secondary tortfeasor." *Doctors*  
28 *Company v. Vincent*, 120 Nev. 644, 654, 98 P.3d 681, 688 (2004)  
(quoting *Black & Decker v. Essex Group*, 105 Nev. 344, 346, 775 P.2d  
698, 699-700 (1989)). Additionally, where a party has committed an  
"independent wrong," and is thus actively negligent, that party has no  
right to indemnity from other tortfeasors. *See Rodriguez*, 125 Nev. at  
589, 216 P.3d at 801; *see also Doctors Company*, 120 Nev. at 658, 98  
P.3d at 690.

1 Id. at 268. Simply put, Defendants cannot show, nor has it been alleged, that the  
2 contractual relationship between the parties creates a preexisting legal relation or  
3 any other duty on behalf of the Third-Party Defendants to protect the Defendants.

4 **B. DEFENDANT'S COUNTERCLAIMS FOR RELIEF,**  
5 **INCLUDED IN HIS COUNTERCLAIM AGAINST**  
6 **VITIOK, MUST ALL FAIL AS A MATTER OF LAW AS**  
7 **THEY ARE NOT PROPER COUNTERCLAIMS AND**  
8 **THEREFORE CANNOT BE BROUGHT INTO THIS**  
9 **MATTER TO PREJUDICE AND CAUSE PLAINTIFF TO**  
10 **UNNECESSARILY INCUR ATTORNEYS' FEES AND**  
11 **COSTS.**

12 Pursuant to NRCP 12(b)(5), "[a] complaint will not be dismissed for failure  
13 to state a claim unless it appears beyond a doubt that the plaintiff could prove no set  
14 of facts which, if accepted by the trier of fact, would entitle him to relief."<sup>31</sup> In  
15 deciding a Motion to Dismiss pursuant to NRCP 12(b)(5), the Court "must construe  
16 the pleading liberally and draw every fair intendment in favor of the [non-moving  
17 party]."<sup>32</sup>

18 While Nevada is a notice pleading state, the complaint must set forth  
19 sufficient facts to establish all necessary elements of claim for relief so that the  
20 adverse party has adequate notice of the nature of the claim and the relief sought."<sup>33</sup>  
21 The test to determine whether the allegations in the complaint are sufficient to  
22 assert a claim is "whether the allegations give fair notice of the nature and basis of a  
23 *legally sufficient claim* and the relief requested."<sup>34</sup>

24 Significantly, although a court must take all factual allegations as true, legal  
25 conclusions couched as factual allegations are insufficient<sup>35</sup>. Indeed, Rule 12(b)

26 <sup>31</sup> *Breliant v. Perferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258 (1993)  
27 (citations omitted).

28 <sup>32</sup> *Vacation Village. Inc. v. Hitachi America. Ltd.*, 110 Nev. 481, 874 P.2d 744  
(1994).

<sup>33</sup> *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984).

<sup>34</sup> *Ravera v. City of Reno*, 100 Nev. 68, 675 P.2d 407 (1984).

<sup>35</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

1 requires “more than labels and conclusions, and a formulaic recitation of the  
2 elements of a cause of action *will not do*.”<sup>36</sup> A “claim has facial plausibility when  
3 the plaintiff pleads factual content that allows the court to draw the reasonable  
4 inference that the defendant is liable for the misconduct alleged.”<sup>37</sup> Moreover, a  
5 complaint does not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further  
6 factual enhancements.’”<sup>38</sup>

7 Review of Defendants’ amended answer and counterclaims reveal a failure to  
8 state a claim upon which relief can be granted. Indeed, each claim fails to contain  
9 the necessary facts to survive a motion to dismiss.

10 1. **The First Claim for Relief - for Violation of Uniform Trade**  
11 **Secret Act 600A must Fail as a matter of law.**

12 Counterclaimant, in a transparent and legally insufficient endeavor to create  
13 and transform this litigation into one composed of unwarranted and unsupported  
14 tortious claims<sup>39</sup>, asserts, without factual support, “trade secrets [Zip Zap Auto’s  
15 customer list]” were “misappropriated” by Counterdefendant is preposterous.

16 As a threshold matter, Vitiok, *not* Counterclaimant, owned the customer list  
17 of Zip Zap Auto. In fact, Defendant/Counterclaimant *admitted* that the customer  
18 list he used after wrongfully evicting Vitiok and converting its assets, belonged to  
19 *Vitiok*<sup>40</sup>. There is no question Vitiok purchased “Zip Zap Auto, its equipment,  
20 licenses and good will” from Samir LLC., which was formally memorialized on  
21 June 1, 2014. See Exhibit “2”. Further, Vitiok leased the premises from Stone &  
22 Stone, LLC, not Counterclaimants. Moreover, review of the lease confirms the  
23 absence of any customer list, pricing scheme, or other purported “trade secret”. See  
24

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25 <sup>36</sup> *Id.*

26 <sup>37</sup> *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

27 <sup>38</sup> *Iqbal*, 556 U.S. at 678.

28 <sup>39</sup> Revealing and confirming abuse of process on the part of Defendants.

<sup>40</sup> Stated under penalty of perjury in Defendants’ Motion for Protective Order, filed  
10/26/2020, page 10 of 12, lines 15-17.

1 Exhibit “1”.

2       Additionally, the elements of a claim of indirect trade secret  
3 misappropriation are: (1) the plaintiff is the owner of a valid trade secret; (2) the  
4 defendant acquired the trade secret from someone other than the plaintiff and (a)  
5 knew or had reason to know before the use or disclosure that the information was a  
6 trade secret and knew or had reason to know that the disclosing party had acquired  
7 it through improper means or was breaching a duty of confidentiality by disclosing  
8 it; or (b) knew or had reason to know it was a trade secret and that the disclosure  
9 was a mistake; (3) the defendant used or disclosed the trade secret without plaintiffs  
10 authorization; and (4) the plaintiff suffered harm as a direct and proximate result of  
11 the defendant's use or disclosure of the trade secret, or the defendant benefitted,  
12 from such use or disclosure<sup>41</sup>.

13       Counterclaimant cannot demonstrate, and his allegations are legally  
14 insufficient, to establish and/or satisfy the requisite elements referenced above and  
15 therefore, his claims must fail as a matter of law.

16       Quite frankly, ignoring the obvious and assuming *arguendo*, *if* Hamid was  
17 the landlord of the premises leased by Vitiok, and *if* Hamid owned the assets of Zip  
18 Zap Auto, and *if* Zip Zap Auto had a “customer list” leased to Vitiok with the  
19 premises *four years earlier* and used by Vitiok, as a matter of law, it would have  
20 been impossible for Vitiok to have “misappropriated Zip Zap Auto’s customer list.”  
21 In the pleadings, *following the logic of Hamid*, Hamid alleges Vitiok acquired the  
22 trade secret from Hamid. Therefore, as a matter of law, since Vitoik would have  
23 acquired the “customer list” from Hamid, the violation of Uniform Trade Secret Act  
24 600A fails<sup>42</sup>.

25 \_\_\_\_\_  
26 <sup>41</sup> *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 484-85 (2016) [superseded by  
27 statute on other grounds] citing *MedioStream, Inc. v. Microsoft Corp.*, 869 F. Supp.  
28 2d 1095, 1114 (N.D. Cal. 2012). Compare Cal. Civ. Code § 3426.1 (2012), with  
NRS 600A.030(2).

<sup>42</sup> See *Golden*, 132 Nev. at 484-85.

1 Defendants have not alleged sufficient facts to support a claim for violation  
2 of Uniform Trade Secret Act and the claim should be dismissed.

3 2. **The Second Claim for Relief for False Light, Disparagement,**  
4 **Defamation, Defamation Per Se are all without merit and must**  
5 **be dismissed.**

6 Counterclaimant's second claim for relief for false light, disparagement,  
7 defamation, defamation per se are all without merit. As established *supra*, an order  
8 to establish a prima facie case of false light, a plaintiff must prove: (1) the  
9 defendant gave publicity to a matter concerning the plaintiff that placed the plaintiff  
10 before the public in a false light (at least an implicit false statement of objective  
11 fact); (2) the false light would be highly offensive to a reasonable person; (3) the  
12 defendant had knowledge of, or acted in reckless disregard as to, the falsity of the  
13 publicized matter and the false light in which the plaintiff would be placed  
14 (requiring actual malice); and (4) plaintiff suffered emotional harm<sup>43</sup>.

15 In order to establish a prima facie case of defamation, a plaintiff must prove:  
16 (1) a false and defamatory statement by defendant concerning the plaintiff; (2) an  
17 unprivileged publication to a third person; (3) fault, amounting to at least  
18 negligence; and (4) actual or presumed damages<sup>44</sup>.

19 The elements required to prove a cause of action for business disparagement  
20 differ from the elements required to prove classic defamation and defamation per  
21 se. In order to establish a prima facie case of false light, a plaintiff must prove: (1)  
22 a false and disparaging statement; (2) the unprivileged publication by the defendant;  
23 (3) malice; and (4) special damages<sup>45</sup>.

24 \_\_\_\_\_  
25 <sup>43</sup> *Flowers v. Carville*, 310 F.3d 118, 1132 (9th Cir. 2002); *Wood v. Hustler*  
26 *Magazine, Inc.*, 736 F.2d 1084, 1093 (5th Cir. 1984) (disclosure of stolen nude  
27 photos); *Vail v. Pioneer Mut. Life. Ins. Co.*, 2010 U.S. Dist. LEXIS 107994, \*5-6  
(D. Nev. July 20, 2011) (citing Restatement (Second) of Torts § 652); *Flowers v.*  
28 *Carville*, 266 F. Supp. 2d 1245, 1252 (D. Nev. 2003).

<sup>44</sup> *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993).

<sup>45</sup> *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385-87, 213

1 Review of the Amended Answer and Counterclaim filed by Defendants’  
2 confirm Counterclaimant failed to even provide the alleged “statement” for the  
3 initial basis for any of these claims, he cannot demonstrate that he adhered to  
4 elements (1), (2) (3) or (4) of any of the above claims and therefore, his claims must  
5 fail as a matter of law. Such failure is fatal. Indeed, dismissal is appropriate where  
6 a plaintiff did not show minimal merit supporting statement was made<sup>46</sup>.

7 Additionally, prior filings by Hamid/Counterclaimant identify the subject  
8 “statements” as being consumer reviews—not made by Plaintiff<sup>47</sup>, and referencing  
9 Zip Zap Auto—not Counterclaimant. Even if the “undisclosed” statements were  
10 actionable (which they are not), as this Court knows, a party has standing to assert  
11 only its own rights and cannot raise the claims of a third-party<sup>48</sup>. Counterclaimant  
12 lacks standing to even allege a cause of action on behalf of Zip Zap Auto and the  
13 action cannot survive a motion to dismiss.

14 3. **The Third Claim for Relief for Intentional Interference with**  
15 **Prospective Economic Advantage is without merit and must be**  
16 **dismissed.**

17 Counterclaimant’s third claim for relief for intentional interference with  
18 prospective economic advantage is without merit. In order to establish a prima  
19 facie case of intentional interference with prospective economic advantage, a  
20 plaintiff must prove: (1) a prospective contractual relationship between plaintiff and  
21 a third party; (2) defendant has knowledge of the prospective relationship; (3) the  
22 intent to harm plaintiff by preventing the relationship; (4) the absence of privilege  
23 or justification by the defendants; (5) actual harm to plaintiff as a result of  
24  
25

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26 P.3d 496, 504-05 (2009).

27 <sup>46</sup> *Abrams v. Sanson*, 458 P.3d 1062, 1070 (2020).

28 <sup>47</sup> See Hamid’s Application for Temporary Protection Order and Motion for  
Protective Order, both filed 10/26/2020.

<sup>48</sup> See *Beazer Homes Holding Corp. v. Dist. Ct.*, 128 Nev. Adv. Op. 66 (2012).

1 defendant's conduct; and (6) causation and damages<sup>49</sup>.

2 Because Counterclaimant failed to even identify or provide the alleged  
3 "contractual relationship" for the initial basis for this claim, he cannot satisfy the  
4 requisite elements and is unable to state a claim upon which relief can be granted.  
5 Counterclaimants claim cannot survive this motion to dismiss and must fail as a  
6 matter of law.

7 4. **The Fourth Claim for Relief for Civil Conspiracy is without**  
8 **merit and must be dismissed.**

9 Counterclaimant's fourth claim for relief for civil conspiracy is likewise  
10 without merit. In order to establish a prima facie case of civil conspiracy, a plaintiff  
11 must prove: (1) a combination of two or more persons; (2) who intend to  
12 accomplish an unlawful objective together; (3) the association acts by a concert of  
13 action by agreement, understanding, or "meeting of the minds" regarding the  
14 objective and the means of pursuing it, whether explicit or by tacit agreement; (4)  
15 the association intends to accomplish an unlawful objective for the purpose of  
16 harming another; (5) commission of an unlawful act in furtherance of the  
17 agreement; and (6) causation and damages<sup>50</sup>.

18  
19 <sup>49</sup> *Custom Tel., Inc. v. Int'l Tele-Services, Inc.*, 254 F. Supp. 2d 1173, 1180-81  
20 (Nev. 2003); *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727 (1993); *Leavitt v.*  
21 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987). *Intention to*  
22 *interfere is the sine qua non of this tort. M&R Inv. Co. v. Goldsberry*, 101 Nev.  
23 620, 707 P.2d 1143, 1144 (1985); *Local Joint Exec. Bd. Of Las Vegas v. Stern*, 98  
24 Nev. 409, 651 P.2d 637, 638 (1982).

25 <sup>50</sup> *Boorman v. Nev. Memorial Cremation Society, Inc.*, 772 F.2d. 1309 (D. Nev.  
26 2011); *Flowers v. Carville*, 266 F. Supp. 2d 1245 (D. Nev. 2003); *In re Koonce*,  
27 262 B.R. 850 (Bankr. D. Nev. 2001); *Ungaro v. Desert Palace, Inc.*, 732 F.Supp.  
28 1522, 1533, n3 (D. Nev. 1989); *Condos v. Conforte*, 596 F.Supp. 197, 201 (D. Nev.  
1984); *GES, Inc. v. Corbitt*, 17 Nev. 265, 270-71, 21 P.3d 11, 15 (2001);  
*Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304,  
971 P.2d 1251 (Nev. 1998); *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1488, 970  
P.2d 98, 112 (1998); *Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 1287 (1989);  
*Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 303, 662 P.2d, 610, 622  
(1983); 16 Am. Jur. 2d Conspiracy § 57 (1998).

1 As this court knows, individuals and corporations are two distinct entities. In  
2 the case at bar, there is but *one* plaintiff—to wit: Vitiok, and Counterclaimant failed  
3 and is unable to even provide the alleged “combination of two or more persons” for  
4 necessary to support such a claim. For this reason alone, Counterclaimant’s claim  
5 must fail.

6 Notwithstanding that failure, coupled with consideration of the remaining  
7 elements, confirms the lack of a factual and legal basis to support such a claim.  
8 Moreover, Defendants failed, and are unable to show even minimal merit  
9 supporting the claim for civil conspiracy because there is no showing (or existence  
10 of) an intent to commit an unlawful objective<sup>51</sup>. Lastly, Counterclaimant has  
11 admitted to making *millions* of dollars following the unlawful conversion of  
12 Vitiok’s business (Zip Zap Auto), and thus is also unable to establish damage.  
13 Hence, the claim must fail as a matter of law<sup>52</sup>.

14 5. *The Fifth Claim for Relief for Conversion / Trespass to*  
15 *Chattel are without merit and must be dismissed.*

16 Counterclaimant’s fifth claim for relief for conversion / trespass to chattel are  
17 also without merit and cannot survive the underlying motion to dismiss. In order to  
18 establish a prima facie case of conversion / trespass to chattel, a plaintiff must  
19 prove: (1) a distinct act of dominion wrongfully exerted over another’s personal  
20 property; (2) in denial of, or inconsistent with his title or rights therein or in  
21 derogation, exclusion, or defiance of such title or rights<sup>53</sup>.

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23 <sup>51</sup> See *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 662 P.2d 610 (1983)  
24 (“An actionable civil conspiracy is a combination of two or more persons who, by  
25 some concerted action, intend to accomplish some unlawful objective for the  
purpose of harming another which results in damage.”)

26 <sup>52</sup> See *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335  
27 P.3d 190, 198 (2014) (defining civil conspiracy); *Abrams v. Sanson*, 458 P.3d 1062,  
1070 (2020).

28 <sup>53</sup> *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 910, 193  
P.3d 536, 542 (2008) (internal quotations omitted).

1 Furthermore, "conversion generally is limited to those severe, major, and  
2 important interferences with the right to control personal property that justify  
3 requiring the actor to pay the property's full value."<sup>54</sup>

4 In Defendants' Amended Answer, Counterclaim and Crossclaims, Hamid  
5 alleges:

6 99. At all times relevant, Hamid was the sole owner of all  
7 equipment contained inside Zip Zap Auto.

8 100. At no time were Counterdefendants the legal or equitable owner  
9 of any of the equipment contained inside Zip Zap Auto.

10 101. Similarly, at no time were Counterdefendants the legal or  
11 equitable owner of the furniture and furnishings attached to, or kept  
12 inside of, the Sun Lake Property.

13 Clearly, Vitiok—**not** Counterclaimant, owned the customer list of Zip Zap  
14 Auto; Vitiok purchased "Zip Zap Auto, its equipment, licenses and good will" from  
15 Samir LLC on June 1, 2014. See Exhibit "2". Further, Vitiok leased the premises  
16 from Stone & Stone, LLC, not Counterclaimant. See Exhibit "1". Lastly, the Sun  
17 Lake Property owned by a third party **not** named in this lawsuit, was not leased, nor  
18 occupied by Vitiok. The inclusion/reference is improper, meaningless, and  
19 confusing.

20 As Counterclaimant failed to even provide the alleged "list of equipment" he  
21 alleges **he** owned and which was/were "disposed of, destroyed, ruined, damaged,  
22 absconded with, spoiled, and otherwise converted the equipment", despite the sale  
23 of Zip Zap Auto to Vitiok, and which equipment was wrongfully converted  
24 following the unlawful eviction of Vitiok from the business premises by  
25 Counterclaimant<sup>55</sup>, Counterclaimant is unable to establish the requisite and the  
26 initial basis for any of this claim, he cannot demonstrate or satisfy the elements (1)

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27 <sup>54</sup> *Edwards v. Emperor's Garden Rest*, 122 Nev. 317, 328-29, 130 P.3d 1280, 1287  
28 (2006).

<sup>55</sup> See Exhibit "7".

1 and (2) of the above claim and therefore, his claim must fail as a matter of law.

2 6. **The Sixth Claim for Relief for Restitution for Tax Liens is**  
3 **without merit and must be dismissed.**

4 Counterclaimant's sixth claim for relief for restitution for tax liens is without  
5 merit. There is no independent cause of action for "Restitution for Tax Liens" –  
6 thus, this claim fails as a matter of law.

7 7. **The Seventh Claim for Relief for Abuse of Process is without**  
8 **merit and must be dismissed.**

9 Counterclaimant's seventh claim for relief for abuse of process is likewise  
10 without merit. In order to establish a prima facie case of abuse of process, a  
11 plaintiff must prove: (1) filing of a lawsuit made with ulterior purpose other than to  
12 resolving a dispute; (2) willful act in use the use of legal process (subsequent to the  
13 filing of the suit) not proper in the regular conduct of the proceeding; and (3)  
14 Damages as a direct result of abuse<sup>56</sup>.

15 Counterclaimant fails to even provide the alleged and necessary "filing of a  
16 lawsuit made with ulterior purpose other than to resolving a dispute", as well as  
17 satisfactory pleading for the remainder of the elements needed for such a cause of  
18 action, the claim does not survive a motion to dismiss and fails as a matter of law.

19 8. **The Eighth Claim for Relief for Breach of the Implied Good**  
20 **Faith and Fair Dealing is without merit and must be**  
21 **dismissed.**

22 According to the Nevada Supreme Court in *Hilton Hotels v. Butch Lewis*

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24 <sup>56</sup> *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002); *Dutt v. Kremp*,  
25 111 Nev. 567, 894 P.2d 354, 360 (Nev. 1995) overruled on other grounds by  
26 *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 897 (2002)); *Laxalt v.*  
27 *McClatchy*, 622 F.Supp. 737, 751 (1985) (citing *Bull v. McCuskey*, 96 Nev. 706,  
28 709, 615 P.2d 957, 960 (1980); *Nevada Credit Rating Bureau, Inc. v. Williams*, 88  
Nev. 601 (1972); 1 Am. Jur. 2d Abuse of Process.

1 *Productions*, 109 Nev. 1043, 1046-47 (1993), the cause of action for Breach of  
2 Good Faith and Fair Dealing requires that the Counterclaimants prove the following  
3 elements: (1) When one party performs a contract in a manner that is unfaithful to  
4 the purpose of the contract; (2) the justified expectations of the other party are thus  
5 denied; and (3) damages may be awarded against the party who does not act in  
6 good faith.

7 Because and actionable claim requires an underlying contractual relationship,  
8 which, as noted and addressed supra, Counterclaimant failed to allege, and more  
9 importantly, is unable to produce, a contract with “Vitiok”, he failed to establish the  
10 requisite elements and facts to support such a claim, and therefore, his claim must  
11 fail as a matter of law.

#### 12 **IV.** 13 **Conclusion**

14 Based on the foregoing pursuant to NRCP 12(b)(5) and NRCP 14, Plaintiff and  
15 Victor Botnari respectfully request an order is entered finding:

- 16 1. Finding Victor Botnari (“Mr. Botnari”) is not a proper “Cross”  
17 (Third-Party) Defendant in this matter because a claim for  
18 Violation of Uniform Trade Secret Act NRS 600A, as alleged by  
19 Defendant and Crossclaimant, Hamid Sheikhai (“Hamid”), is  
20 not based on indemnification or contribution, as is required by  
NRCP 14, and naming him as a third-party defendant is  
impermissible as a matter of law.
- 21 2. Finding Mr. Botnari is not a proper “Cross” (Third-Party)  
22 Defendant in this matter because claims for False Light,  
23 Disparagement, Defamation, and a Defamation Per Se, as  
24 alleged by Defendant and Crossclaimant, Hamid, are not based  
25 on indemnification or contribution, as is required by NRCP 14  
and naming him as a third-party defendant is impermissible as a  
matter of law.
- 26 3. Finding Mr. Botnari is not a proper “Cross” (Third-Party)  
27 Defendant in this matter because a claim for Interference with  
28 Prospective Economic Advantage cannot be not based on  
indemnification or contribution, as is required by NRCP 14 and

1 naming him as a third-party defendant is impermissible as a  
2 matter of law.

3 4. Finding Mr. Botnari is not a proper "Cross" (Third-Party)  
4 Defendant in this matter because a claim for Civil Conspiracy is  
5 not based on indemnification or contribution, as is required by  
6 NRCP 14 and naming him as a third-party defendant is  
impermissible as a matter of law.

7 5. Finding Mr. Botnari is not a proper "Cross" (Third-Party)  
8 Defendant in this matter because a claim for  
9 Conversion/Trespass to Chattel are not based on indemnification  
10 or contribution, as is required by NRCP 14 and naming him as a  
third-party defendant is impermissible as a matter of law.

11 6. Finding Mr. Botnari is not a proper "Cross" (Third-Party)  
12 Defendant in this matter because a claim for Restitution of Tax  
13 Liens does not exist and if a claim did exist, it could not be  
14 logically based on indemnification or contribution, as is required  
by NRCP 14 and naming him as a third-party defendant is  
impermissible as a matter of law.

15 7. Finding Mr. Botnari is not a proper "Cross" (Third-Party)  
16 Defendant in this matter because a claim for Abuse of Process is  
17 not based on indemnification or contribution, as is required by  
18 NRCP 14 and naming him as a third-party defendant is  
impermissible as a matter of law.

19 8. Finding Mr. Botnari is not a proper "Cross" (Third-Party)  
20 Defendant in this matter because a Breach of Good Faith and  
21 Fair Dealing claim is not based on indemnification or  
22 contribution, as is required by NRCP 14 and naming him as a  
third-party defendant is impermissible as a matter of law.

23 9. Finding the First Claim for Relief - for Violation of Uniform  
24 Trade Secret Act 600A is without merit and must be dismissed  
25 as a matter of law.

26 10. Finding the Second Claim for Relief for False Light,  
27 Disparagement, Defamation, Defamation Per Se is dismissed as  
28 a matter of law.

- 1 11. Finding the Third Claim for Relief for Intentional Interference  
2 with Prospective Economic Advantage is without merit and  
3 must be dismissed as a matter of law.  
4 12. Finding the Fourth Claim for Relief for Civil Conspiracy is  
5 without merit and must be dismissed as a matter of law.  
6 13. Finding the Fifth Claim for Relief for Conversion / Trespass to  
7 Chattel are without merit and must be dismissed as a matter of  
8 law.  
9 14. Finding the Sixth Claim for Relief for Restitution for Tax Liens  
10 is without merit and must be dismissed as a matter of law.  
11 15. Finding the Seventh Claim for Relief for Abuse of Process is  
12 without merit and must be dismissed as a matter of law.  
13 16. Finding the Eighth Claim for Relief for Breach of the Implied  
14 Good Faith and Fair Dealing is without merit and must be  
15 dismissed as a matter of law.

16 Dated this 24<sup>th</sup> day of November, 2020.

17  
18 LEVENTHAL & ASSOCIATES, PLLC

19 By: /s/ Todd M. Leventhal

20 Todd M. Leventhal, Esq.

21 Nevada Bar Number: 008543

22 California Bar Number: 223577

23 626 S. Third St.

24 Las Vegas, Nevada, 89101

25 Telephone: (702) 472-8686

26 *Attorneys for Plaintiff Vitiok, LLC*  
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1. I am the sole owner of Vitiok, LLC, Plaintiff in the above-entitled matter, and authorized to sign on its behalf. Unless otherwise stated herein, I have personal knowledge of the facts and circumstances set forth herein.

DATED this 24<sup>th</sup> day of November, 2020

/s/ Victor Botnari  
Victor Botnari

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# EXHIBIT “1”

DEF000313  
ROA001325

## Commercial Property Lease Agreement

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into this 31st day of March, 2014, by and between Stone & Stone LLC whose address is 5960 Thiros Circle, Las Vegas NV 89146 (hereinafter referred to as "Lessor") and Vitiok LLC DBA Zip Zap Auto (hereinafter referred to as "Lessee").

### WITNESSETH:

WHEREAS, Lessor is the fee owner of certain real property being, approximately 2,695 square foot garage APN # 138-09-422-004 lying and situated in Clark County, such real property having a street address of 3230 N. Durango Drive, Las Vegas NV 89129.

WHEREAS, Lessor is desirous of leasing the Premises to Lessee upon the terms and conditions as contained herein; and

WHEREAS, Lessee is desirous of leasing the Premises from Lessor on the terms and conditions as contained herein;

The parties hereto hereby agree as follows:

1. TERM. Lessor leases to Lessee and Lessee leases from Lessor the above described Premises together with any and all appurtenances thereto, for a term of 25 years and 0 months, such term beginning on 04/01/2014, and ending at 12 o'clock midnight on 03/31/2039.

2. RENT. The total Triple Net rent for the term hereof is the sum of Two Million One hundred fifty Four Thousand Nine Hundred Ninety Six and 00/100 NNN (Including rent increases) DOLLARS (\$2,154,996.00 NNN Including rent increases) payable on the 1st day of each month of the term, in installments starting at Six Thousand Five Hundred DOLLARS (\$6,500.00 NNN), with the first installments to be paid upon execution of this Agreement, the second installment to be paid on 05/01/2014.

On the anniversary of each of five (5) years during the twenty five (25) year term, payments shall be increased by five percent (5%) of the current lease payment (See payment schedule as follows:

04/01/2019	5% increase of \$325.00 and new payments of \$6,825.00
04/01/2024	5% increase of \$341.25 and new payments of \$7,166.25
04/01/2029	5% increase of \$358.31 and new payments of \$7,524.56
04/01/2034	5% increase of \$376.23 and new payments of \$7,900.79

All such payments shall be made to Lessor at Lessor's address as set forth in the preamble to this Agreement, or at such address as provided to Lessee in writing, on or before the due date and without demand, plus the Real Property Tax, Personal Property Tax, City Sewer Charges and Common Area Maintenance (CAMs, if applicable).

3. DAMAGE DEPOSIT. Upon the due execution of this Agreement, Lessee shall deposit with Lessor the sum of Zero DOLLARS (\$0) receipt of which is hereby acknowledged by Lessor, as security for any damage caused to the Premises during the term hereof. Such deposit shall be returned to Lessee, without interest, and less any set off for damages to the Premises upon the termination of this Agreement.

4. USE OF PREMISES. The Premises shall be used and occupied by Lessee as an Auto Repair Facility, and no part of the Premises shall be used at any time during the term of this Agreement by Lessee for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as an auto repair shop. Lessee shall not allow any other person, to use or occupy the Premises without first obtaining Lessor's written consent to such use. Lessee shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

5. **CONDITION OF PREMISES.** Lessee stipulates, represents and warrants that Lessee has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and tenantable condition.

6. **ASSIGNMENT AND SUB-LETTING.** Lessee shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof without the prior written consent of Lessor. Consent by Lessor to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of Lessor or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at Lessor's option, terminate this Agreement.

7. **ALTERATIONS AND IMPROVEMENTS.** Lessee shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Lessor. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Lessee shall, unless otherwise provided by written agreement between Lessor and Lessee, be and become the property of Lessor and remain on the Premises at the expiration or earlier termination of this Agreement.

8. **NON-DELIVERY OF POSSESSION.** In the event Lessor cannot deliver possession of the Premises to Lessee upon the commencement of the Lease term, through no fault of Lessor or its agents, then Lessor or its agents shall have no liability, but the rental herein provided shall abate until possession is given. Lessor or its agents shall have thirty (30) days in which to give possession, and if possession is tendered within such time, Lessee agrees to accept the demised Premises and pay the rental herein provided from that date. In the event possession cannot be delivered within such time, through no fault of Lessor or its agents, then this Agreement and all rights hereunder shall terminate.

9. **HAZARDOUS MATERIALS.** Lessee shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company, other than normal and customary chemicals, oils, lubricants, coolant, solvents and cleaners used in the automotive industry for the maintenance and repair of automobiles.

10. **UTILITIES.** Lessee shall be responsible for arranging for and paying for all utility services required on the Premises.

11. **MAINTENANCE AND REPAIR RULES.** Lessee will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, Lessee shall:

- (a) Not obstruct the driveways, sidewalks, courts, entry ways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;
- (b) Keep all windows, glass, window coverings, doors, locks and hardware in good, clean order and repair;
- (c) Not obstruct or cover the windows or doors;
- (d) Not leave windows or doors in an open position during any inclement weather;
- (e) Not hang any laundry, clothing, sheets, etc. from any window, rail, porch or balcony nor air or dry any of same within any yard area or space;
- (f) Not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of Lessor;
- (g) Keep all air conditioning filters clean and free from dirt;
- (h) Keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. Lessee shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by Lessee;

(i) And Lessee's family and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb other residents;

(j) Keep all radios, television sets, stereos, phonographs, etc., turned down to a level of sound that does not annoy or interfere with other residents;

(k) Deposit all trash, garbage, rubbish or refuse in the locations provided therefore and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the exterior of any building or within the common elements;

(l) Abide by and be bound by any and all rules and regulations affecting the Premises or the common area appurtenant thereto which may be adopted or promulgated by the Condominium or Homeowners' Association having control over them.

12. DAMAGE TO PREMISES. In the event the Premises are destroyed or rendered wholly untenantable by fire, storm, earthquake, or other casualty not caused by the negligence of Lessee, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. The rental provided for herein shall then be accounted for by and between Lessor and Lessee up to the time of such injury or destruction of the Premises, Lessee paying rentals up to such date and Lessor refunding rentals collected beyond such date. Should a portion of the Premises thereby be rendered untenantable, the Lessor shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that Lessor exercises its right to repair such untenantable portion, the rental shall abate in the proportion that the injured parts bears to the whole Premises, and such part so injured shall be restored by Lessor as speedily as practicable, after which the full rent shall recommence and the Agreement continue according to its terms.

13. INSPECTION OF PREMISES. Lessor and Lessor's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon. And for the purposes of making any repairs, additions or alterations as may be deemed appropriate by Lessor for the preservation of the Premises or the building. Lessor and its agents shall further have the right to exhibit the Premises and to display the usual "for sale", "for rent" or "vacancy" signs on the Premises at any time within forty-five (45) days before the expiration of this Lease. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions, but do not conform to this Agreement or to any restrictions, rules or regulations affecting the Premises.

14. SUBORDINATION OF LEASE. This Agreement and Lessee's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Lessor, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances and any and all renewals, extensions or modifications of such mortgages, liens or encumbrances.

15. LESSEE'S HOLD OVER. If Lessee remains in possession of the Premises with the consent of Lessor after the natural expiration of this Agreement, a new tenancy from month-to-month shall be created between Lessor and Lessee which shall be subject to all of the terms and conditions hereof except that rent shall then be due and owing at Eight thousand two hundred ninety five and 83/100 NNN DOLLARS (\$ 8,295.83 NNN) per month and except that such tenancy shall be terminable upon Thirty (30) days written notice served by either party.

16. SURRENDER OF PREMISES. Upon the expiration of the term hereof, Lessee shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.

17. ANIMALS. Not Allowed.

18. QUIET ENJOYMENT. Lessee, upon payment of all of the sums referred to herein as being payable by Lessee and Lessee's performance of all Lessee's agreements contained herein and Lessee's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.

19. INDEMNIFICATION. Lessor shall not be liable for any damage or injury of or to the Lessee, Lessee's family, guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Lessee hereby agrees to indemnify, defend and hold Lessor harmless from any and all claims or assertions of every kind and nature.

20. DEFAULT. If Lessee fails to comply with any of the material provisions of this Agreement, including the covenant to pay Real Property Tax, Personal Property Tax, City Sewer Charges and Common Area Maintenance (CAMs, if applicable), or of any present rules and regulations or any that may be hereafter prescribed by Lessor, or materially fails to comply with any duties imposed on Lessee by statute, within Ten (10) days after delivery of written notice by Lessor specifying the non-compliance and indicating the intention of Lessor to terminate the Lease by reason thereof, Lessor may terminate this Agreement.

If Lessee fails to pay rent when due and the default continues for Ten (10) days thereafter, Lessor may, at Lessor's option, declare the entire balance of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to Lessor at law or in equity or may immediately terminate this Agreement.

21. LATE CHARGE. In the event that any payment required to be paid by Lessee hereunder is not made within five (5) days of when due, Lessee shall pay to Lessor, in addition to such payment or other charges due hereunder, a "late fee" in the amount of Five Percent or Three hundred dollars (5% or \$300.00) whichever is less.

22. ABANDONMENT. If at any time during the term of this Agreement Lessee abandons the Premises or any part thereof, Lessor may, at Lessor's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Lessee for damages or for any payment of any kind whatever. Lessor may, at Lessor's discretion, as agent for Lessee, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option, hold Lessee liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of reentry is exercised following abandonment of the Premises by Lessee, then Lessor shall consider any personal property belonging to Lessee and left on the Premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and Lessor is hereby relieved of all liability for doing so.

23. ATTORNEYS' FEES. Should it become necessary for Lessor to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Lessee agrees to pay all expenses so incurred, including a reasonable attorneys' fee.

24. RECORDING OF AGREEMENT. Lessee shall not record this Agreement on the Public Records of any public office. In the event that Lessee shall record this Agreement, this Agreement shall, at Lessor's option, terminate immediately and Lessor shall be entitled to all rights and remedies that it has at law or in equity.

25. GOVERNING LAW. This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Nevada.

26. 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.

27. BINDING EFFECT. The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

28. DESCRIPTIVE HEADINGS. The descriptive headings used herein are for convenience of reference only and they are not intended to have any affect whatsoever in determining the rights or obligations of the Lessor or Lessee.

29. CONSTRUCTION. The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.

30. NON-WAIVER. No indulgence, waiver, election or non-election by Lessor under this Agreement shall affect Lessee's duties and liabilities hereunder.

31. MODIFICATION. The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

ADDENDUM: This Agreement shall be assigned to the Financial Institution providing the mortgage in the event of default by Lessor.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed:

Witnesses: "Lessor"

\_\_\_\_\_  
Hamid Sheikhai – Manager for Stone & Stone LLC

Date: \_\_\_\_\_

Witnesses: "Lessee"




\_\_\_\_\_  
Victor Botnari – Manager for Vitiok LLC DBA Zip Zap Auto

Date: \_\_\_\_\_

botnari\_victor@yahoo.com - Yahoo Mail

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Vitiok LLC - 3230 ... Page 1 of 6   

Lease, 2015 tax extension and 2014 taxes

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**Hamid** <hamidsheikhai@gmail.com>  
To: botnari\_victor@yahoo.com

Aug 11, 2016 at 1:02 PM


Attached

**Hamid Sheikhai**  
2964 Sun Lake Drive  
Las Vegas NV 89128  
**Cell: (925) 548-9000**  
Work: (702) 579-3001  
Fax: (702) 579-3002

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Reply, Reply All or Forward

## Commercial Property Lease Agreement

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") made and entered in  
day of March, 2011, by and between State of Michigan  
whose address is 1000 Westnoodle, Lansing, MI 48911 (hereinafter referred to as "Lessor") and Monte L. D. D. Jr. D.D. Jr. (hereinafter referred to as "Lessee")

WITNESSETH

WHEREAS, Lessor is the fee owner of certain real property being \_\_\_\_\_  
\_\_\_\_\_ lying and situated in \_\_\_\_\_ County, such real property having a site

WHEREAS, Lessor is desirous of leasing the Premises to Lessee upon the terms and conditions herein, and

WHEREAS, Lessee is desirous of leasing the Premises from Lessor on the terms and conditions herein,

The parties hereto hereby agree as follows.

1. TEPM Lessor leases to Lessee and Lessee leases from Lessor the above described Premises and all appurtenances thereto, for a term of 12 years and 11 months, such term beginning 12/15/2014 and ending at 12 o'clock midnight on 12/14/2026.

2. RENT. The total Triple Net rent for the term hereof is the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) payable on the \_\_\_\_\_ day of each month of the term, in installments of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) with the first installment to be paid on \_\_\_\_\_, and the second installment to be paid on \_\_\_\_\_.

On the anniversary of each of five (5) years during the twenty five (25) year term, payments shall be no more than 15% of the current lease payment (See payment schedule as follows)

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04:07_01:44	% 04:07_01:44 % 04:07_01:44 % 04:07_01:44 % 04:07_01:44 % 04:07_01:44

All such payments shall be made to Lessor at Lessor's address as set forth in the preamble to this Agreement as provided to Lessee in writing, on or before the due date and without demand, plus the Real Personal Property Tax, City Sewer Charges and Common Area Maintenance (CAMs, if applicable).

3. **DAMAGE DEPOSIT.** Upon the due execution of this Agreement, Lessee shall deposit with Lessor            DOLLARS (\$           ) receipt of which is hereby acknowledged by Lessor, as security for damages during the term hereof. Such deposit shall be returned to Lessee, without interest or for damages to the Premises upon the termination of this Agreement.

4. **USE OF PREMISES** The Premises shall be used and occupied by Lessee as an office for no part of the Premises shall be used at any time during the term of this Agreement by Lessee for the purpose of business, profession, or trade of any kind, or for any purpose other than as an office. Lessee shall not allow any other person, to use or occupy the Premises without first obtaining Lessor's written use. Lessee shall comply with any and all laws, ordinances, rules and orders of any and all government governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

Page 1 of 5

5. **CONDITION OF PREMISES.** Lessee stipulates, represents and warrants that Lessee has no Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and ten

6. **ASSIGNMENT AND SUB-LETTING.** Lessee shall not assign this Agreement, or sub-let or use the Premises or any part thereof without the prior written consent of Lessor. Consent by Lessor to assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment or license. An assignment, sub-letting or license without the prior written consent of Lessor or an assignment by operation of law shall be absolutely null and void and shall, at Lessor's option, terminate this Agreement.

7. ALTERATIONS AND IMPROVEMENTS. Lessee shall make no alterations to the buildings or the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Lessor. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises shall, unless otherwise provided by written agreement between Lessor and Lessee, be and become the property of Lessor and remain on the Premises at the expiration or earlier termination of this Agreement.

**§ NON-DELIVERY OF POSSESSION** In the event Lessor cannot deliver possession of the P upon the commencement of the Lease term, through no fault of Lessor or its agents, then Lessor or its agents shall be deemed to have delivered possession of the P to Lessee on the date that the P is delivered to Lessee.

PLT001376

<https://mail.yahoo.com/d/search/name=Hamid%2520Sheikhai&emailAddresses=hamidsheikhai%2540gmail.com&emailAddresses=hamid%2540busyboots.com&ema>

DEF000319  
ROA001331

# EXHIBIT “2”

DEF000320  
ROA001332

## BILL OF SALE

This Bill of Sale ("Agreement") is dated June 1st, 2014, by and between SAMIR, LLC, dba Zip Zap Auto, ("Seller") and VITIOK LLC ("Buyer"). This Agreement is made in respect of the following facts:

### RECITALS

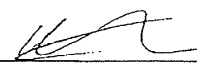
**WHEREAS** the parties wish to enter this Agreement for the sale and purchase of the assets of Zip Zap Auto ("the business");

**WHEREFORE**, in consideration of the foregoing, the mutual covenants and conditions set forth herein and other good and valuable consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Seller hereby sells the business known as Zip Zap Auto, its equipment, licenses, and goodwill for the total amount of One Dollar (\$1.00) is allocated to the purchase of the equipment of the business.
2. Filings and Authorizations. Each Party, as promptly as practicable will use their best efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order to fulfill their obligations hereunder. The Parties will coordinate and cooperate with one another in exchanging such information and supplying such reasonable assistance as may be reasonably requested by each in connection with the foregoing.
3. The parties confirm that the sale is being made "as is" and with all faults, and Seller makes no warranties whatsoever regarding the business or the purchase of the business or its equipment.

SELLER - SAMIR LLC, a NV Limited Liability Company, dba Zip Zap Auto      BUYER - VITIOK LLC, a NV Limited Liability

  
Hamid Sheikhai

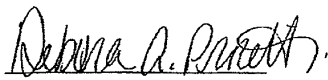
  
Victor Botnari

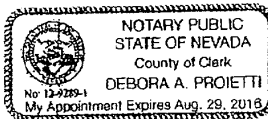
State of Nevada

County of Clark

This instrument was acknowledged before me on 6/3/2014 (date)

by Hamid Sheikhai & Victor Botnari (name(s) of person(s)).

  
(Signature of notarial officer)



Scanned by CamScanner  
PLT000022

DEF000321  
ROA001333

# EXHIBIT "3"

DEF000322  
ROA001334

**SECRET**

.....D

- 2014 JAN -5 0 12:48

المجلة

2. 1

VITIOK LLC  
Name of individual corporation partners

Zip Zip Auto  
(Fictitious)

\_\_\_\_\_

5/5/14

Mailing Address, if different from above \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

City, State, Zip \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

City, State, Zip

City, State, Zip \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

City, State, Zip \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Expiration Date \_\_\_\_\_ Month, Year \_\_\_\_\_  
06-04/2014 2-40-2014

100-443887-100

RECEIVED

JUN 05 2014

\_\_\_\_\_

DEF000323  
ROA001335

Welcome Guest (0 Items: \$0.00) Cart Support Search Login

I want to ...

☐ Get a copy of my marriage certificate (Proof of Marriage)  
☐ Get a copy of my marriage license  
☒ Get a copy of my company documents

Last Name: Zip zap auto First Name:   
or (COUNT) or (COUNT)

Date Range: Specify Date Range

From Record Date: 1/1/1800 To Record Date: 6/7/2018

☒ I'm not a robot

Receipts & Images

Scroll down to view results

Helpful  
 Images  
 docum  
 copy o  
 This ap  
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 1.0 and  
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 PST. Di  
 times c  
 Please

Export to CSV Book equal Filter Grid Receipts & Images

Search Criteria - Name: Zip zap auto Show Names: All, Name Matching Mode: StartsWith, From Record Date: 1/1/1800, To Record Date: 6/7/2018

Page 1 of 1

Displaying items 1 - 4 of 4

Item	Id	Doc	From	To	First Name	Last Name	Instrument	Record Date	Doc Type	Doc No
1			To		ZIP ZAP AUTO	SLC LLC	201806041...	06/04/2018	FFN CERTIF...	FFN
2	0	0	To		ZIP ZAP AUTO	SAMIIR LLC	201102281...	02/28/2011	FFN CERTIF...	FFN
3	0	0	To		ZIP ZAP AUTO	JENS, INC	201303281...	03/28/2013	FFN CERTIF...	FFN
4	0	0	To		ZIP ZAP AUTO	VITONK LLC	201406051...	06/05/2014	FFN CERTIF...	FFN

10/11/2019

Clark Records Search And Order System

201806041164096

HELP

**Instrument Number:** 201806041164096

**Search Results**

**Record Date:** 6/4/2018

**Book Type:** FFN - FICTITIOUS FIRM NAMES

**Instrument #:** 201806041164096

**Number of Pages:** 1

**Doc Type:** FFN - FFN  
CERTIFICATE

**Business Name:** ZIP ZAP AUTO

**Mailing Addr 1:** 4160 S DURANGO  
DR #110

**Mailing City:** LAS VEGAS

**Mailing State:** NV

**Mailing Zip:** 89147

**Owner Name:** SLC LLC

**Expiration Date:** 6/4/2023

DEF000325  
ROA001337

# EXHIBIT "4"

DEF000326  
ROA001338



# BUSINESS PERSONAL PROPERTY DECLARATION

MICHELE W. SHAFE, CLARK COUNTY ASSESSOR

Rocky A. Steele, Assistant Director of Assessment Services

500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401

www.ClarkCountyNV.gov/assessor

702-455-4997

Fiscal Year July 1, 2014 to June 30, 2015

## NAME AND MAILING ADDRESS:

ZIP ZAP AUTO  
C/O JENS INC  
3230 N DURANGO DR  
LAS VEGAS, NV 89129-7279

ASSESSOR ID#: 153316

DIST: 200

NH: 1231.58

DATE: 07/01/2014

LOCATION: 3230 N DURANGO DR

LAS VEGAS, NV 89129-7279

PHONE NO: 702-644-1400 ACCOUNT TYPE: Business

## NOTES:

## Complete steps 1-7 below:

1. Is the business information printed above correct? Yes ☐ No ☒ (If no, complete changes below)

Business (DBA) name:

~~KITAK LLC~~ DBA: Zip Zap Auto

Legal/Corporation name:

Vitak LLC

Mailing address:

3230 N. Durango Drive, Las Vegas

Location address:

Same

NV 89129

Phone number:

WC 702-644-1400 Cell 702-800-1991

2. What is the NAICS code or business type?

81111

3. Do any of the following apply? Yes ☐ No ☐ (If yes, complete changes below)

☒ New business

Date opened: 04/01/2014

☐ Business reorganized

Effective date: 04/01/2014

New Entity: ☒

☐ Business sold

Date sold: 1/1

New Owner: ☒

☐ Out of business/Left County

Effective date: 1/1

Comments:

4. Provide an asset listing using one of the following options: (check one)

☐ Electronic data submitted

☐ Asset listing attached

☒ Reverse side completed

5. Do you have multiple locations in Clark County? Yes ☐ No ☒ (Each location requires a separate report)

## 6. Contact Information:

Business Owner Name: Victor Botnari

Contact Preparer: Hamid Shekhai

Contact Name: Same

Contact Company: N/A

Contact Phone: 702-800-1991

Contact Fax: 702-644-1111

Contact Email Address: ZipZapAuto@yahoo.com

Website Address: ZipZapAuto.com

7. IMPORTANT - READ AND SIGN BELOW: If returning by mail, please sign and return.

NEVADA REVISED STATUTES 361.185 AND 361.268 PROVIDE FOR THE PROSECUTION OF PERSONS WHO FAIL TO SUBMIT A SWORN STATEMENT OF PROPERTY OR SUBMIT A FALSE STATEMENT THEREOF. STATUTES REQUIRE THAT THIS DECLARATION BE COMPLETED AND RETURNED TO THE COUNTY ASSESSOR BY JULY 31 OF FISCAL YEAR REPORTING OR WITHIN 15 DAYS OF THE DATE PRINTED ON DECLARATION, WHICHEVER IS LATER.

## • OATH •

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT I HAVE EXAMINED THIS BUSINESS PERSONAL PROPERTY DECLARATION, INCLUDING ACCOMPANYING SCHEDULES OR OTHER ATTACHMENTS, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT, AND COMPLETE AND INCLUDES ALL PROPERTY REQUIRED TO BE REPORTED WHICH IS OWNED, CLAIMED, POSSESSED, OR MANAGED BY THE PERSON OR FIRM NAMED ON THIS DECLARATION.

Signature of Owner/Authorized Agent:

*Hamid Shekhai*

Date: 8/30/14

Print Name of Owner/Authorized Agent:

Hamid Shekhai

Title: Agent

1-925-548-9000



Please keep a copy for your records.

88TP396EX31RL

PLT000033

DEF000327  
ROA001339

## 163316

\_\_\_\_\_ No change (no additions or deletions since prior filing)

✓ Complete list Additions & deletions only

See instructions for a complete list of department codes

Asset ID / Serial # (optional)	Description	Year Acquired	Acquisition Cost	Dept Code	Check It:		Lessor or Lessee Name	Lessor or Lessee Address	Date Lease Began	Date Lease Ends	Monthly Lease Pymnt	Lease Type
					Leased or Rented From	Leased or Rented To						
	Alignment Rack	2014	1,500	1								
	alignment computer	2014	1,000	5								
	Tire exchanger	2014	1,000	1								
	Tire Balancer	2014	500	1								
	2-post hoists	2014	4,000	1								
	Smoky machine	2014	2,500	5								
	AC Machine	2014	100	1								
	OTHER, misc SHOP EQUIP	2014	2,000	1								
	OFFICE FURNITURE	2014	1,000	1								
	COMPUTERS	2014	1,000	5								
	Appliances	2014	1,000	1								
	Tanks, Pumps, Reels & dispensers	2014	2,500	1								
	TV, Phones, modems	2014	1,100	3								

PLT000034

DEF000328  
ROA001340

# EXHIBIT "5"

DEF000329  
ROA001341

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Hamid [hammadshahid@dmu.ac.uk](mailto:hammadshahid@dmu.ac.uk)

My visitor is applying for a loan at Bank of Nevada to refinance the Zip Zap property. They may call or come by and ask questions. Here's what you should tell them:

You helped start and manage the Zip Zip Business for over 3 years now, and just now bought it from me, and signed a new lease in March this year and are doing almost a million 3 year average in sales.

You have a 25 year lease with me as manager of Stone & Stone LLC, starting April 1st 2014 and ending March 31st 2039. Lease payments currently are \$6,500 per month including CAMs.

You have tax returns and profit and loss statements and can send it to them if they need it.

## Thanks :

Harald S.

**Hamid Sheikh**  
3960 Thiras Circle  
Las Vegas NV 89148  
Cell: (925) 548-9000  
Work: (702) 576-3001  
Fax: (702) 576-3001

Reply    Reply to All    Forward    ... More

Victor Botnari ~botnari.victor@yahoo.com

## OK, Sounds Good.

今日の政治小説

2025.11.19 22

# EXHIBIT "6"

DEF000331  
ROA001343

10/11/2019

Clark Records Search And Order System

201806041164096



HELP

**Instrument Number:** 201806041164096

**Search Results**

**Record Date:** 6/4/2018

**Book Type:** FFN - FICTITIOUS FIRM NAMES

**Instrument #:** 201806041164096

**Number of Pages:** 1

**Doc Type:** FFN - FFN  
CERTIFICATE

**Business Name:** ZIP ZAP AUTO

**Mailing Addr 1:** 4160 S DURANGO  
DR #110

**Mailing City:** LAS VEGAS

**Mailing State:** NV

**Mailing Zip:** 89147

**Owner Name:** SLC LLC

**Expiration Date:** 6/4/2023

DEF000332  
ROA001344

# EXHIBIT "7"

DEF000333  
ROA001345

# **FIVE-DAY NOTICE TO QUIT FOR TENANCY AT WILL** (NRS 40.251)

10-17-08

TO: (Print name and address of tenant)	FROM: (Print name and address of landlord)
DATE: (Print date)	DATE: (Print date)
RE: (Print name of property)	RE: (Print name of property)
NO. (Print number)	NO. (Print number)
DATE: (Print date)	DATE: (Print date)
DATE: (Print date)	DATE: (Print date)
DATE: (Print date)	DATE: (Print date)

TAKE NOTICE that your tenancy at will is hereby terminated, and you are required to vacate the premises within five (5) days of the date of service of this notice. If you do not comply with this notice, your tenancy at will is hereby terminated, and you shall be liable for the consequences thereof. If you have any objections to this notice, you may file a written statement with the County Clerk of the County of Nevada, within five (5) days of the date of service of this notice. If you fail to do so, the County Clerk will issue a writ of possession in favor of the landlord. If you fail to comply with this notice, you shall be liable for the consequences thereof.

IF YOU DO NOT COMPLY WITH THIS NOTICE, you shall be liable for the consequences thereof, including but not limited to, the payment of damages, costs, and attorney's fees. You shall also be liable for the consequences thereof, including but not limited to, the payment of damages, costs, and attorney's fees.

FOR INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter can be obtained from the Office of the County Clerk, which is located in the County of Nevada, at the County Clerk's Office, 1000 South Main Street, Las Vegas, NV 89101.

## **DECLARATION OF SERVICE**

I, the undersigned, have served this notice in the following manner (check one):  
☐ By delivering a copy to the tenant(s) personally, in the presence of a witness (provide witness and tenant's full name and address):  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_

☐ By depositing a copy of this notice in the United States Mail, by first-class mail, return receipt requested, postage paid, to the tenant(s) at the address above.  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_

☐ By depositing a copy of this notice in the United States Mail, by first-class mail, return receipt requested, postage paid, to the tenant(s) at the address above.  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_

☐ By depositing a copy of this notice in the United States Mail, by first-class mail, return receipt requested, postage paid, to the tenant(s) at the address above.  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_

I declare under penalty of perjury that the above is true and correct. I am the landlord or authorized agent of the landlord.  
 Signature: \_\_\_\_\_  
 Name: S. Lang P #9599  
 Address: \_\_\_\_\_

11/8/2018

CourtView Justice Solutions

18LVTC016279

Case Status: CLOSED  
File Date: 06/04/2018  
Action: NOTICES  
Status Date: 06/04/2018

All Information Party Docket Receipt

Party Information

STONE AND STONE - LANDLORD

Disposition  
Disp Date

Alias

Party Attorney

More Party Information

BOTNARI VICTOR - TENANT

Disposition  
Disp Date

Alias

Party Attorney

More Party Information

Docket Information

Date	Docket Text
06/04/2018	SERVICE ISSUED
06/04/2018	MILEAGE FEE \$2 A MILE Receipt: 1520087 Date: 06/04/2018
06/04/2018	ONE NOTICE OF EVICTION Receipt: 1520087 Date: 06/04/2018

11/8/2018

CourtView Justice Solutions

Date

06/06/2018

Docket Text

SERVED

Party Type: TENANT

Party: BOTINARI, VICTOR

Addr Type: HOME ADDRESS

Address: 3230N DURANGO DR

City: LAS VEGAS

State: NV

Zip: 89129

Miles: 9

Service: NSW/ILVTC

Request By: LANDLORD: STONE AND STONE

Docket Code: ONE NOTICE OF EVICTION

Default Method: LAS VEGAS CONSTABLE DEPUTY / STAFF

Issue Date: 06/04/2018

Notice

Tenants: All Tenants

Service Date: 06/05/2018 06:16

Return Date: 06/06/2018

Service By: LANG, SCOTT

Result of Service: SERVED/LVTC

Assign/Post Date: 06/05/2018

Exp/Renew/Landlord Return Dt: 06/13/2018

Receipts

Receipt Number

1520087

Receipt Date

06/04/2018

Received From

STONE AND STONE

Payment Amount

\$44.00

\$44.00

# EXHIBIT "8"

DEF000337  
ROA001349



RECEIVED Occupational and Business Licensing  
JUN 29 2018  
DMV  
CED/OBL  
555 Wright Way  
Carson City, NV 89711-0700  
(775) 684-4690  
www.dmvnv.com

OUT OF BUSINESS NOTIFICATION

NRS Chapters 445B, 482, 483, 487 and 490

Business Name Vitiok LLC DBA: Zip Zap Auto DMV Business License # 0AR243501  
E7634243502  
(Attach original business license to this form)  
Business Address 3230 N Durango Dr Las Vegas NV 89129  
Street Address City State Zip Code  
Reason for Closure Principal left the country Date of Business Closure \_\_\_\_\_

Forwarding Contact Information:

Name Hamid Sheikhai Phone Number 925-548-9000 Email HamidSheikhai@Gmail.Com  
Address 14250 Calico Basin Road Las Vegas NV 89161  
Street Address City State Zip Code

Business License Plates List all plates surrendered. If a plate issued to this license is not surrendered for the reason that it is Lost or Stolen, please attach a completed Lost Plate Affidavit OBL238 form. (Attach additional sheet if necessary)

Plate Number(s)	Plate Number(s)	Plate Number(s)	Plate Number(s)

Supplies: List all unused secured documents surrendered. (Attach additional sheet if necessary)

Document Name	Control Number(s)	Document Name	Control Number(s)

Dealers/Rebuilders Only:

Salespersons: When a salesperson ceases to be employed by a licensed dealer, the dealer shall notify DMV by forwarding the salesperson's license to DMV within 10 days. NRS 482.362

Dealer Report of Sale: Please transmit Electronic DRS transactions prior to submitting this form to DMV. Once this form is processed by DMV, your login credentials to the EDRS web portal will no longer be valid.

Principal's Printed Name Hamid Sheikhai for: Victor Botnari Title Manager  
Principal's Signature [Signature] Date 6/29/18  
[Signature] Date 7/3/18  
Signatures must be originals. Photocopies are not acceptable.

RECEIVED		OBL Office Use Only	
Date Received	<u>JUN 29 2018</u>	Date Processed	
		Tech Number	

DMV  
OBL266 (05/2016) CED/OBL

Scanned with CamSca

DEF000338

ROA001350



RECEIVED

JUN 20 2018

DMV  
CED/OBL

Occu

lional and Business Licensing  
555 Wright Way  
Carson City, NV 89711-0700  
(775) 684-4690  
[www.dmvnv.com](http://www.dmvnv.com)

## OUT OF BUSINESS NOTIFICATION

NRS Chapters 445B, 482, 483, 487 and 490

Business Name Vitiok LLC DBA: Busy Boots Automotive DMV Business License # GAR000045332  
(Attach original business license to this form)  
Business Address 4160 S Durango Dr Las Vegas NV 89147  
Street Address City State Zip Code  
Reason for Closure Principal left the country Date of Business Closure \_\_\_\_\_

## Forwarding Contact Information:

Name Hamid Sheikhai Phone Number 925-548-9000 Email HamidSheikhai@Gmail.Com  
Address 14250 Calico Basin Road Las Vegas NV 89161  
Street Address City State Zip Code

Business License Plates List all plates surrendered. If a plate issued to this license is not surrendered for the reason that it is Lost or Stolen, please attach a completed Lost Plate Affidavit OBL238 form. (Attach additional sheet if necessary)

Plate Number(s)	Plate Number(s)	Plate Number(s)	Plate Number(s)

Supplies: List all unused secured documents surrendered. (Attach additional sheet if necessary)

Document Name	Control Number(s)	Document Name	Control Number(s)

## Dealers/Rebuilders Only:

**Salespersons:** When a salesperson ceases to be employed by a licensed dealer, the dealer shall notify DMV by forwarding the salesperson's license to DMV within 10 days. NRS 482.362

**Dealer Report of Sale:** Please transmit Electronic DRS transactions prior to submitting this form to DMV. Once this form is processed by DMV, your login credentials to the EDRS web portal will no longer be valid.

Principal's Printed Name Hamid Sheikhai for: Victor Botnari Title Manager  
Principal's Signature Signature on P/c Date 6/29/18  
X [Signature] DATE 7/3/18  
Signatures must be originals. Photocopies are not acceptable.

OBL Office Use Only  
Date Received [Signature] Date Processed 6/29/18 Tech Number 8027

OBL266 (05/2016)

Scanned with CamScanner

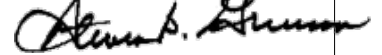
DEF000339

ROA001351

# EXHIBIT “J”

MICHAEL B. LEE, P.C.  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL - (702) 546-7055; FAX - (702) 825-4734

Electronically Filed  
12/4/2020 4:14 PM  
Steven D. Grierson  
CLERK OF THE COURT



MICHAEL B. LEE, ESQ. (NSB 10122)  
MICHAEL MATTHIS, ESQ. (NSB 14582)  
MICHAEL B. LEE, P.C.  
1820 E. Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104  
Telephone: (702) 477.7030  
Facsimile: (702) 477.0096  
[mike@mblnv.com](mailto:mike@mblnv.com)  
Attorneys for Defendants ZOHREH AMIRYAVARI and SLC, LLC

WILLICK LAW GROUP  
MARSHAL S. WILLICK, ESQ.  
Nevada Bar No. 2515  
3591 E. Bonanza Road, Suite 200  
Las Vegas, NV 89110-2101  
Phone (702) 438-4100;  
Fax (702) 438-5311  
[email@willicklawgroup.com](mailto:email@willicklawgroup.com)  
Attorney for Defendant Hamid Sheikhai

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VITIOK LLC, a Nevada Limited Liability  
Company,

Plaintiff,

vs.

SLC, LLC a Nevada Limited Liability  
Company; HAMID SHEIKHAI, an individual,  
ZOHREH AMIRYAVARI, an individual and  
DOES I through X and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

And Related Actions.

CASE NO.: A-19-805955-C  
DEPT. NO.: XXII

HEARING REQUESTED

**MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT, LEAVE TO  
AMEND, AND FOR STAY**

Defendants SLC, LLC ("SLC") and ZOHREH AMIRYAVARI ("Amiryavari"), by and through their attorney, MICHAEL B. LEE, P.C., and Defendant HAMID SHEIKHAI ("Sheikhai"), by and through his counsel of record, WILLICK LAW GROUP, hereby jointly file this Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, Leave to Amend, and for Stay ("Motion"). This Motion is made and based upon the papers and pleadings on file herein, the points and authorities attached hereto, the affidavit of counsel, and any oral arguments that are allowed by this Honorable Court at the time of hearing. Defendants SLC, Amiryavari, and Sheikhai are collectively referred to as "Defendants". Plaintiff VITIOK, LLC ("Vitiok" or

1 “Plaintiff”). Cross-Defendant Victor Botnari is referred to “Botnari”.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 **A. Overview**

5 Mr. Botnari, the owner of Vitiok, made several admissions in a verified petition for  
6 annulment. Therein, he swore under the penalty of perjury that: (1) he knowingly defrauded Mr.  
7 Sheikhai into marrying him for the purposes of a green card; (2) in furtherance of this scheme to  
8 defraud both Mr. Sheikhai and the United States, he manipulated Mr. Sheikhai into adding his  
9 name to all Mr. Sheikhai’s assets, specifically Zip Zap Auto, which Mr. Botnari said would  
10 strengthen his immigration case although he promised Mr. Sheikhai he would not try to take this  
11 or any other assets belonging to Mr. Sheikhai; (3) he cost Mr. Sheikhai a lot of money; (4) there  
12 was no consideration for the alleged transfer since he fraudulently induced Mr. Sheikhai into  
13 marrying him for a green card, which made him guilty of fraud; and (5) Mr. Sheikhai always  
14 understood that Mr. Botnari was not going to make a claim on Zip Zap Auto.

15 These admissions are dispositive of Plaintiff’s claims, wherein Defendants should be  
16 entitled to Summary Judgment as a matter of law. Under the theories of judicial estoppel, claim  
17 preclusion, law of the case, and party admissions, no genuine issue of material fact exists that  
18 Vitiok has zero claim to Zip Zap Auto. However, arguendo, to the extent that this Honorable  
19 Court determines that there may be a disputed issue, partial summary judgment is appropriate  
20 related to the admissions. Moreover, it would also be appropriate to provide Defendants leave to  
21 amend their pleadings to assert additional claims against Plaintiff and Mr. Botnari related to the  
22 admissions. Finally, Defendants respectfully request a stay of this matter pending the resolution  
23 of the domestic case related to the sham marriage and the restoration of the assets of each as  
24 brought into the sham marriage as they expressly agreed.

25 **B. Statement of Facts**

26 1. **Facts Alleged in the Complaint**

27 In 2013, Plaintiff alleged that the Nevada Department of Motor Vehicles issued a  
28 directive prohibiting Mr. Sheikhai from operating a smog repair facility. *Id.* at ¶ 6. Plaintiff

1 claims that Mr. Sheikhai is operating the day to day operations of SLC, not Ms. Amiryavari. *Id.*  
2 at ¶ 10. Furthermore, Plaintiff averred that SLC is the alter ego of Mr. Sheikhai as SLC has not  
3 followed corporate formalities, it is undercapitalized as evidenced by its fraudulent acts of  
4 operating Zip Zap Auto and it has co-mingled its funds with Mr. Sheikhai. *Id.* at ¶ 11.

5 On June 1, 2014, Plaintiff alleged Vitiok purchased Zip Zap Auto business and its assets  
6 from Samir LLC that was owned and operated by Mr. Sheikhai. *Id.* at ¶ 12. Plaintiff claimed on  
7 June 5, 2014, Vitiok registered “Zip Zap Auto” as a dba of Vitiok. *Id.* at ¶ 14. In 2014, Plaintiff  
8 alleged Vitiok began operating “Zip Zap Auto” at 3230 N. Durango Road, Las Vegas, NV  
9 89129. *Id.* at ¶ 15. Plaintiff averred on June 5, 2018, Stone and Stone under false pretenses  
10 evicted Vitiok from 3230 N. Durango Road, Las Vegas, NV 89129. *Id.* at ¶ 16. Plaintiff  
11 claimed on June 6, 2018, SLC LLC began to operate Vitiok’s business under the name of Zip  
12 Zap Auto at 3230 N. Durango Road, Las Vegas, NV 89129. *Id.* at ¶ 17.

13 2. Facts Admitted by Botnari

14 On March 28, 2018, Mr. Sheikhai and Mr. Botnari filed a joint petition for annulment  
15 (“Petition”) in the Ninth Judicial District Court, District of Nevada (“Douglas County”). Petition  
16 attached as **Exhibit A**. Therein, Mr. Botnari provided a verification for the Petition  
17 (“Verification”), under the penalty of perjury that the Petition was accurate. *Id.* at HS004323.  
18 These facts are supported by the Verification and the Petition. References to Mr. Botnari and  
19 Mr. Sheikhai below are maintained as originally drafted in the Petition.

20 “VICTOR BOTNARI misrepresented and concealed that he only married HAMID  
21 SHEIKHAI for the purpose of obtaining a green card.” *Id.* at HS004318:9-10. “VICTOR  
22 BOTNARI falsely represented to HAMID SHEIKHAI that he desired to get married because he  
23 was in love and wanted to maintain a traditional marital relationship by residing together and  
24 performing all matrimonial duties of a spouse.” *Id.* at HS004318:11-13. “VICTOR BOTNARI  
25 further specifically promised and represented that he was not marrying solely to gain United  
26 States citizenship or a green card.” *Id.* at HS004318:14-15.

27 “VICTOR BOTNARI withheld and misrepresented the intention to only marry for a  
28 green card and withheld the fraudulent intent to evade immigration laws and commit marriage

1 fraud, so as to induce HAMID SHEIKHAI to marry him. HAMID SHEIKHAI believes VICTOR  
2 BOTNARI had no intention of maintaining a marital relationship, but rather intended to leave  
3 once he obtained a green card. HAMID SHEIKHAI would not have entered into the marriage  
4 except for the misrepresentations of the spouse.” *Id.* at HS004318:16-21.

5 “Hamid moved to Las Vegas in March of 2011 and opened a new automotive repair  
6 business [Zip Zap Auto] where he hired Victor as a mechanic.” *Id.* at HS004318:22-23.  
7 “Sometime later Victor was finally ready to marry Hamid and said it didn’t matter what his  
8 family or other people in his country would think anymore. They got married on May 4, 2014.”  
9 *Id.* at HS004319:3-4. “In July of 2014 the parties were in the process of buying a home together  
10 and Hamid learned Victor was in deportation proceedings. Hamid has no idea and this led to a  
11 lot of things he had not been told to by Victor and he felt deceived.” *Id.* at HS004319:5-7.

12 “Hamid later learned Victor filed for a green card in November of 2013 based on his  
13 marriage to Gina [Vasapollo – “Gina” as referenced in the Petition] and it was denied based on  
14 fraud and in February 2014 he was placed in removal proceedings. Hamid learned Victor was  
15 served a Notice to Appear for removal proceedings on April 30, 2014, only a few days before the  
16 marriage.” *Id.* at HS004319:7-10; *see also* Immigration Judge Decision (“IJ Decision”) dated  
17 March 8, 2016 attached as **Exhibit B**; Board of Immigration Appeals Affirmation (“BIA  
18 Affirmation”) attached as **Exhibit C**. Victor “has filed for appeals, dismissals and continuances  
19 with Immigration but has not been successful due to his previous fraudulent marriage with  
20 Gina.” *Id.* at HS4319:23-24.

21 Hamid “added Victor’s name to all Hamid’s assets which Victor said would strengthen  
22 his immigration case so they could stay together and to be able to conduct business for one  
23 another. They then filed for Victor’s green card based on this marriage in October 2014. He  
24 said it was not to take anything that wasn’t his. However, that is not how it has worked out and it  
25 has cost Hamid a lot of money.” *Id.* at HS4319:13-17. Victor “has been a consistent part of  
26 Hamid’s business life but not with good intentions there either. He has taken the profits and  
27 burdened Hamid with the losses.” *Id.* at HS4319:21-23.

28 ////

1 “In January of 2017 Victor filed for another visa as an abused spouse by Hamid, but  
2 Hamid did not know about it until later. He submitted falsified evidence including using  
3 Photoshop to alter a prescription bottle to make it look like Hamid was on medication, which he  
4 wasn’t on. Everything was too much to ignore and Hamid confronted Victor in March of 2018  
5 and he admitted he married solely for money and immigration benefits. He admitted adultery  
6 and confirmed all Hamid’s suspicions about his bad character.” I. at HS004319:25-28 –  
7 HS4320:1. “Hamid would not have married Victor if he knew he was needing a greencard and  
8 was only marrying to gain access to his money.” *Id.* at HS004320:3-4.

9 Victor fraudulently induced Hamid into marrying him for a green card, which made him  
10 guilty of fraud. *Id.* at HS004320:8-18, HS004320:23-24 (fraud as defined by NRS § 125.340,  
11 125.350 [failure of consideration]). There was a failure of consideration related to Victor’s  
12 acquisition of Hamid’s assets. *Id.* Victor had no right to make any claims against Hamid’s  
13 assets accumulated during the sham marriage. *Id.* at HS004321:5-7.

14 As to the transfer of Hamid’s assets to Victor, the parties executed a Bill of Sale (“Bill of  
15 Sale”) on June 1, 2014. Bill of Sale attached as **Exhibit D**. The Bill of Sale was only for \$1.00,  
16 illustrating the lack of consideration and to facilitate Mr. Botnari’s continuing scheme to defraud  
17 the United States and Immigration. *Id.*; Ex. A at HS4319:13-17. Hamid understood that Victor  
18 was not going to make a claim on this asset. *Id.* at HS004321:5-7.

19 3. Findings by Douglas County

20 The factual allegations admitted by Mr. Botnari in the Petition were true. *Id.* at  
21 HS004326:15. There are not community assets and/or debts between Mr. Sheikhai and Mr.  
22 Botnari. *Id.* at HS004327:2. The Parties expressly agreed and contracted that “[e]ach party shall  
23 have affirmed to them as their sole and separate property, the property they brought to the union  
24 as individuals.” *Id.* at HS004327:14-15.

25 4. Findings by IJ Decision

26 On March 8, 2016, the Immigration Judge issued a decision denying the immigration  
27 petition for alien relative (“Immigration Petition”). Ex. B. Mr. Botnari’s marriage to Gina  
28 Vasapollo (“Vasapollo”) was a sham marriage, and Mr. Botnari was “the facilitator of the sham

1 marriage between Ms. Vasapollo and [himself].” *Id.* at HS001045. The sham marriage was one  
2 of convenience and for the sole purpose of obtaining immigration benefits.” *Id.* at HS001046.

3 On April 6, 2017, the BIA affirmed the IJ Decision. Ex. C. In dismissing the visa  
4 petition appeal, the BIA “affirmed USCIS’s finding that the visa petition record contained  
5 substantial and probative evidence that the respondent’s prior marriage was fraudulent[.]” *Id.* at  
6 HS001038

7 **C. Statement of Procedure**

8 On November 22, 2019, Plaintiff filed its complaint alleging six causes of action: (1)  
9 Unjust Enrichment; (2) Intentional Interference with Economic Interest; (3) Civil Conspiracy; (4)  
10 Injunction; (5) Declaratory Relief; and (6) Accounting.

11 In a related action between Mr. Sheikhai and Mr. Botnari related to the Petition, there  
12 have been several orders affirming the annulment:

- 13 1. On June 4, 2018, Victor filed in Douglas County a document entitled Defendant’s  
14 Motion to Change Venue; For Defendant’s Attorney’s Fees and Costs Incurred  
15 Herein; and Related Matters, asking the Ninth Judicial District Court to change  
16 venue to the Eighth Judicial District Court. Victor’s Motion argued that he had  
17 “post divorce issues,” including the division of assets, and that all witnesses and  
18 anything to do with his claims were in Clark County. Victor never indicated in his  
19 Motion that he was planning to set aside any ruling from the Ninth Judicial  
20 District Court in his “post divorce” litigation.
- 21 2. On August 16, 2018, Judge Gregory of the Ninth Judicial District Court issued the  
22 Order Granting Motion to Change Venue, finding in relevant part that Victor  
23 “represents that [he] anticipates filing post-decree motions,” and requests the  
24 venue change “to promote the convenience of witnesses and the ends of justice.”  
25 The Order granted Victor’s request to change venue, transferring the entire matter  
26 to this county, and this Court, to hear all further issues. This was done upon  
27 Victor’s Motion and upon Victor’s request upon Victor’s allegation that he had  
28 “postdecree” issues to resolve.

Order from August 16 attached as **Exhibit E**.

3. the draft Order from the October 15, 2020 Hearing. The Clark County Family  
Court, Dept. R could hardly be clearer:

The Court, having jurisdiction to do so, hereby finds that the Court  
already definitively ruled on the issue of setting aside the  
annulment and/or whether the annulment stands, and if the parties  
felt the Court was wrong and/or that it lack sufficient findings, they  
could and should have, and did to some large extent, petition the  
Ninth Judicial District and/or the Appellate Courts for ruling on  
this matter.

The Court, having jurisdiction to do so, hereby orders that the Court already definitively ruled on the issue of setting aside the annulment and/or whether the annulment stands, and if the parties felt the Court was wrong and/or that it lack sufficient findings, they could and should have, and did to some large extent, petition the Ninth Judicial District and/or the Appellate Courts for ruling on this matter.

Order from the October 15 attached as **Exhibit F**.

4. Order from the December 3, 2019 Hearing filed *Sheikhai v. Botnari*, Case Number D-18-575686-L, (Hon. William Henderson”), wherein Judge Henderson issued his order ruling that “the marriage between the parties is to remain annulled,” and vacated all trial dates, with the understanding that discovery may yield information related to the division of allegedly omitted assets, but there was insufficient information at that time to determine the merits of the property division claims.

Order from the December 3, 2019 Hearing filed April 5, 2019 attached as **Exhibit G**.

5. Order from January 14, 2019, where Judge Henderson issued his second Order denying Victor’s request to set aside the annulment, emphatically ordering that “The annulment stands.”

Order from the January 14, 2019 Hearing filed May 22, 2019 attached as **Exhibit H**.

6. Order from May 1, 2020, where the Ninth Judicial District Court issued Order Denying Motion to Set Aside Decree.

Order from May 1 attached as **Exhibit I**.

7. Order from October 15, 2020, Judge Henderson again affirmed its ruling that the request to set aside the annulment was denied and clearly ordered the annulment to stand, and that Victor’s set-aside request was denied

See Ex. F.

8. On June 17, 2020, Victor filed an appeal with the Nevada Supreme Court related to the annulment in Douglas County, but later voluntarily withdrew it on November 3, 2020.

Notice of Voluntarily Withdrawal of Appeal attached as **Exhibit L**.

## **II. DISCUSSION**

Summary Judgment is appropriate as a matter of law. In support, this Discussion is organized into five parts. Part A sets forth the legal standards for summary judgment, judicial estoppel, admissions by a party, claim preclusion, and the law of the case. Part B explains, in four subparts, that Summary Judgment is appropriate based on (1) Mr. Botnari’s admissions, (2) judicial estoppel, and (3) claim preclusion. The fourth subpart breaks down the allegations in the

1 Complaint, in subsections (a)-(f), and illustrates how the admissions are fatal to each claim as  
2 pled in the Complaint. Part C, in the alternative, requests partial summary judgment related to  
3 undisputed findings based on the admissions. Part D, in the alternative, requests leave to amend  
4 the pleadings to add additional claims related to the admissions. Finally, Part E, in the  
5 alternative, requests to stay this action pending the domestic case between Messrs. Botnari and  
6 Sheikhai.

7 **A. Legal Standards**

8 1. Summary Judgment

9 Summary judgment is appropriate when the pleadings, depositions, answers to  
10 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate  
11 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a  
12 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).  
13 Substantive law controls whether factual disputes are material and will preclude summary  
14 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
15 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the  
16 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*  
17 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

18 The Nevada Supreme Court has held that the non-moving party may not defeat a motion  
19 for summary judgment by relying “on gossamer threads of whimsy, speculation and conjecture.”  
20 *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court  
21 has also made it abundantly clear when a motion for summary judgment is made and supported  
22 as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon  
23 general allegations and conclusions, but must by affidavit or otherwise set forth specific facts  
24 demonstrating the existence of a genuine factual issue. *Id.*

25 Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment,  
26 or partial summary judgment. “The court shall grant summary judgment if the movant shows  
27 that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a  
28 matter of law.” The court may rely upon the admissible evidence cited in the moving papers,

1 and may also consider other materials in the record as well. *Id.* at 56(c). “If the court does not  
2 grant all the relief requested by the motion, it may enter an order stating any material fact —  
3 including an item of damages or other relief — that is not genuinely in dispute and treating the  
4 fact as established in the case.” *Id.* at 56(g).

5 The pleadings and proof offered in a Motion for Summary Judgment are construed in the  
6 light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725  
7 P.2d 238, 241 (1986). However, the non-moving party still “bears the burden to ‘do more than  
8 simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid  
9 summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at 1031. “To successfully  
10 defend against a summary judgment motion, ‘the nonmoving party must transcend the pleadings  
11 and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue  
12 of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev. 2008) (quoting *Cuzze v.*  
13 *Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

14 The non-moving party bears the burden to set forth specific facts demonstrating the  
15 existence of a “genuine” issue for trial or have summary judgment entered against him. *Collins*  
16 *v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). When there  
17 is no genuine issue of material fact and the non-moving party provides no admissible evidence to  
18 the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US 317, 322  
19 (1986). When a motion for summary judgment is made and supported, an adversary party who  
20 does not set forth specific facts showing a genuine issue to be resolved at trial may have a  
21 summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99 Nev.  
22 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414,  
23 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

24 2. Judicial Estoppel

25 “‘Under the doctrine of judicial estoppel, a party may be estopped merely by the fact of  
26 having alleged or admitted in his pleadings in a former proceeding the contrary of the assertion  
27 sought to be made.’” *Sterling Builders, Inc. v. Fuhrman*, 80 Nev. 543, 549, 396 P.2d 850, 854  
28 (1964) (quoting 31 C.J.S. Estoppel § 121 at 649). Whether judicial estoppel applies is a question

1 of law. *NOLM, LLC v. County of Clark*, 100 P.3d 658, 663 (Nev. 2004) (citing *Kitty–Anne*  
2 *Music Co. v. Swan*, 112 Cal.App.4th 30, 4 Cal.Rptr.3d 796, 800 (Ct.App.2003)). The primary  
3 purpose of judicial estoppel is to protect the judiciary’s integrity, *Id.* (citation omitted), and a  
4 court may invoke the doctrine at its discretion. *Id.* (citation omitted).

5 The doctrine generally applies “when “ ‘(1) the same party has taken two positions; (2)  
6 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party  
7 was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it  
8 as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a  
9 result of ignorance, fraud, or mistake.’ ” ” *Id.* (quoting *Furia v. Helm*, 111 Cal.App.4th 945, 4  
10 Cal.Rptr.3d 357, 368 (Ct.App.2003) (quoting *Thomas v. Gordon*, 85 Cal.App.4th 113, 102  
11 Cal.Rptr.2d 28, 32 (Ct.App.2000) (quoting *Drain v. Betz Laboratories, Inc.*, 69 Cal.App.4th 950,  
12 81 Cal.Rptr.2d 864, 868 (Ct.App.1999) (quoting *Jackson v. County of Los Angeles*, 60  
13 Cal.App.4th 171, 70 Cal.Rptr.2d 96, 103 (Ct.App.1997)))).

14 3. Admissions by Party

15 “[A]n admitting party is barred from denying that which it has already admitted. *La-Tex*  
16 *Partn. v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec.*  
17 *Inc.*, 93 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R.  
18 Civ. Pro. 36). The general rule “is that a party cannot create an issue of fact by an affidavit  
19 contradicting his prior deposition testimony.” *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262,  
20 266 (9th Cir. 1991) (citations omitted). “[I]f a party who has been examined at length on  
21 deposition could raise an issue of fact simply by submitting an affidavit contradicting his own  
22 prior testimony, this would greatly diminish the utility of summary judgment as a procedure for  
23 screening out sham issues of fact.” *Id.* (quoting *Foster v. Arcata Associates*, 772 F.2d 1453,  
24 1462 (9th Cir.1985), *cert. denied*, 475 U.S. 1048, 106 S.Ct. 1267, 89 L.Ed.2d 576 (1986)  
25 (additional citations omitted)).

26 4. Claim Preclusion

27 “A valid and final judgment on a claim precludes a second action on that claim or any  
28 part of it.” *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 879 P.2d 1180, 1191 (1994). In Nevada,

1 for claim preclusion to apply, the following factors must be satisfied: (1) the parties or their  
2 privities are the same; (2) the final judgment is valid (proper jurisdiction); (3) the subsequent  
3 action is based on the same claims or any part of them that were or could have been brought in  
4 the first case; and (4) the issue was actually and necessarily litigated. *Id.* at 713 (citations  
5 omitted). *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 713 (Nev. 2008). Thus, “claim  
6 preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that  
7 could have been asserted, and thus has a broader reach than collateral estoppel.” *Tarkanian*, 879  
8 P.2d at 1192 (citations omitted).

9 In particular, the Nevada Supreme Court adopted the majority rule. *Five Star Capital*  
10 *Corp.*, 194 P.3d 709, 712 (Nev. 2008). It stated that:

11 [p]ursuant to the rule of claim preclusion, a valid and final  
12 judgment on a claim precludes a second action on that claim or any  
13 part of it. Claim preclusion applies when a second suit is brought  
14 against the same party on the same claim . . . . We have further  
15 stated that the modern view is that claim preclusion embraces all  
16 grounds of recovery that were asserted in a suit, as well as those  
17 that could have been asserted, and thus has a broader reach than  
18 issue preclusion.

19 *Id.* (quoting *Executive Management v. Ticor Title Insurance Co.*, 114 Nev. 823, 835, 963 P.2d  
20 465, 473 (internal quotations and citations omitted in the original).

21 5. Law of the Case

22 “The ‘law of the case’ doctrine holds that when a court decides upon a rule of law, that  
23 decision should generally control the same issues throughout the subsequent stages in the same  
24 case.” Steven Baicker-McKee, William M. Janssen & John B. Corr, Federal Civil Handbook  
25 1079 (2010) (citing *Arizona v. California*, 460 U.S. 605, 618, 103 S. Ct. 1382, 1391 (1983)).  
26 The doctrine of law of the case prevents further litigation of these issues and cannot be avoided  
27 by more detailed and precisely focused arguments. *See Hall v. State*, 91 Nev. 314, 316, 535 P.2d  
28 797, 799 (1975).

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1           B.     Summary Judgment is Appropriate as a Matter of Law in Favor of  
2                 Defendants, and Against Plaintiff, on ALL Plaintiff's Claims

3                 1.     Mr. Botnari's Admissions Justify Summary Judgment

4           Mr. Botnari's admissions in the Petition justify Summary Judgment. "[A]n admitting  
5 party is barred from denying that which it has already admitted. *La-Tex Partn. v. Deters*, 893  
6 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 632,  
7 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro. 36). Mr. Botnari  
8 verified, under the penalty of perjury, that he knowingly defrauded Mr. Sheikhai into marrying  
9 him for the purposes of a green card. Ex. A at HS004318:9-10. He admitted that in furtherance  
10 of this scheme to defraud both Mr. Sheikhai and the United States Department of Immigration  
11 Customs Enforcement ("ICE"), he manipulated Mr. Sheikhai into "add[ing] Victor's name to all  
12 Hamid's assets which Victor said would strengthen his immigration case . . . , [although] [h]e  
13 said it was not to take anything that wasn't his. However, that is not how it has worked out and  
14 it has cost Hamid a lot of money." *Id.* at HS4319:13-17. One such asset is Zip Zap Auto, the  
15 principal issue in this dispute. Compl. at ¶ 12.

16           As to Zip Zap, Mr. Botnari admitted that "Hamid moved to Las Vegas in March of 2011  
17 and opened a new automotive repair business [Zip Zap Auto] where he hired Victor as a  
18 mechanic." *Id.* at HS004318:22-23. Thus, no dispute exists that the purpose of this was to  
19 facilitate Mr. Botnari's fraud on ICE related to the sham marriage, not to actually transfer the  
20 property to him. *Id.* at HS4319:13-17. Moreover, Mr. Botnari also admitted that there was no  
21 consideration for the alleged transfer since he fraudulently induced Mr. Sheikhai into marrying  
22 him for a green card, which made him guilty of fraud. *Id.* at HS004320:8-18, HS004320:23-24  
23 (fraud as defined by NRS § 125.350 [failure of consideration]). Notably, the underlying  
24 transaction purportedly transferring Zip Zap to Mr. Botnari was for \$1, Ex. D, although the  
25 actual fair market price for the business was \$278,517.93 as evidenced by the actual sale of it on  
26 March 25, 2013. Jens, Inc. escrow and asset purchase agreement attached as **Exhibit K**;  
27 Declaration of Hamid Sheikhai attached as **Exhibit L**. At all times relevant, Mr. Botnari  
28 admitted that Mr. Sheikhai always understood that Mr. Botnari was not going to make a claim on

1 this asset. *Id.* at HS004321:5-7.

2 Notably, these undisputed facts illustrate that the alleged facts asserted in the Complaint  
3 are violative of Rule 11. The Complaint falsely asserts that “[o]n June 1, 2014, Vitiok purchased  
4 Zip Zap Auto business and its assets from Samir LLC that was owned and operated by Mr.  
5 Sheikhai.” *Id.* at ¶ 12. This allegation is the principal allegation upon which all the claims in the  
6 Complaint rest upon. Concerningly, Plaintiff’s counsel was acutely aware that the Complaint he  
7 filed directly contradicted the Petition despite actual knowledge of Mr. Botnari’s admissions  
8 therein. Exs. E-K. Further examination may be necessary as directed by this Honorable Court  
9 related to any ethical violations.

10 2. Judicial Estoppel Applies, Justifying Summary Judgment

11 Mr. Botnari filed the Petition and Verification with Douglas County. In reliance of both,  
12 Douglas County issued an annulment of the marriage between Mr. Sheikhai and Mr. Botnari.  
13 Therein, Mr. Botnari: (1) is the same party who took two positions related to an ownership right  
14 in Mr. Sheikhai’s assets, including Zip Zap Auto; (2) the positions were taken in a judicial  
15 proceedings; (3) Mr. Botnari was successful in asserting the first position (i.e., Douglas County  
16 adopted the position and issued a Decree; (4) the two positions are totally inconsistent; and (5)  
17 the first position was not taken as a result of ignorance, fraud, or mistake. As such, Mr. Botnari  
18 is estopped from denying that he has no interest in Mr. Sheikhai’s assets, which include Zip Zap  
19 Auto. See Vaile v. Eighth Judicial Dist. Court (Vaile I), 118 Nev. 262, 270, 44 P.3d 506, 514  
20 (2002) (“a party who has stated an oath in a prior proceeding, ‘as in a pleading,’ that a given fact  
21 is true, may not be allowed to deny the same fact in a subsequent action.”).

22 3. Claim Preclusion Justifies Summary Judgment

23 The Decree is a valid and final judgment on a claim precludes this instant action related  
24 to Vitiok’s claim of ownership in Zip Zap Auto. *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 879  
25 P.2d 1180, 1191 (1994). (1) Mr. Botnari, the owner of Vitiok, and Mr. Sheikhai are the same  
26 parties or their privities are the same as in the Douglas County action and this one. (2) The  
27 Decree was the final judgment with proper jurisdiction of the Parties. (3) This action is based on  
28 the same claims (ownership of Mr. Sheikhai’s assets, or Zip Zap Auto, or any part of them that

1 were or could have been brought in the Douglas County case. (4) The issue was actually and  
2 necessarily litigated. Thus, “claim preclusion embraces all grounds of recovery that were  
3 asserted in a suit, as well as those that could have been asserted, and thus has a broader reach  
4 than collateral estoppel.” *Tarkanian*, 879 P.2d at 1192 (citations omitted).

5 4. The Admissions are Fatal to Plaintiff’s Claims

6 Plaintiff false asserted factual the factual allegation that he owed Zip Zap Auto in support  
7 of these claims: (1) Unjust Enrichment; (2) Intentional Interference with Economic Interest; (3)  
8 Civil Conspiracy; (4) Injunction; (5) Declaratory Relief; and (6) Accounting.

9 a. Unjust Enrichment

10 Unjust enrichment occurs whenever a person has and retains a benefit which in equity  
11 and good conscious belongs to another. *Mainor v. Nault*, 120 Nev. 750, 763, 101 P.3d 308, 317  
12 (2004). “The doctrine of quantum meruit applies to actions for restitution involving work and  
13 labor performed which is formed on oral promises on the part of the defendant to pay the  
14 plaintiff as much as the plaintiff reasonably deserves for his labor in absence of an agreed upon  
15 amount.” *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994).

16 However, the unclean hands doctrine “bars a party from receiving equitable relief  
17 because of that party’s own inequitable conduct.” *Las Vegas Fetish & Fantasy Halloween Ball,*  
18 *Inc. v. Ahern Records, Inc.*, 182 P.3d 764, 766 (Nev. 2008) (quoting *Food Lion, Inc. S.L.*  
19 *Nusbaum Ins. Agency, Inc.*, 202 F.3d 223, 228 (4th Cir. 2000)). The unclean hands doctrine  
20 precludes a party from attaining an equitable remedy when that party’s “connection with the  
21 subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the  
22 want of good faith.” *Id.* (quotation omitted). Litigants seeking equity must come with “clean  
23 hands.” *Tracy v. Capozzi*, 98 Nev. 120, 122, 642 P.2d 591, 593 (1982).

24 “The doctrine of unjust enrichment or recovery in quasi contract applies to situations  
25 where there is no legal contract but where the person sought to be charged is in possession of  
26 money or property which in good conscience and justice he should not retain but should deliver  
27 to another [or should pay for].’ ” *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12,*  
28 *1975*, 113 Nev. 747, 942 P.2d 182, 187 (1997) (quoting 66 Am.Jur.2d Restitution § 11 (1973)).

1 An unjust enrichment claim is “not available when there is an express, written contract, because  
2 no agreement can be implied when there is an express agreement.” *Id.*

3 Here, Plaintiff has no basis for the claim for unjust enrichment. In support, the  
4 Complaint averred that:

5 19. Plaintiff conferred benefits upon Defendants, and each of  
6 them by virtue of operating Zip Zap Auto without Plaintiffs  
consent.

7 20. Plaintiff conferred benefits upon Defendants through the act of  
8 Defendants using Plaintiffs dba name of Zip Zap Auto without  
Plaintiffs consent or approval.

9 21. Plaintiff conferred benefits upon Defendants through the act of  
10 Defendants using Plaintiffs assets, customer directory, good will,  
and its computer data base.

11 22. Defendants, and each of them, appreciated the benefit  
12 conferred upon them by Plaintiff by using Plaintiffs assets,  
customer directory, good will, and its computer data base.

13 23. Defendants, and each of them, accepted and retained the  
14 benefit conferred upon them by Plaintiff in circumstances where it  
15 is inequitable for them to retain the benefit without payment for the  
value thereof to Plaintiff.

16 Compl. at ¶¶ 19-23.

17 However, Mr. Botnari admitted that he knowingly defrauded Mr. Sheikhai into marrying  
18 him for the purposes of a green card, Ex. A at HS004318:9-10, and in furtherance of this scheme  
19 to defraud both Mr. Sheikhai and ICE, he manipulated Mr. Sheikhai into “add[ing] Victor’s  
20 name to all Hamid’s assets which Victor said would strengthen his immigration case . . . ,  
21 [although] [h]e said it was not to take anything that wasn’t his. However, that is not how it has  
22 worked out and it has cost Hamid a lot of money.” *Id.* at HS4319:13-17. Moreover, Mr. Botnari  
23 also admitted that there was no consideration for the alleged transfer since he fraudulently  
24 induced Mr. Sheikhai into marrying him for a green card, which made him guilty of fraud. *Id.* at  
25 HS004320:8-18, HS004320:23-24 (fraud as defined by NRS § 125.350 [failure of  
26 consideration]). Finally, Mr. Botnari admitted that Mr. Sheikhai always understood that Mr.  
27 Botnari was not going to make a claim on this asset. *Id.* at HS004321:5-7. (Collectively referred  
28 to “Admissions”.)

Furthermore, Vitiok is barred from equitable relief because of Mr. Botnari's bad faith conduct. *Las Vegas Fetish & Fantasy Halloween Ball, Inc.*, 182 P.3d at 766. Their unclean hands preclude Vitiok from attaining an equitable remedy since Vitiok's alleged interest in Zip Zap Auto is unconscientious, unjust, or marked by the want of good faith.

Summary Judgment is appropriate as a matter of law since no genuine issue of material fact exists that Plaintiff did not have any ownership interest in Zip Zap Auto, so no consent was required from Vitiok related to the use of Zip Zap Auto, nor did Plaintiff confer any benefits to Defendants for the same reasons.

b. Intentional Interference with Economic Interest

Under Nevada law, to establish intentional interference with contractual relations, a plaintiff must show: "(1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." *J.J. Indus., L.L.C. v. Bennett*, 119 Nev. 269, 71 P.3d 1264, 1267 (2003) (citing *Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 1287, 1290 (1989)). "[M]ere knowledge of the contract is insufficient to establish that the defendant intended or designed to disrupt the plaintiff's contractual relationship; instead, the plaintiff must demonstrate that the defendant intended to induce the other party to breach the contract with the plaintiff." *J.J. Indus., L.L.C. v. Bennett*, 119 Nev. 269, 272, 71 P.3d 1264, 1268 (2003) (citing *Sutherland v. Gross*, 105 Nev. 192, 772 P.2d 1287, 1290 (1989)).

Here, Plaintiff has no basis for the claim for unjust enrichment. In support, the Complaint averred that:

28. Plaintiff had existing business and economic interest in Zip Zap Auto.

29. Defendants knew of Plaintiffs economic interest in Zip Zap Auto.

30. With the intent to harm Plaintiff, the Defendants operated business under the name Zip Zap Auto without Plaintiffs consent.

31. With the intent to interfere with Plaintiffs economic interest, the Defendants operated business under the name of Plaintiffs dba i.e. Zip Zap Auto without Plaintiffs consent.

1 32. Defendants used Plaintiffs dba i.e. Zip Zap Auto, without  
2 Plaintiffs consent to collect money using Plaintiffs dba i.e. Zip Zap  
Auto.

3 33. Defendants used Plaintiffs dba i.e. Zip Zap Auto, without  
4 Plaintiffs consent to obtain control over Plaintiffs assets for an  
economic advantage.

5 34. Defendants' actions are wrongful and neither privileged or  
6 justified.

7 Compl. at ¶¶ 28-34.

8 As noted in section II(B)(4)(a), Mr. Botnari's Admissions are fatal to these allegations as  
9 a matter of law. No dispute exists that Plaintiff did not have an existing business and economic  
10 interest in Zip Zap Auto, Defendants were well aware that the only purpose of the sham transfer  
11 was to assist Mr. Botnari to obtain a green card, and Mr. Sheikhai had a right to use Zip Zap  
12 Auto, by and through SLC, without Plaintiff's consent, which included collection of monies and  
13 right to the assets that were always Mr. Sheikhai's. As such, Summary Judgment is appropriate  
14 as a matter of law in favor of Defendants.

15 c. Civil Conspiracy

16 Under Nevada law, to establish a civil conspiracy claim, a plaintiff must show (1) the  
17 commission of an underlying tort; and (2) an agreement between the defendants to commit that  
18 tort. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 110 P.3d 30, 51  
19 (2005) (per curiam) (stating that "an underlying cause of action for fraud is a necessary predicate  
20 to a cause of action for conspiracy to defraud"), *abrogated on other grounds Buzz Stew, LLC v.*  
21 *City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 n. 6 (2008); *GES, Inc. v. Corbitt*,  
22 117 Nev. 265, 21 P.3d 11, 15 (2001). However, Nevada has not stated that it would require each  
23 conspirator to owe the duty that forms the predicate for the underlying tort. Rather, Nevada has  
24 indicated that a co-conspirator could be liable in tort where no such duty is owed. *Hilton Hotels*  
25 *Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 862 P.2d 1207, 1210–11 (1993) ("If  
26 Hilton is able to prove that the implied contractual covenant of good faith and fair dealing was  
27 breached, the jury will then be free to also determine whether the breach resulted from tortious  
28 acts of conspiracy and interference involving the other named defendants."). "[I]t suffices under

1 Nevada law to allege that Defendants . . . owed a duty to Plaintiffs not to conspire with those  
2 who do owe fiduciary duties to Plaintiffs to breach those duties.” *Boorman v. Nev. Mem'l*  
3 *Cremation Soc'y, Inc.*, 772 F. Supp. 2d 1309, 1315 (D. Nev. 2011).

4 Here Plaintiff averred:

5 Zohreh and Hamid conspired to engage in the foregoing wrongful  
6 acts of including but not limited to: (a) operating Plaintiff[']s  
7 business without Plaintiff[']s consent; (b) using Plaintiff[']s dba  
8 Zip Zap Auto with Plaintiff[']s consent; (c) confusing Plaintiff[']s  
9 former customers; (d) maintain possession of Plaintiff[']s business,  
10 its assets without payment to Plaintiff; liquidating, transferring,  
11 utilizing and/or diverting assets from Plaintiff without Plaintiff[']s  
12 consent or approval; (e) making decisions that materially affected  
13 Plaintiff; and (g) failed to recognize or acknowledge Plaintiff[']s  
14 ownership in Zip Zap Auto.

15 Compl. at ¶ 39.

16 As noted in section II(B)(4)(a), Mr. Botnari's Admissions are fatal to these allegations as  
17 a matter of law. No dispute exists that Plaintiff did not have an existing business and economic  
18 interest in Zip Zap Auto, Defendants were well aware that the only purpose of the sham transfer  
19 was to assist Mr. Botnari to obtain a green card, and Mr. Sheikhai had a right to use Zip Zap  
20 Auto, by and through SLC, without Plaintiff's consent, which included collection of monies and  
21 right to the assets that were always Mr. Sheikhai's. As such, Summary Judgment is appropriate  
22 as a matter of law in favor of Defendants.

23 d. Injunction

24 Courts may grant injunctions when it shall appear: (1) by the complaint that the plaintiff  
25 is entitled to the relief demanded, and such relief or any part thereof consists in restraining the  
26 commission or continuance of the act complained of, either for a limited period or perpetually;  
27 (2) by the complaint or affidavit that the commission or continuance of some act, during the  
28 litigation, would produce great or irreparable injury to the plaintiff; or (3) that the defendant is  
doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation  
of the plaintiff's rights respecting the subject of the action, and tending to render the judgment  
ineffectual. NEV. REV. STAT. § 33.010(1)-(3).

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1 For a preliminary injunction to issue, the moving party must show that there is a  
2 likelihood of success on the merits and that the nonmoving party's conduct, should it continue,  
3 would cause irreparable harm for which there is no adequate remedy at law. *Dangberg Holdings*  
4 *v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999); *Pickett v. Comanche*  
5 *Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992). Injunctive relief is extraordinary  
6 relief, and the irreparable harm must be articulated in specific terms by the issuing order or be  
7 sufficiently apparent elsewhere in the record. *Dangberg*, 115 Nev. at 144, 978 P.2d at 320.

8 ““Permanent injunctive relief is available where there is no adequate remedy at law . . . ,  
9 where the balance of equities favors the moving party, and where success on the merits has been  
10 demonstrated.”” *State Farm Mut. Auto. Ins. Co. v. Jafbro Inc.*, 109 Nev. 926, 928, 860 P.2d 176,  
11 178 (1993) (quoting 43 C.J.S. Injunctions § 16) (emphasis in the original, omission in the  
12 original)). “[A]cts committed without just cause which unreasonably interfere with a business or  
13 destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an  
14 injunction.” *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335,  
15 337, (1986) (citing *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848  
16 (1974)).

17 Here, as noted in section II(B)(4)(a), Plaintiff is not entitled to equitable relief because of  
18 the unclean hands of Mr. Botnari and Vitiok. That said, the Complaint avers:

19 44. Defendants have and continue to engage in the following  
20 non-exclusive examples of collusion, misfeasance, malfeasance,  
21 wrongful acts, and or neglect:

- 22 a. Using Plaintiff's dba name of Zip Zap Auto  
without Plaintiff's consent or approval;
- 23 b. Wrongfully liquidated, transferred, utilized  
and/or diverted assets from Plaintiff without  
Plaintiff's consent or approval;
- 24 c. Refusing to obtain the Plaintiff's consent or  
approval before making decisions that  
materially affect Plaintiff; and
- 25 d. Refusing to recognize or acknowledge the  
Plaintiff's ownership in Zip Zap Auto.

26 45. The conduct and omissions of Defendants as described  
27 herein, if allowed to continue, will result in immediate and  
28 irreparable harm to Plaintiff.

1 46. The conduct and omissions undertaken by Defendants have  
2 been ongoing and there is no adequate remedy at law to  
3 compensate Plaintiff or to preclude Defendants from their  
4 continuing course of actions to the detriment of Plaintiff.

47. Plaintiff enjoys a likelihood of succeeding on the merits of  
their claims against Defendants.

5 As noted in section II(B)(4)(a), Mr. Botnari's Admissions are fatal to these allegations as  
6 a matter of law. In that light, in addition to the unclean hands issue that precludes Plaintiff from  
7 equitable relief, the Admissions illustrate that Plaintiff does not enjoy a likelihood of success.  
8 Similarly, no dispute exists that Plaintiff did not have an existing business and economic interest  
9 in Zip Zap Auto, Defendants were well aware that the only purpose of the sham transfer was to  
10 assist Mr. Botnari to obtain a green card, and Mr. Sheikhai had a right to use Zip Zap Auto, by  
11 and through SLC, without Plaintiff's consent, which included collection of monies and right to  
12 the assets that were always Mr. Sheikhai's. As such, Summary Judgment is appropriate as a  
13 matter of law in favor of Defendants.

14 e. Declaratory Relief

15 Under Nevada Revised Statute § 30.030, courts have the jurisdiction to "declare rights,  
16 status and other legal relations whether or not further relief is or could be claimed." The  
17 declaratory relief may be either in the affirmative or negative in form and effect, where it shall  
18 have the force and effect of a final judgment or decree. *Id.* Further, courts may entertain  
19 declaratory judgment actions when no other actions are pending to which the same parties and  
20 same issues may be adjudicated. *Pub. Serv. Commn. of Nev. v. Eighth Jud. Dist. Ct. of State of*  
21 *Nev.*, 107 Nev. 680, 684, 818 P.2d 396, 399 (1991). Similarly, courts should grant declaratory  
22 judgment when it disposes of a controversy and serves a useful purpose. *Aetna Cas. & Sur. Co.*  
23 *v. Rasa Mgt. Co., Inc.*, 621 F.Supp. 892, 893 (D. Nev. 1985).

24 Here, as noted in section II(B)(4)(a), Plaintiff is not entitled to equitable relief because of  
25 the unclean hands of Mr. Botnari and Vitiok. That said, the Complaint avers:

26 52. The interests of Plaintiff and Defendants are  
27 adverse as Plaintiff owns the dba Zip Zap Auto and  
28 Defendants are operating Zip Zap Auto. Plaintiff is entitled  
to all rights and privileges afforded it as the owner of Zip  
Zap Auto, yet Defendants continue operate Zip Zap Auto

1 and fail to provide information regarding the finances they  
2 diverted from Plaintiff or to provide information regarding  
3 decisions that would materially affect Plaintiff.

4 53. Plaintiff has a legally protected interest in this  
5 action by virtue of its position as the owner of Zip Zap  
6 Auto.

7 54. This Court has the power to declare rights and other  
8 legal remedies between Plaintiff and Defendants.

9 55. These issues are ripe for judicial determination  
10 given the discord between the Plaintiff and the Defendants.

11 56. Plaintiff is entitled to a declaration by this Court  
12 that:

- 13 a. Plaintiff owns Zip Zap Auto;
- 14 b. Plaintiff is entitled to all rights and  
15 privileges afforded it as the owner of Zip  
16 Zap Auto;
- 17 c. Plaintiff is entitled to information regarding  
18 the finances of SLC that it and or Hamid  
19 diverted from Plaintiff; and
- 20 d. Defendants are to cease and desist using the  
21 name Zip Zap Auto and are to immediately  
22 return any assets, belongings, and or profits  
23 wrongfully taken / removed / withheld from  
24 Plaintiff.

25 As noted in section II(B)(4)(a), Mr. Botnari's Admissions are fatal to these allegations as  
26 a matter of law. In that light, in addition to the unclean hands issue that precludes Plaintiff from  
27 equitable relief, the Admissions illustrate that Plaintiff is not entitled to declaratory relief.  
28 Similarly, no dispute exists that Plaintiff did not have an existing business and economic interest  
in Zip Zap Auto, Defendants were well aware that the only purpose of the sham transfer was to  
assist Mr. Botnari to obtain a green card, and Mr. Sheikhai had a right to use Zip Zap Auto, by  
and through SLC, without Plaintiff's consent, which included collection of monies and right to  
the assets that were always Mr. Sheikhai's.

As such, Summary Judgment is appropriate as a matter of law in favor of Defendants,  
which should result in the following declaration:

1. On March 28, 2018, Mr. Botnari filed a joint petition for  
annulment in the Ninth Judicial District Court, District of  
Nevada ("Douglas County"). Therein, Mr. Botnari  
provided a verification for the Petition ("Verification"),  
under the penalty of perjury that the Petition was accurate.

2. Mr. Botnari misrepresented and concealed that he only married Mr. Sheikhai for the purpose of obtaining a green card and falsely represented to Mr. Sheikhai that he desired to get married because he was in love and wanted to maintain a traditional marital relationship by residing together and performing all matrimonial duties of a spouse. Mr. Botnari further specifically promised and represented that he was not marrying solely to gain United States citizenship or a green card.
3. Mr. Botnari withheld and misrepresented the intention to only marry for a green card and withheld the fraudulent intent to evade immigration laws and commit marriage fraud, so as to induce Mr. Sheikhai to marry him. Mr. Sheikhai believed Mr. Botnari had no intention of maintaining a marital relationship, but rather intended to leave once he obtained a green card. Mr. Sheikhai would not have entered into the marriage except for the misrepresentations of the spouse.
4. Mr. Sheikhai moved to Las Vegas in March of 2011 and opened a new automotive repair business, Zip Zap Auto, where he hired Mr. Botnari as a mechanic. Sometime later Mr. Botnari was finally ready to marry Mr. Sheikhai and said it didn't matter what his family or other people in his country would think anymore. They got married on May 4, 2014. In July of 2014 the parties were in the process of buying a home together and Mr. Sheikhai learned Mr. Botnari was in deportation proceedings. Mr. Sheikhai has no idea and this led to a lot of things he had not been told to by Mr. Botnari and he felt deceived.
5. Mr. Sheikhai later learned Mr. Botnari filed for a green card in November of 2013 based on his marriage to Gina and it was denied based on fraud and in February 2014 he was placed in removal proceedings. Mr. Sheikhai learned Mr. Botnari was served a Notice to Appear for removal proceedings on April 30, 2014, only a few days before the marriage. Mr. Botnari has filed for appeals, dismissals and continuances with Immigration but has not been successful due to his previous fraudulent marriage with Gina.
6. Mr. Sheikhai added Mr. Botnari's name to all Mr. Sheikhai's assets which Mr. Botnari said would strengthen his immigration case so they could stay together and to be able to conduct business for one another. They then filed for Mr. Botnari's green card based on this marriage in October 2014. Mr. Botnari said it was not to take anything that was not his; however, that is not how it has worked out and it has cost Mr. Sheikhai a lot of money. Mr. Botnari has been a consistent part of Mr. Sheikhai's business life but not with good intentions there either. He has taken the profits and burdened Mr. Sheikhai with the losses.

7. In January of 2017 Mr. Botnari filed for another visa as an abused spouse by Mr. Sheikhai, but Mr. Sheikhai did not know about it until later. He submitted falsified evidence including using Photoshop to alter a prescription bottle to make it look like Mr. Sheikhai was on medication, which he was not on. Everything was too much to ignore and Mr. Sheikhai confronted Mr. Botnari in March of 2018 and he admitted he married solely for money and immigration benefits. He admitted adultery and confirmed all Mr. Sheikhai's suspicions about his bad character. Mr. Sheikhai would not have married Mr. Botnari if he knew he was needing a green card and was only marrying to gain access to his money.
8. Mr. Botnari fraudulently induced Mr. Sheikhai into marrying him for a green card, which made him guilty of fraud.
9. There was a failure of consideration related to Mr. Botnari's acquisition of Mr. Sheikhai's asset, Zip Zap Auto.
10. Mr. Botnari had no right to make any claims against Mr. Sheikhai's assets accumulated during the sham marriage.
11. As to the transfer of Mr. Sheikhai's assets to Mr. Botnari, the parties executed a Bill of Sale ("Bill of Sale") on June 1, 2014. The Bill of Sale was only for \$1.00, illustrating the lack of consideration and to facilitate Mr. Botnari's continuing scheme to defraud the United States and ICE. Mr. Sheikhai understood that Mr. Botnari was not going to make a claim on this asset.
12. Mr. Botnari filed the Petition and Verification with Douglas County. In reliance of both, Douglas County issued an annulment of the marriage between Mr. Sheikhai and Mr. Botnari. Therein, Mr. Botnari: (1) is the same party who took two positions related to an ownership right in Mr. Sheikhai's assets, including Zip Zap Auto; (2) the positions were taken in a judicial proceedings; (3) Mr. Botnari was successful in asserting the first position (i.e., Douglas County adopted the position and issued a Decree; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. As such, Mr. Botnari is estopped from denying that he has no interest in Mr. Sheikhai's assets, which include Zip Zap Auto.
13. Mr. Botnari committed perjury related to his Immigration Petition.
14. Mr. Botnari is barred from denying the Admissions in the Petition. *La-Tex Partn. v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 632, 572 P.2d 921, 924 (1977)).

15. The Decree is a valid and final judgment on a claim precludes this instant action related to Vitiok's claim of ownership in Zip Zap Auto. *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 879 P.2d 1180, 1191 (1994). (1) Mr. Botnari, the owner of Vitiok, and Mr. Sheikhai are the same parties or their privities are the same as in the Douglas County action and this one. (2) The Decree was the final judgment with proper jurisdiction of the Parties. (3) This action is based on the same claims (ownership of Mr. Sheikhai's assets, or Zip Zap Auto, or any part of them that were or could have been brought in the Douglas County case. (4) The issue was actually and necessarily litigated. Thus, "claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel." *Tarkanian*, 879 P.2d at 1192 (citations omitted).

16. Mr. Botnari's Admissions are fatal to the claims for: (1) Unjust Enrichment; (2) Intentional Interference with Economic Interest; (3) Civil Conspiracy; (4) Injunction; (5) Declaratory Relief; and (6) Accounting.

f. Accounting

An accounting is a remedy under Nevada Revised Statute § 86.241(3)-(6). As noted in section II(B)(4)(a), Mr. Botnari's Admissions are fatal to these allegations as a matter of law, and Plaintiff is not entitled to an accounting.

C. Alternatively, Partial Summary Judgment is Appropriate on Botnari's Admissions in the Petition and History of Fraud

Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment or partial summary judgment. "If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case." *Id.* at 56(g). "[A]n admitting party is barred from denying that which it has already admitted. *La-Tex Partn. v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro. 36).

Here, if this Honorable Court does not grant Summary Judgment on all claims, then Defendants respectfully request that It grant partial Summary Judgment as to the Admissions.

1           **D.     Alternatively, Leave to Amend is Appropriate to Assert Additional Claims**  
2           **by Defendants Against Plaintiff and Botnari**

3           District courts have the discretion to grant leave to amend a pleading. *Stephens v.*  
4           *Southern Nevada Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Before trial,  
5           leave should be freely given to a party to amend its pleadings. NEV. R. CIV. PRO. 15(a)(2). “[I]n  
6           the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory  
7           motive on the part of the movant - the leave sought should be freely given.” *Stephens*, 89 Nev. at  
8           105-06, 507 P.2d at 139. The moving party must attach a copy of a proposed amended pleading  
9           to any motion to amend the pleading. EIGHTH JUD. DIST. CT. R. 2.30(a). Here, the proposed  
10          pleading is attached as **Exhibit M**.

11          Good cause appears to provide Plaintiff with leave to amend its pleading. NEV. R. CIV.  
12          PRO. 16(b); *Stephens v. Southern Nevada Music Co., Inc.*, 89 Nev. 104, 105-06, 507 P.2d 138,  
13          139 (1973) (“[I]n the absence of any apparent or declared reason - such as undue delay, bad faith  
14          or dilatory motive on the part of the movant - the leave sought should be freely given.”). The  
15          proposed counterclaim incorporates the arguments set forth herein, and the claims that this  
16          Honorable Court already approved. The Parties recently agreed to enlarge discovery, which  
17          would push back the deadline to amend the pleadings to January 29, 2021. Proposed SAO  
18          attached as **Exhibit N**. Finally, the Motion is in compliance with Eighth Judicial District Court  
19          Rule 2.30(a). Ex. M.

20           **E.     Alternatively, Staying This Matter is Appropriate Until the Domestic Case is**  
21           **Resolved**

22          “ ‘[T]he power to stay proceedings is incidental to the power inherent in every court to  
23          control the disposition of the causes on its docket with economy of time and effort for itself, for  
24          counsel, and for litigants.’ ” *In re Smith*, 389 B.R. 902, 917 (Bkrtcy. D. Nev. 2008) (quoting  
25          *Landis v. North American Co.*, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). In *Landis*, the  
26          United States Supreme Court stated that determining whether to grant a stay “can best be done  
27          [with] the exercise of judgment, which must weigh competing interests and maintain an even  
28          balance.” *Landis*, 299 U.S. at 254-55, 57.

1 The *Smith* Court further took notice that, in terms of staying adversary proceedings:

2 “ ‘[w]here it is proposed that a pending proceeding be stayed, the  
3 competing interests which will be affected by the granting or  
4 refusal to grant a stay must be weighed. Among those competing  
5 interests are the possible damage which may result from the  
6 granting of a stay, the hardship or inequity which a party may  
suffer in being required to go forward, and the orderly course of  
justice measured in terms of the simplifying or complicating of  
issues, proof, and questions of law which could be expected to  
result from a stay.’ ”

7 *In re Smith*, 389 B.R. at 917 (quoting *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th  
8 Cir.2005)).

9 Similarly, Nevada has guidelines that a court should in weighing considering whether to  
10 issue a stay. In terms of appeals, courts consider the following factors: (1) whether the object of  
11 the appeal will be defeated if the stay is denied, (2) whether appellant will suffer irreparable or  
12 serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious  
13 injury if the stay is granted, and (4) whether appellant is likely to prevail on the merits in the  
14 appeal. Nev. R. App. Pro. 8(c); *see also Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982  
15 (2000). Nevertheless, if one or two factors are especially strong, they may counterbalance other  
16 weak factors. *Fritz Hansen A/S*, 116 Nev. at 659, 6 P.3d at 987.

17 Here, the domestic action before Judge Henderson is dispositive of the issues related to  
18 Zip Zap Auto. “[A] judge sitting in family court has all the constitutional powers and procedural  
19 and substantive instruction of a district judge.” *Landreth v. Malik*, 251 P.3d 163, 170 (Nev.  
20 2011). “A judge sitting in the family division is a district court judge who retains his or her  
21 judicial powers derived from the Constitution to dispose of justiciable controversies.” *Id.* at 171.  
22 As such, Judge Henderson has the “the authority to preside over” the post-annulment claims  
23 between the Parties, which encompasses Vitiok’s claims related to its alleged ownership of Zip  
24 Zap Auto. *Id.* at 170. Moreover, if Judge Henderson elects, he could also potentially take  
25 jurisdiction over the counterclaims that fall outside of the post-annulment claims. Thus, a stay is  
26 appropriate pending the resolution of the domestic case.

27 As Mr. Botnari is a party to the domestic case, and he is the sole member of Vitiok,  
28 Plaintiff cannot demonstrate that it will suffer from a hardship or inequity since the orderly

1 course of justice measured in terms of simplifying the issues, proof, and questions of law as it  
2 will affect the other parties through issue and/or claim preclusion. Stay of this matter is  
3 appropriate and favorable considering: (1) Judge Henderson could resolve the ultimate dispute  
4 between the Parties; (2) Plaintiff will not suffer irreparable or serious injury from a stay; (3)  
5 Defendants will not suffer irreparable or serious injury if the stay is granted; and (4) Mr.  
6 Sheikhai is likely to overwhelmingly prevail related to award of his pre-marriage assets, including  
7 Zip Zap Auto, based on the Admissions. In that light, a stay is appropriate under the factors  
8 measured by the Nevada courts.

9 **III. CONCLUSION**

10 Based on the foregoing, Defendants respectfully request that this Honorable Court grant  
11 the Motion in full, or, alternatively, find partial Summary Judgment as requested above, obtain  
12 leave to amend the pleading, and to stay this action.

13 Dated this 4 day of December, 2020.

14 MICHAEL B. LEE, P.C.

15 /s/ Michael Lee  
16 MICHAEL B. LEE, ESQ. (NSB 10122)  
17 MICHAEL MATTHIS, ESQ. (NSB 14582)  
18 1820 E. Sahara Avenue, Suite 110  
19 Las Vegas, Nevada 89104  
20 Telephone: (702) 477.7030  
21 Facsimile: (702) 477.0096  
22 [mike@mblnv.com](mailto:mike@mblnv.com)  
23 Attorney for Defendants Zohreh Amiryavari and SLC, LLC

24 Dated this 4 day of December, 2020.

25 WILICK LAW GROUP

26 /s/ Marshall Willick  
27 MARSHAL S. WILICK, ESQ.  
28 LORIEN COLE, ESQ.  
3591 E. Bonanza Road, Suite 200  
Las Vegas, NV 89110-2101  
Phone (702) 438-4100;  
Fax (702) 438-5311  
[email@willicklawgroup.com](mailto:email@willicklawgroup.com)  
Attorney for Defendant Hamid Sheikhai

MICHAEL B. LEE, P.C.  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL - (702) 546-7055; FAX - (702) 825-4734

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of  
MICHAEL B. LEE, and that on the 4 day of December, 2020, the foregoing **MOTION FOR  
SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY  
JUDGMENT, LEAVE TO AMEND, AND FOR STAY** was served via the Court's electronic  
filing and/or service system and/or via facsimile and/or U.S. Mail first class postage pre-paid to  
all parties addressed as follows:

Todd M. Leventhal, Esq.  
LEVENTHAL & ASSOCIATES  
626 S. Third St.  
Las Vegas, NV 89101  
[leventhalandassociates@gmail.com](mailto:leventhalandassociates@gmail.com)  
Attorney for Plaintiff

Bradley J. Hofland, Esq.  
HOFLAND & TOMSHECK  
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Attorney for Plaintiff

MARSHAL S. WILLICK, ESQ.  
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Attorneys for Defendants

\_\_\_\_\_  
/s/ Mindy Pallares  
An employee of Michael B. Lee PC

# EXHIBIT A

DEF000368

ROA001381

ORIGINAL

MAR 28 2018

Douglas County  
District Court Clerk

FILED

2018 MAR 28 PM 4:20

BOBBIE R. WILLIAMS  
CLERK

BY M. S. La... DEPUTY

Case No. 18-D-0087

Dept. No. II

D-18-575686-L

Department: C

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

IN THE MATTER OF THE MARRIAGE OF

HAMID SHEIKHAI and  
VICTOR BOTNARI,

Petitioners.

JOINT PETITION FOR ANNULMENT

This Joint-Petition of HAMID SHEIKHAI and VICTOR BOTNARI, the above named  
Petitioners, respectively shows as follows:

I.

HAMID SHEIKHAI is now and has been, for more than six weeks preceding the  
commencement of this action, a bona fide resident of the State of Nevada, having been continually  
physically present in said State for a period in excess of six weeks prior to the filing of this action,  
with the intention of making the State of Nevada a home for an indefinite period of time and is a  
resident of Las Vegas, Nevada.

The parties were married on May 4, 2014, and ever since that date have been and are now a same  
sex marital couple. Under Nevada Law S.B. 283 establishes that same sex couples have the same  
rights, protections and obligations that "are the same as those spouses", including domestic  
partnerships and the legal division of the marriage.

II.

The current addresses of the Petitioners are:

Name: HAMID SHEIKHAI

1 Address: 14250 Calico Basin Road, Las Vegas, NV 89161

2 (925) 548-9000

3 Name: VICTOR BOTNARI

4 Address: 2964 Sun Lake Drive, Las Vegas, NV 89128

5 (925) 548-9000

6 **III.**

7 There are no minor children of the union and Petitioners have not adopted any children.

8 **IV.**

9 Petitioners feel this marriage should be annulled, because: VICTOR BOTNARI misrepresented  
10 and concealed that he only married HAMID SHEIKHAI for the purpose of obtaining a green card.  
11 VICTOR BOTNARI falsely represented to HAMID SHEIKHAI that he desired to get married  
12 because he was in love and wanted to maintain a traditional marital relationship by residing together  
13 and performing all matrimonial duties of a spouse.

14 VICTOR BOTNARI further specifically promised and represented that he was not marrying  
15 solely to gain United States citizenship or a green card.

16 VICTOR BOTNARI withheld and misrepresented the intention to only marry for a green card  
17 and withheld the fraudulent intent to evade immigration laws and commit marriage fraud, so as to  
18 induce HAMID SHEIKHAI to marry him. HAMID SHEIKHAI believes VICTOR BOTNARI had  
19 no intention of maintaining a marital relationship, but rather intended to leave once he obtained a  
20 green card. HAMID SHEIKHAI would not have entered into the marriage except for the  
21 misrepresentations of the spouse.

22 Hamid moved to Las Vegas in March of 2011 and opened a new automotive repair business  
23 where he hired Victor as a mechanic. In April 2012 Hamid attended Victor and Michaela's wedding  
24 but shortly after Victor came to Hamid and said he made a mistake. He filed for annulment and the  
25 parties formed a partnership. In June of 2012 Hamid left his wife and the parties moved in  
26 together. Hamid's divorce was final in November of 2012. Victor's annulment was recorded in  
27 December and Hamid wanted to make their relationship public.

28 However, instead Victor married another woman, Gina, in January of 2013. He insisted his culture  
would not accept him as a gay man and he would lose his family. He talked Hamid into continuing

1 their partnership while they were living together and he was married to a woman. After the wedding  
2 he moved Gina into their casita but Hamid was very uncomfortable and asked him to have her leave.  
3 Sometime later Victor was finally ready to marry Hamid and said it didn't matter what his family or  
4 other people in his country would think anymore. They got married on May 4, 2014.

5 In July of 2014 the parties were in the process of buying a home together and Hamid learned  
6 Victor was in deportation proceedings. Hamid has no idea and this led to a lot of things he had not  
7 been told to by Victor and he felt deceived. Hamid later learned Victor filed for a green card in  
8 November of 2013 based on his marriage to Gina and it was denied based on fraud and in February  
9 2014 he was placed in removal proceedings. Hamid learned Victor was served a Notice to Appear  
10 for removal proceedings on April 30, 2014, only a few days before the marriage.

11 They closed escrow on the home in August 2014 but Victor moved in alone. And at the time it didn't  
12 feel like there was an urgency or motivation to apply for greencard. Victor was focused on business  
13 and Hamid thought he was trying to be his partner. They added Victor's name to all Hamid's assets  
14 which Victor said would strengthen his immigration case so they could stay together and to be able  
15 to conduct business for one another. They then filed for Victor's green card based on this marriage  
16 in October 2014. He said it was not to take anything that wasn't his. However, that is not how it has  
17 worked out and it has cost Hamid a lot of money. They never lived together after the  
18 marriage. Victor has consistently dated women while they have been married. He has had two  
19 women live with him in the home they were supposed to be living in together but Hamid has never  
20 spent one night there. They have not built a personal life together like Victor promised and has  
21 admitted he never had any intention of doing so. He has been a consistent part of Hamid's business  
22 life but not with good intentions there either. He has taken the profits and burdened Hamid with the  
23 losses. He has filed for appeals, dismissals and continuances with Immigration but has not been  
24 successful due to his previous fraudulent marriage with Gina.

25 In January of 2017 Victor filed for another visa as an abused spouse by Hamid, but Hamid did not  
26 know about it until later. He submitted falsified evidence including using Photoshop to alter a  
27 prescription bottle to make it look like Hamid was on medication, which he wasn't on. Everything  
28 was too much to ignore and Hamid confronted Victor in March of 2018 and he admitted he married  
solely for money and immigration benefits. He admitted adultery and confirmed all Hamid's

1 suspicions about his bad character. He stated he intended to stay in the United States illegally before  
2 he ever arrived and has used American citizens since to attempt to stay and live the American  
3 dream. Hamid would not have married Victor if he knew he was needing a greencard and was only  
4 marrying to gain access to his money.

5 HAMID SHEIKHAI learned on September 2014, that VICTOR BOTNARI would not keep his  
6 prenuptial promises and representations and that he had fraudulently concealed these facts from  
7 HAMID SHEIKHAI prior to the marriage. The parties have never lived together.

8 The Court should grant an annulment pursuant to *Rabie v. Rabie*, 115 Cal.Rptr. 594, 40  
9 Cal.App.3d 917 (1974) [Evidence was sufficient to support trial court finding that husband  
10 fraudulently induced wife to marry him solely in order to obtain "green card" from Immigration  
11 Department, that duties and obligations of husband to wife included more than mere cohabitation  
12 with her, that evidence constituted adequate basis for judgment of nullity.....]. *Rubman v. Rubman*,  
13 251 N.Y.S. 474 [where husband falsely told wife he loved her and did not disclose that real reason  
14 for marriage was to avoid deportation].

15 While it is true that it has been held that if either party enters into the marriage contract with an  
16 undisclosed intention of not performing, and thereafter refuses and persists in refusing to perform,  
17 such party is guilty of fraud going to the essence of the marriage relation, and the other party is  
18 entitled to have the marriage annulled. *Bragg v. Bragg*, 219 Cal. 715; *Bomer v. Edsall*, 90 N.J.Eq.  
19 299; *Hyslop v. Hyslop*, 241 Ala. 223. It is error for trial court to arbitrarily refuse to grant decree  
20 of annulment when plaintiff's testimony establishes grounds for annulment and is not impeached,  
21 contradicted, or inherently improbable. *Putnam v. Putnam*, 254 P.2d 589, 116 C.A.2d 841.

22 The parties have not resided together since discovery of these facts by HAMID  
23 SHEIKHAI. The Court should grant an annulment pursuant to Nevada Revised Statutes Section  
24 125.340 due to fraud and NRS 125.350 failure of consideration underlying the very purposes of the  
25 marriage contract between the parties and providing grounds for declaring the marriage contract  
26 between the parties void on equitable grounds.

27 In addition, VICTOR BOTNARI is in violation of the Immigration and Nationality Act, Section  
28 237(a)(1)(G)(i), 8 U.S.C.A. Section 1227(a)(1)(G)(I).

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V.

Each of the Petitioners hereby waive any and all right to spousal support or any other monetary claim each may have against the other for support or maintenance.

VI.

Petitioner's certify to the Court that there are no community assets or community debts to be divided and distributed by this Court, because the parties never accumulated any debts or assets as a married community and/or the court does not have jurisdiction.

VII.

The Petitioners hereby waive their respective rights to receive written notice of the entry of any decree and Judgment of Annulment entered herein; and Petitioners waive their right to request formal Findings of Fact, Conclusion of Law herein or to appeal any Judgment or Order of this Court made and entered in these proceedings.

VIII.

It is further understood by the Petitioners that entry of Decree of Annulment constitutes a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and the respective Petitioners' rights to (1) written notice of entry of decree; (2) requests for findings of facts and conclusions of law; (3) move for a new trial.

IX.

It is further understood by the Petitioners that a final Decree of Annulment entered pursuant to this summary procedure does not prejudice or bar the rights of either Petitioner to institute an action to set aside the final decree for fraud, duress, accident, mistake or grounds recognized at law or in equity.

X.

Neither party requires to have a former name restored.

WHEREFORE, Petitioners pray as follows:

1. That any bonds of matrimony now and heretofore existing between the parties be declared null and void and the marriage treated as though it never occurred, and that each of the said Petitioners be legally restored to the status of a single, unmarried person.

///

*VB*

1 • This document does not contain the social security number of any person.

2 We declare, under penalty of perjury under the law of the state of Nevada, that the forgoing is  
3 true and accurate.

4  
5 DATED this 20 day of March, 2018.

6 By:   
7 HAMID SHEIKHAI

8  
9 DATED this 20 day of MARCH, 2018.

10  
11 By:   
12 VICTOR BOTNARI

13 Victoria Crockett  
14 338 California Avenue  
15 Reno, NV 89509  
16 (775) 322-5357  
17 #NVDP2014336  
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VERIFICATION

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

HAMID SHEIKHAI, being first duly sworn, on oath depose and says under penalty of perjury:  
That I am one of the Petitioners named herein; that I have read the foregoing Joint Petition for  
Annulment and knows the contents thereof, that the same is true of my knowledge, except for those  
matters therein contained stated upon information and belief, and as to those matters, I believe them  
to be true.

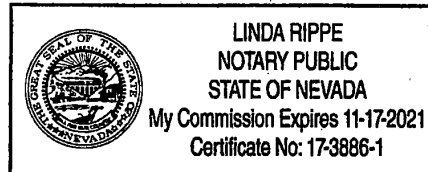
DATED this 20 day of March, 20 18.

By: [Signature]  
HAMID SHEIKHAI

SUBSCRIBED AND SWORN to before me  
this 20 day of March, 20 18  
by HAMID SHEIKHAI.

[Signature]  
NOTARY PUBLIC

Victoria Crockett  
338 California Avenue  
Reno, NV 89509  
(775) 322-5357  
#NVDP2014336



VERIFICATION

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

VICTOR BOTNARI, being first duly sworn, on oath depose and says under penalty of perjury:  
That I am one of the Petitioners named herein; that I have read the foregoing Joint Petition for  
Annulment and knows the contents thereof, that the same is true of my knowledge, except for those  
matters therein contained stated upon information and belief, and as to those matters, I believe them  
to be true.

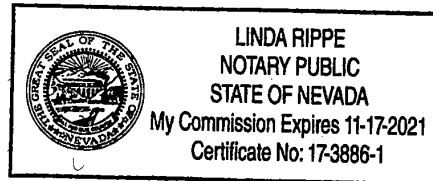
DATED this 20 day of March, 20 18

By: [Signature]  
VICTOR BOTNARI

SUBSCRIBED AND SWORN to before me  
this 20 day of March, 20 18  
by VICTOR BOTNARI.

[Signature]  
NOTARY PUBLIC

Victoria Crockett  
338 California Avenue  
Reno, NV 89509  
(775) 322-5357  
#NVDP2014336



[Signature]  
VB

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IN THE FAMILY DIVISION  
OF THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR DOUGLAS COUNTY

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, JOINT PETITION FOR ANNULMENT filed in the Family Division of the Ninth Judicial Court of the State of Nevada, in and for Douglas County Case No. (new case) \_\_\_\_\_.

☒ Does not contain the social security number of any person

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant

  
HAMID SHEIKHAI

3/20/18  
Date

Victoria Crockett  
338 California Avenue  
Reno, NV 89509  
(775) 322-5357  
#NVD2014336

ORIGINAL

Case No. 18-D1-8087

MAR 28 2018

Dept. No. II

Douglas County  
District Court Clerk

FILED

2018 MAR 30 PM 2:38

D-18-575686-L

Department: C

BOBBIE R. WILLIAMS  
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

IN THE MATTER OF THE MARRIAGE OF

HAMID SHEIKHAI and  
VICTOR BOTNARI,

Petitioners.

DECREE OF ANNULMENT

The parties, having filed a Joint Petition for Annulment, and submitting it to this Court for Decision, and this Court finding that the allegations as stated in the Joint Petition are true, enters this Finding of Facts, Conclusions of Law and Decree of Annulment.

FINDING OF FACTS

HAMID SHEIKHAI is now and has been, for more than six weeks preceding the commencement of this action, a bona fide resident of the State of Nevada, having been continually physically present in said State for a period in excess of six weeks prior to the filing of this action, with the intention of making the State of Nevada a home for an indefinite period of time and is a resident of Las Vegas, Nevada.

The Petitioners, having entered into a marriage ceremony on or about May 4, 2014 in San Bernardino, State of California, and ever since that date have been and are now a same sex marital couple. Under Nevada Law S.B. 283 establishes that same sex couples have the same rights, protections and obligations that "are the same as those spouses", including domestic partnerships and the legal division of the marriage; and,

The ceremony having been entered into by the parties under circumstances which are recognized

1 by statute to the basis for an Annulment; and,

2 The parties having certified that there are no community assets and no community debts to be  
3 adjudicated by this Court; and,

4 The parties having further certified that there are no minor children born of the union; the parties  
5 have not adopted any minor children.

6 **CONCLUSIONS OF LAW**

7 The Family Division of the Ninth Judicial Court of the State of Nevada, in and for Douglas  
8 County, has the jurisdiction over the parties and issues to enter this Decree of Annulment.

9 **DECREE OF ANNULMENT**

10 The Petitioners are hereby granted a Decree of Annulment, dissolving and declaring null and  
11 void the marriage and each is returned to the status of an unmarried person.

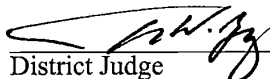
12 Each party shall have set aside to them, as individuals, the debts they incurred and shall hold the  
13 other party harmless therefrom.

14 Each party shall have affirmed to them as their sole and separate property, the property they  
15 brought to the union as individuals.

16 Neither party requires to have a former name restored.

17 **THIS IS A FINAL DECREE**

18 DATED this 30<sup>th</sup> day of March, 2018,

19   
20 District Judge

# EXHIBIT B

U.S. Department of Homeland Security  
5650 W. Badura Avenue #100  
Las Vegas, NV 89118



U.S. Citizenship  
and Immigration  
Services

Hamid Sheikai  
2964 Sunlake Drive  
Las Vegas, NV 89128

Date: March 8, 2016  
File: A207067316/dd  
Receipt Number: SRC1590037209

### NOTICE OF INTENT TO DENY PETITION FOR ALIEN RELATIVE

Dear Hamid Sheikai:

Thank you for submitting Form I-130, Petition for Alien Relative, to U.S. Citizenship and Immigration Services (USCIS) on behalf of Victor Botnari (the Beneficiary). You sought to have the Beneficiary classified as the spouse of a United States citizen under section 201(b) of the Immigration and Nationality Act (INA).

After a thorough review of your petition, the testimony at your interview, and the record of evidence, unfortunately, we must inform you that we intend to deny your petition for the following reasons.

Generally, to demonstrate that an individual is eligible for approval as the beneficiary of a petition filed under INA 201(b), the petitioner must:

- Establish a bona fide relationship to certain alien relatives who wish to immigrate to the United States;
- Establish the appropriate legal status (i.e., U.S. Citizenship or Lawful Permanent Resident Residence) to submit a petition on the beneficiary's behalf.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the requested immigration benefit sought under the INA. See *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); Title 8, Code of Federal Regulations (8 CFR), section 103.2(b). You must demonstrate that the beneficiary can be classified as your spouse. See 8 CFR 204.2(a). The petitioner must show by the preponderance of the evidence, that the marriage was legally valid and bona fide at its inception and "not entered into for the purpose of evading immigration laws." *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983). Although evidence to establish intent at the time of marriage can take many forms, some of those include: "proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences." See *Laureano*, supra.

DEF000381  
ROA001394

Name: Victor Botnari  
File Number: A207067316  
Receipt Number: SRC1590037209

Page 2

When there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the purpose of evading immigration law. See *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). To demonstrate that the purpose of the marriage was not to evade the immigration laws, a petitioner may submit documentation showing for instance, joint ownership of property, joint tenancy of a common residence, commingling of financial resources, birth certificates of children born to the union, and sworn or affirmed affidavits from third parties with personal knowledge of the marital relationship.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit by a preponderance of the evidence. *Matter of Patel*, 19 I. & N. Dec. 774, 782 (BIA 1988); *Matter of Soo Hoo*, 11 I & N Dec. 15, 152 (BIA 1965). Evidence submitted by the petitioner has to be relevant, probative and credible. *Matter of Chawathe*, 25 I. & N. Dec. 369 (BIA 2010).

No Visa petition "...shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws." See INA 204(c).

In order for a visa petition to be barred by INA 204(c), there must be "substantial and probative evidence" of such an attempt or conspiracy and the derogatory evidence must be contained in the alien's file. See 8 CFR 103.2(b)(16)(i), 204.2(a)(1)(ii); *Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990). If there is substantial and probative evidence, "the district director must deny any subsequent visa petition for immigrant classification filed on behalf of such alien, regardless of whether the alien received a benefit through the attempt or conspiracy. As a basis for the denial it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy." See *Matter of Tawfik* at 167. In reaching such a conclusion, USCIS "...may rely on any relevant evidence, including evidence having its origin in prior Service proceedings involving the beneficiary, or in court proceedings involving the prior marriage. Ordinarily, the district director should not give conclusive effect to determination made in a prior proceeding, but, rather, should reach his [or her] own independent conclusion based on the evidence before him [or her]." See *Matter of Tawfik* at 168.

Such evidence may consist of an admission by the beneficiary or spouse that they colluded to evade the immigration laws. See *Ghaly v. INS*, 48 F.3d 1426 (7<sup>th</sup> Cir 1995); *Salas-Velasquez v. INS*, 34 F.3d 705 (8<sup>th</sup> Cir. 1994). Further, such evidence can be found where the spouse was paid to marry the beneficiary or where the marriage was never consummated, where the spouses never cohabitated, and where the spouses never held themselves out to family and friends as husband and wife. See *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). Where there is "substantial and probative evidence" of prior marriage fraud in the record, the burden then shifts to the petitioner to overcome this evidence. Hence, the petitioner must present evidence show that the prior marriage was not entered into for the primary purpose of evading immigration law. See *Matter of Phillis* at 386

DEF000382  
ROA001395

Name: Victor Botnari  
File Number: A207067316  
Receipt Number: SRC1590037209

Page 3

**Statement of Facts and Analysis, Including Ground(s) for Denial**

You and the beneficiary were married on April 19, 2014, at San Bernardino, CA. You filed a Petition for Alien Relative, Form I-130, on October 24, 2014. On February 22, 2016, you and the beneficiary appeared at the USCIS Las Vegas Field Office for an interview on the instant petition. You were represented by counsel at the interview. Although Counsel present for your interview has an EOIR Form-28 on file, he has not filed Form G-28 to represent you in the instant petition. The interview was recorded.

You and the beneficiary testified separately and together at the interview. It appears that on your end your marriage to the beneficiary is be bona fide.

USCIS notes here that this is your third marriage and the fourth marriage for the beneficiary. All of the previous marriages for the both of you have been to females.

On July 1, 2013, the Secretary of the U. S. Department of Homeland Security announced: "After last week's decision by the Supreme Court holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, President Obama directed federal departments to ensure the decision and its implication for federal benefits for same-sex legally married couples are implemented swiftly and smoothly. To that end, effective immediately, I have directed U.S. Citizenship and Immigration Services (USCIS) to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse." Prior to the DOMA ruling same-sex marriages were not recognized for immigration benefits.

USCIS looks at the beneficiary's third marriage, which was to Gina Vasapollo, a United States citizen and entered into on January 27, 2013, at Las Vegas, NV. This marriage was entered into prior to DOMA being declared unconstitutional. Thus, at that time marriage to a female was the only avenue available to the beneficiary for immigration benefits. On November 25, 2013, Gina Vasapollo filed a Petition for Alien Relative, Form I-130 in behalf of the beneficiary, concurrently with an Application to Register Permanent Residence or Adjust Status, Form I-485. On or about March 18, 2014, Gina Vasapollo and the beneficiary appeared for an interview. The couple was represented by counsel.

As evidence of a bona fide marriage Gina Vasapollo submitted:

- 1.) A lease from Yasaman Helmi to Gina Vasapollo and Victor Botnari for a Casita at 6130 Tara Ave Las Vegas, NV 89146, dated December 17, 2012;
- 2.) Jointly filed 2012 IRS Form 1040.

The evidence submitted did not establish that Gina Vasapollo and the beneficiary's marriage was bona fide. Your testimony on February 22, 2016, (to be discussed later) on the beneficiary living with you in

DEF000383  
ROA001396

Name: Victor Botnari  
File Number: A207067316  
Receipt Number: SRC1590037209

Page 4

the house and Ms. Vasapollo living in the guest house clearly establishes that lease does not serve as probative evidence.

The couple filed their 2012 Form 1040 as married, however, they did not marry until January 27, 2013. Thus they either misrepresented themselves to the Internal Revenue Service or the tax document is fraudulent evidence submitted to support a sham marriage. Due to the lack of bona fide marital documents a separated interview was conducted. Numerous discrepancies were noted from the separated interview.

When did you first meet?

Beneficiary: November of 2012.

Petitioner: It was in the middle of November, 2012.

When was the last time the Beneficiary saw the Petitioner's Father?

Beneficiary: I saw him last January when I visited my wife in Boston.

Petitioner: He saw my Father in October, in Boston. He did not see my Father in January because my Father is a very private person.

Who does the Petitioner live with in Boston?

Beneficiary: She lives with Sam and Lori, in a two bedroom apartment.

Petitioner: I live with Sam, a male friend, in a one bedroom apartment.

When the Beneficiary visited Boston in January where did he stay?

Beneficiary: We stayed in a hotel, Best Western, maybe four or five nights.

Petitioner: We stayed at my place with Sam, we stayed in the bedroom.

Did the Beneficiary ever meet Sam?

Beneficiary: No, I never met him. Oh, I met him in Boston.

Petitioner: The Beneficiary met Sam in Boston at the end of January.

How long did the Petitioner and Beneficiary live together at 6130 Tara Ave?

Beneficiary: December of 2012 to July of 2013.

Petitioner: February of 2013 to May or June of 2013.

How many bedrooms and toilets are in your current residence at 5960 Thiros Circle Las Vegas, NV?

Beneficiary: Six bedrooms and five toilets.

Petitioner: Seven bedrooms and four toilets.

What ethnicity is Samir, the man your husband works for and lives with?

DEF000384  
ROA001397

Name: Victor Botnari  
File Number: A207067316  
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Beneficiary: Persian, he speaks Persian.

Petitioner: Romanian, maybe Bulgarian. I think he speaks Bulgarian.

How much does the beneficiary earn each weekly?

Beneficiary: \$300 to \$500 per week depending on how many days he works or sometimes \$600 for a week.

Petitioner: The Beneficiary earn \$1,1329.00 per week.

Did the Beneficiary go to work this morning?

Beneficiary: Yes I went into work between 10:00 and 11:00 but only stayed 15-20 minutes.

Petitioner: No, he did not go into work this morning?

Gina Vasapollo was confronted with these discrepancies at the February 18, 2014, interview and immediately withdrew her petition.

You testified at the February 22, 2016, interview that you and the beneficiary have lived together continuously since early 2012. You testified that this time span has covered residences on Tara Ave, Thiros Circle and Sunlake Drive. You stated that at one time you left briefly to watch your son's house.

You were asked who else resided with you and the beneficiary at these residences during this time. You stated that your son and his girlfriend at one residence and that you gave them the master bedroom. You also stated that daughter lived with you and the beneficiary for a short time. You also stated that a couple of young girls, who were students, lived with you but you had to evict them for not paying rent.

Since you never mentioned Gina Vasapollo as residing with you, the interviewing officer inquired about her. You stated that she lived as a tenant in one of your guest homes at the back of your property. Gina never lived in the house with you and the beneficiary. Ms. Vasapollo and the beneficiary never lived as a married couple. Your sworn and recorded testimony that Ms. Vasapollo lived in one of the guest houses on the back of your property is probative and substantial evidence that she and the beneficiary were nothing more than neighbors and co-workers.

In addition to filing a Petition for Alien Relative in behalf of the beneficiary Gina Vasapollo also submitted an Affidavit of Support, Form I-864 in support of the beneficiary. Included with the documents submitted with the Form I-864 is a letter from you stating that Gina Vasapollo is an employee of your company. You signed the letter on May 21, 2013, however you stated that she is in good standing with company as of January 1, 2013.

The foregoing leads USCIS to find that you were a facilitator of the sham marriage between Ms. Vasapollo and the beneficiary.

DEF000385  
ROA001398

Name: Victor Botnari  
File Number: A207067316  
Receipt Number: SRC1590037209

Page 6

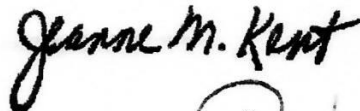
USCIS finds from your testimony and a review of the record that there is substantial and probative evidence that the marriage between the beneficiary and his prior petitioning spouse was one of convenience and for the sole purpose of obtaining immigration benefits.

Therefore, approval of your petition is barred under INA 204(c) and USCIS intends to deny your visa petition on these grounds.

You are hereby afforded an opportunity to rebut the aforementioned information and to submit any additional evidence in support of your visa petition. You have thirty (30) days from the date of service of this notice to submit such rebuttal or evidence. Failure to respond to this notice within the specified period of time may result in denial of the Petition for Alien Relative, Form I-130, for the reasons set forth above. All responses should be mailed to the address listed at the top of this correspondence.

If you need additional information, please visit the USCIS Web site at [www.uscis.gov](http://www.uscis.gov) or call our National Customer Service toll free at 1-800-375-5283.

Sincerely yours,



JEANNE M. KENT  
Field Office Director

Cc: Luther Snavelly, Esq

DEF000386  
ROA001399

# EXHIBIT C



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

**Shevchenko, Sergei  
Barshev, P.C.  
20501 Ventura Boulevard, Suite 323  
Woodland Hills, CA 91364**

**DHS/ICE Office of Chief Counsel - LVG  
3373 Pepper Lane  
Las Vegas, NV 89120**

**Name: BOTNARI, VICTOR**

**A 207-067-316**

**Date of this notice: 4/6/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Acting Chief Clerk

Enclosure

Panel Members:  
Creppy, Michael J.

LiuD

Userteam: Docket

DEF000388  
ROA001401

**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

---

File: A207 067 316 – Las Vegas, NV

Date:

APR - 6 2017

In re: VICTOR BOTNARI

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Sergei Shevchenko, Esquire<sup>1</sup>

ON BEHALF OF DHS: Maya Timis  
Assistant Chief Counsel

APPLICATION: Administrative closure; continuance

The respondent, a citizen of Moldova, appeals from the Immigration Judge's May 10, 2016, decision denying his request for a continuance to await the adjudication of an Alien Relative Petition (Form I-130) filed on his behalf by his United States citizen spouse and ordering him removed from the United States. On March 7, 2017, the respondent also filed a motion to administratively close, and he filed a supplement to this motion on March 27, 2017. The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be dismissed and the motion will be denied.

We review for clear error the findings of fact, including any determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in an appeal from an Immigration Judge's decision under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent entered the United States on May 14, 2009, as a nonimmigrant exchange visitor, but violated the terms and conditions of this status (I.J. at 1; Exh. 1). The DHS served him with a Notice to Appear on April 30, 2014 (I.J. at 1; Exh. 1). On April 19, 2014, the respondent married a United States citizen who filed a visa petition on his behalf in October 2014 (I.J. at 2; Tr. at 6; Respondent's May 9, 2016, Documentary Submission). On April 14, 2016, U.S. Citizenship and Immigration Services ("USCIS") denied the visa petition (I.J. at 2; Tr. at 9-10).

At his May 9, 2016, hearing, the respondent requested a continuance for his spouse to file a visa petition appeal with the Board (I.J. at 2; Tr. at 8). The Immigration Judge denied the respondent's request for a continuance, concluding that there was insufficient record evidence to

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<sup>1</sup> The respondent's December 19, 2016, motion to substitute counsel is granted. A courtesy copy of this decision is being served on the respondent's former appellate counsel, Luther Snively, III, Esquire, to advise him of this determination.

DEF000389  
ROA001402

establish that the visa petition was *prima facie* approvable, particularly in light of the USCIS denial (I.J. at 3).

On appeal, the respondent contends that the Immigration Judge erred in denying the continuance (Respondent's Brief at 2-9). We agree with the Immigration Judge and adopt and affirm his decision in this regard. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (explaining that the Immigration Judge should consider various criteria in determining the propriety of any continuance request relating to a *pending* visa petition application).

Moreover, on November 9, 2016, the Board dismissed the visa petition appeal filed on the respondent's behalf.<sup>2</sup> In dismissing the visa petition appeal, we affirmed USCIS's finding that the visa petition record contained substantial and probative evidence that the respondent's prior marriage was fraudulent, barring the approval of the current visa petition for the respondent under section 204(c) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c). *Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990). Specifically, we noted both that (1) the respondent's former spouse withdrew the visa petition filed on his behalf after being confronted with numerous discrepancies in their testimony during separate USCIS interviews, and (2) she did not provide credible evidence demonstrating a commingling of their financial resources, cohabitation, or a genuine intent to make a life together. Thus, the respondent's claim that removal proceedings should have been continued pending the adjudication of the visa petition appeal is now moot.<sup>3</sup>

Finally, on March 7, 2017, the respondent moved to administratively close proceedings to allow him to pursue a Petition for Amerasian, Widower, or Special Immigrant (Form I-360) that he filed with USCIS as an abused spouse on January 4, 2017 (Respondent's Supplemental Motion at 2). The salient factors to consider in determining whether good cause exists for administratively closing a case include, but are not limited to: (1) the reason administrative closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood the respondent will succeed on his petition; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and (6) the ultimate outcome of removal proceedings. *Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012).

Here, we conclude that neither administrative closure nor remand of the record for factual development as it relates to such a request is appropriate for the following reasons. USCIS found, and we affirmed that finding in an appeal to this Board, that another visa petition record involving the respondent contains substantial and probative evidence that the respondent

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<sup>2</sup> A courtesy copy of the Board's decision in the separate visa petition proceedings is being provided to the parties along with this decision.

<sup>3</sup> We acknowledge the respondent's request to consolidate the visa petition and removal appeals (Respondent's Brief at 4). Given that the Board has already decided the visa petition appeal, we also deem the request moot.

previously entered into a marriage solely for immigration purposes. *See* section 204(c) of the Act. In his motion, however, the respondent has not meaningfully argued that the bar will not also impact the approval of his self-petition nor cited any authority to support such a position. *See id.* (stating that “no petition shall be approved” if the respondent sought to be accorded immediate relative status as the spouse of a United States citizen by reason of a fraudulent marriage). Thus, because the respondent has not provided persuasive evidence that he is likely to prevail on the pending self-petition or that a delay to allow for the adjudication of the petition is likely to alter the outcome in these proceedings, we decline to administratively close this case. *See Matter of Avetisyan, supra.*

Accordingly, the following orders will be entered.

ORDER: The respondent’s appeal is dismissed.

FURTHER ORDER: The respondent’s motion for administrative closure is denied.

  
FOR THE BOARD

# EXHIBIT D

## BILL OF SALE

This Bill of Sale ("Agreement") is dated June 1st, 2014, by and between SAMIR, LLC, dba Zip Zap Auto, ("Seller") and VITIOK LLC ("Buyer"). This Agreement is made in respect of the following facts:

### RECITALS


**WHEREAS** the parties wish to enter this Agreement for the sale and purchase of the assets of Zip Zap Auto ("the business");

**WHEREFORE**, in consideration of the foregoing, the mutual covenants and conditions set forth herein and other good and valuable consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Seller hereby sells the business known as Zip Zap Auto, its equipment, licenses, and goodwill for the total amount of One Dollar (\$1.00) is allocated to the purchase of the equipment of the business.
2. Filings and Authorizations. Each Party, as promptly as practicable will use their best efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order to fulfill their obligations hereunder. The Parties will coordinate and cooperate with one another in exchanging such information and supplying such reasonable assistance as may be reasonably requested by each in connection with the foregoing.
3. The parties confirm that the sale is being made "as is" and with all faults, and Seller makes no warranties whatsoever regarding the business or the purchase of the business or its equipment.

SELLER - SAMIR LLC, a NV Limited Liability Company, dba Zip Zap Auto      BUYER - VITIOK LLC, a NV Limited Liability


  
Hamid Sheikhai

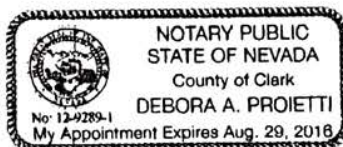
  
Victor Botnari

State of Nevada

County of Clark

This instrument was acknowledged before me on 6/3/2014 (date)  
by Hamid Sheikhai & Victor Botnari (name(s) of person(s)).

  
(Signature of notarial officer)





SURETY RIDER

Nationwide Mutual Insurance Company  
Bond Department  
1100 Locust Street, Department 2006  
Des Moines, IA 50391-2006

TO BE ATTACHED TO AND FORM PART OF

NV Motor Vehicle - Garage

BOND NUMBER 7900411164

IN FAVOR OF Occupational and Business Licensing

(Obligee)

ON BEHALF OF Samir LLC dba ZIP ZAP AUTO

(Principal)

IT IS AGREED THAT, in consideration of the original premium charged for this bond, and any additional premium that may be properly chargeable as a result of this rider,

1. The Surety hereby gives its consent to amend the following:

Exact Name \_\_\_\_\_;

From:

1. Exact Name: Samir LLC dba ZIP ZAP AUTO

To:

1. Exact Name: VITIOK LLC DBA: ZIP ZAP AUTO

Effective: June 26, 2014

2. PROVIDED, however, that this attached bond shall be subject to all its agreements, limitations, and considerations except as herein expressly modified, and that the liability of the Surety under the attached bond as changed by this rider shall not be cumulative.

3. Signed and sealed this 26th day of June, 2014.



Nationwide Mutual Insurance Company

BY: \_\_\_\_\_

TIMOTHY HARRISON, Attorney in Fact

# EXHIBIT E

FILED

AUG 16 2018

RECEIVED

JUL 13 2018

Douglas County  
District Court Clerk

2018 JUL 13 AM 9:47

CLERK OF COURT

Case No. 18-DI-0087

Dept. No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

D-18-575686-L

Department: C

IN THE MATTER OF THE MARRIAGE  
OF:

HAMID SHEIKHAI and VICTOR  
BOTNARI,

ORDER GRANTING MOTION TO  
CHANGE VENUE

Petitioners.

THIS MATTER comes before the court on Joint Petitioner Victor Botnari's Motion to Change Venue; For Attorney's Fees and Costs Incurred Herein; and Related Matters. The Motion has been fully briefed and is ripe for consideration. Good cause appearing, the Court finds and orders as follows:

Joint Petitioners Hamid Sheikhai ("Sheikhai") and Victor Botnari ("Victor") filed a Joint Petition for Annulment on March 28, 2018. On March 30, 2018, a Decree of Annulment was entered.

On June 4, 2018, Botnari filed the pending motion. Botnari represents that Botnari anticipates filing post-decree motions. Botnari and Sheikhai reside in Las Vegas. Issues to be litigated include real property and business interests located in Las Vegas. Botnari requests that venue be changed to Clark County to promote the convenience of witnesses and the ends of justice. NRS

THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

DEF000396  
ROA001409

1 13.050(2)(c).

2 Sheikhai is opposed. Regarding convenience, Sheikhai states  
3 only that he "prefers to attend the necessary hearings, if any, in  
4 Douglas County." Sheikhai does not dispute Botnari's contention  
5 that all witnesses, evidence, and/or property are located in Las  
6 Vegas. In recognition of this fact, Sheikhai states "a separate  
7 case can be pled in Clark County" regarding the property issues.  
8 Sheikhai does not suggest that Douglas County has any connection  
9 to the parties, the witnesses or the issues.

10 All information presented suggests that the convenience of  
11 witness and the ends of justice would be promoted by a change of  
12 venue to Clark County. NRS 13.050(2)(c). "When the evidence is  
13 clear, unconflicting in the essentials, and points unerringly to  
14 one result, to refuse to follow it is what the law denominates an  
15 abuse of discretion..." *Fabbi v. First National Bank*, 62 Nev. 405,  
16 414 (1944).

17 IT IS HEREBY ORDERED that the Motion to Change Venue is  
18 GRANTED. This matter is transferred to the Eighth Judicial  
19 District Court, Clark County, Nevada, for all further proceedings.  
20 The Clerk is directed forthwith to transfer the pleadings, papers,  
21 files, and record. Each party shall bear their own fees and  
22 costs.

23 DATED this 13<sup>th</sup> day of July, 2018.

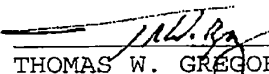
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THOMAS W. GREGORY  
DISTRICT JUDGE

THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

1 Copies served by mail delivered on July 13<sup>th</sup>, 2018, addressed to:

2 Gary M. Zernich, Esq.  
3 2470 St. Rose Parkway, Suite 206  
4 Henderson, Nevada 89074

5 Todd M. Leventhal, Esq.  
6 626 S. Third Street  
7 Las Vegas, Nevada 89101

Erin C. Plante  
Erin C. Plante

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THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

DATE August 1, 2018

BOBBIE R. WILLIAMS, Clerk of Court  
of the State of Nevada, in and for the County of Douglas,

By [Signature] Deputy

# EXHIBIT F

**ORDR**

WILICK LAW GROUP  
MARSHAL S. WILICK, ESQ.  
Nevada Bar No. 2515  
3591 E. Bonanza Road, Suite 200  
Las Vegas, NV 89110-2101  
Phone (702) 438-4100; Fax (702) 438-5311  
email@willicklawgroup.com  
Attorneys for Plaintiff

**DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA**

HAMID SHEIKHAI,  
Plaintiff,

vs.

VICTOR BOTNARI,  
Defendant.

CASE NO: D-18-575686-L  
DEPT. NO: R

DATE OF HEARING: N/A  
TIME OF HEARING: N/A

**ORDER FROM OCTOBER 15, 2020, HEARING**

This matter came on for hearing before the Honorable Bill Henderson, District Court Judge, Family Division, for a Status Check re: Supreme Court Settlement Conference. Hamid Sheikhai was present and represented by his counsel, Marshal S. Willick, Esq., and Lorien K. Cole, Esq.; Victor Botnari was present and represented by counsel, Bradley Hofland, Esq., and Todd M. Leventhal, Esq.,

The Court, having reviewed the papers and pleadings on file herein, the Court made the following findings and orders.

**THE COURT HEREBY FINDS AND/OR NOTES:**

1. The Court, having jurisdiction to do so, hereby finds that the purpose of this hearing was to set trial dates which would also include any pre-trial orders to show cause.

1           2. The Court, having jurisdiction to do so, hereby finds that the Ninth Judicial  
2 District's decision whether or not to assert venue, if improper, would be reversed by  
3 the appellate court, but it is beyond the reach of this Court. If there is specific  
4 language in those orders that prevent this Court from moving forward on any matters,  
5 that is fine.

6           3. The Court, having jurisdiction to do so, hereby finds that the Court is looking  
7 at January 21<sup>st</sup> at 1:30 to discuss the scope of the trial, including set aside, divorce  
8 versus annulment, *Millender* decision. Then, depending on the outcome, we would  
9 proceed with these March dates which are going to be present at this time, or based  
10 on those rulings, there may not be a need for those future dates. But we will have  
11 them locked in depending on outcome. If it is necessary on January 21 to move  
12 forward on the merits, we will set a two-day trial.

13           4. The Court, having jurisdiction to do so, hereby finds that on January 21, at  
14 1:30, the Court will deal with these preliminary matters concerning scope, including  
15 but not limited to, the issue of the set aside, the issue of divorce vs. annulment, and  
16 the other issues which have been briefed, some of which were already part of an  
17 appellate process. And then, depending on that outcome of that hearing, if we need  
18 to proceed forward in total as to remaining property and debts, we're going to do so  
19 on March 22nd at 1:30 p.m. and then March 23rd at 1:30 p.m.

20           5. The Court, having jurisdiction to do so, hereby finds that some level of  
21 briefing by both parties would be helpful before such date with a conclusion which  
22 lists how the Court should rule on each issue. Number one, the Court should rule on  
23 the set aside as follows. Number two, the Court should rule on divorce vs. annulment  
24 as follows. Number three, based on the above the Court no longer needs to be  
25 proceeding with the March hearings, or if so they need to be more limited in scope  
26 to the following.

1       6. The Court, having jurisdiction to do so, hereby finds that either side may rest  
2 entirely on filed paperwork, but each is permitted a synched guidance or memo or brief  
3 to the Court prior to the scope hearing. We're directing the scope of what, if anything,  
4 is to occur at the March hearings. Because we have Court in January, we're not going  
5 to need trial viability date as to the March hearings – we'll hear on January 21<sup>st</sup> if  
6 we're still proceeding with the March hearings and someone needs more time and  
7 wants to bump them out further for whatever reason, we'll hear arguments at that  
8 time.

9       7. The Court, having jurisdiction to do so, hereby finds that the initial briefing  
10 for the January 21<sup>st</sup> hearing should be filed by January 8, and if anyone has any  
11 replies, they should be filed by January 15. Replies are limited to under 10 pages,  
12 because they should only be hitting on a few clarification points.

13       8. The Court, having jurisdiction to do so, hereby finds that if the replies are  
14 filed by 19<sup>th</sup>, the Court will still read them, but if they are filed on the 20<sup>th</sup>, late in the  
15 afternoon, the Court may not have the opportunity to review them by the morning of  
16 the 21<sup>st</sup>. So aim for the 15<sup>th</sup> because the 16<sup>th</sup> and 17<sup>th</sup> is the weekend and 18<sup>th</sup> is MLK  
17 Day, so if you can't get them in the 15<sup>th</sup>, try and get them in as early on the 19<sup>th</sup> as  
18 possible. If get them in late on the 20<sup>th</sup>, the Wednesday, there's no guarantee the  
19 Court will be able to absorb them.

20       9. The Court, having jurisdiction to do so, hereby finds that with respect to the  
21 contempt issues, unless there's something outrageous, like the media saying  
22 something, or some irreparable, serious harm that could be never rectified later, the  
23 Court really believes contempt matters are only appropriate after the Court determines  
24 the scope in January. Then, if those matters are still appropriate, they should be  
25 combined and heard on either March 22<sup>nd</sup> or 23<sup>rd</sup>.

26       10. The Court, having jurisdiction to do so, hereby finds that a transcript of  
27 this hearing is going to be critical plus there's a certain degree of basic decorum that  
28

1 the Court expects parties to provide each other. Although the Court will make a  
2 determination in January as to these matters and whether they can be revived, the  
3 Court is clear that since the annulment was granted, and not set aside as early as  
4 December 3<sup>rd</sup>, 2018, and reiterated at subsequent hearings, that will either stand by  
5 the Court or the parties will provide subsequent appellate orders reversing it or Ninth  
6 Judicial District orders reaching a different conclusion.

7 11. The Court, having jurisdiction to do so, hereby finds that the order was  
8 initially issued at a hearing of December 3<sup>rd</sup>, 2018, and reiterated at subsequent  
9 hearings. So unless someone presents an appellate or even a Ninth District Court  
10 order or something from those two other departments, 22 or 31 that they think it's  
11 appropriate for them to take jurisdiction over these financial matters and these are not  
12 separate collateral hearings at the RJC, but it goes right to the heart of it. Unless  
13 there's some indication that those Courts are assuming or should assume or desire to  
14 assume most of the financial matters before the Court or on the issue of the set aside  
15 and the annulment, unless the issue of the Court granting the annulment and not  
16 setting it aside and stating that and ruling that at the 12/03/2018 hearing.

17 12. The Court, having jurisdiction to do so, hereby finds that subsequently,  
18 unless there's something confer from the Ninth Judicial District or more to the point  
19 an appellate order indicating the Court's in error of that, presumably at the scope  
20 hearing of January, the Court will not be disturbing that order that the annulment was  
21 not set aside. But we're still having the scope hearing because there are other matters  
22 that appear to be involved.

23 13. The Court, having jurisdiction to do so, hereby finds that if the Court does  
24 not state specifically it has jurisdiction on an order, but it makes a specific order, it's  
25 presumed the Court had jurisdiction.

26 14. The Court, having jurisdiction to do so, hereby finds that with regard to  
27 divorce matters, this Court has jurisdiction over the parties, the subject matter, and  
28

1 in UCCJA hearings, but in 99% of actual orders which are reiterated in court orders  
2 and decrees, they are not preceded with the words, “the Court has jurisdiction for  
3 this,” it’s presumed that the Court is proceeding with proper jurisdiction and that was  
4 already made clear. If parties want the Court to reiterate or review the jurisdictional  
5 aspects, it’ll deal with that at the annulment hearing. But again, the issue of the Court  
6 having or not having jurisdiction, if that’s erroneous, it should’ve been dealt with  
7 successfully during the appellate process or the Ninth Judicial District process.

8 15. The Court, having jurisdiction to do so, hereby finds that if the appellate  
9 court and the the Ninth Judicial District are not motivated by a request to get involved  
10 as to whether this Court has jurisdiction, that’s an implicit statement by those courts  
11 that they’re not persuaded that there’s not a jurisdictional problem. But, again, as you  
12 all indicate, it’s best to reduce these matters to memo form prior to the scope hearing  
13 in January.

14 16. The Court, having jurisdiction to do so, hereby finds that of course, if the  
15 Court issued an order, it believed it had jurisdiction. Even if that order was not  
16 preceded with the words, “the Court has jurisdiction.” Most orders are not preceded  
17 with the language, “and the Court further has jurisdiction to divide this motor  
18 vehicle,” and “the Court further has jurisdiction for the following” in order. Generic  
19 references to jurisdiction do occur in most divorce and custody orders, but when  
20 individual mandates occur within the context of an order, that’s not constantly  
21 reiterated. And if the parties felt that Court’s inability or failure to have stated in any  
22 prior orders was erroneous, this Court is not going to so rule. It should’ve been  
23 handled through the proper processes.

24 17. The Court, having jurisdiction to do so, hereby finds that if no Appellate  
25 Court approached with that issue has ruled it’s erroneous and the Ninth Judicial  
26 District didn’t seem moved to action by that argument, then this Court is not  
27 persuaded that it’s a monumental issue. But the Court does not mind at the scope  
28

1 hearing indicating that the Court has jurisdiction, if that's necessary, and here's why.  
2 That way you would have some direct findings maybe that you could challenge if that  
3 needs to be the case. But if so, I would expect those matters challenged by a writ,  
4 prior to our March hearings. But we're not going to really resolve all of these matters  
5 today that go to the merits of the arguments.

6 18. The Court, having jurisdiction to do so, hereby finds that the first thing  
7 that should've been done at that hearing of nearly two years ago, is, Judge could you  
8 add more detail of why you feel it's the case. Usually this Court errs on the side of too  
9 much repetition or detail as to why it reaches the orders it does. If the Court did not,  
10 that would've been the time to make that request. And if you missed that opportunity,  
11 the second opportunity would've been the appellate processes, the direct appeal or  
12 writ to the Appellate Courts, and that seems to be pursued. And/or number three, the  
13 original Court that was involved, the Ninth Judicial District, requesting that they  
14 become involved and weigh in on that issue is fine as well. If nobody did, after  
15 spending all that time and money to access these other Courts, you know the Court  
16 is not really sure where we are going on it.

17 19. The Court, having jurisdiction to do so, hereby finds that the issue in  
18 January is if there's no jurisdiction, the Court does not want to conduct a farce where  
19 we then proceed to two expensive March hearings where we rule on a bunch of  
20 matters, where it's going to be a tact for no jurisdiction. The Court would not expect  
21 a package appeal on direct appeal on the whole process, but would expect some sort  
22 of writ attack because the Court's not going to conduct a March hearing, dealing with  
23 the financial issues of that annulment, if failing to set aside or decline to set aside an  
24 annulment is still being attacked.

25 20. The Court, having jurisdiction to do so, hereby finds that the Court would  
26 expect that to be attacked appellate-wise, via writ, rather than a direct appeal of the  
27 whole matter in March, which would be a farce and it would be improper in the  
28

1 Court's view. So we're not going to proceed on dividing assets or ruling on financial  
2 orders in March if a party is still objecting to jurisdiction or has a direct appeal on  
3 jurisdiction. We will wait for the resolution of such writ or appellate request.

4 21. The Court, having jurisdiction to do so, hereby finds that if the Court's  
5 wrong and you want the Court to change its mind, go to the places that can tell the  
6 Court it's wrong and that they disagree and to some significant extent, you already  
7 have. And when you petition the Ninth Judicial District Court and/or the Appellate  
8 Courts and you can't obtain those kind of rulings after spending that kind of time and  
9 money, maybe that's a strong hint to parties to put their resources into attacking the  
10 merits of the case and proceeding from there. But I'll leave that for the attorneys to  
11 make these cost efficiency and time decisions and with consulting their clients. But  
12 the Court does not see any reason for further deconstruction of that issue at a hearing  
13 which is basically reserved for setting trial dates.

14 22. The Court, having jurisdiction to do so, hereby finds that the Court has  
15 already made clear, the Court already definitively ruled on this issue, and if the  
16 parties felt the Court was wrong and/or that it lack sufficient findings, they could and  
17 should have, and did to some large extent, petition the Ninth Judicial District and/or  
18 the Appellate Courts for ruling on this matter.

19 23. The Court, having jurisdiction to do so, hereby finds that to put it in  
20 simplest forms, let's say a Court rules on something: Mom gets the house and all the  
21 equities and someone objects. The parties go to the Supreme Court, and the Court  
22 says, "no, we're not reversing it." Then the parties proceed to the Court about whether  
23 it has a basis to reopen the issue on the house separate and apart from the appeal like  
24 by undisclosed evidence or set aside. If there's no basis at some collateral hearing,  
25 setting proceedings on other matters, the Court cannot just take a new shot at that  
26 issue.

1       24.     The Court, having jurisdiction to do so, hereby finds that if a Court is  
2 wrong, you take it to the Courts that can correct the Court. And if you do and its  
3 unsuccessful or you don't bother, then you don't really get a fourth bite at the apple.  
4 It's just not the way it works.

5       25.     The Court, having jurisdiction to do so, hereby finds that we can explore  
6 that at the scope hearing and if there's something in the minutes or the video record  
7 which was never reduced to an order, and it's quite possible that has occurred, which  
8 means that's a key reason to get these orders done fairly expeditiously and definitely  
9 as accurately as possible, then that's fine.

10       26.     The Court, having jurisdiction to do so, hereby finds that there were  
11 multiple orders entered confirming the annulment was to remain in place. The parties  
12 continued to argue about it, and there was some necessity of the Court to reiterate it.  
13 When that's done a couple of three times, it indicates, quite candidly, if someone  
14 didn't like something or they thought it was erroneous, they needed to take it to  
15 another Court.

16       27.     The Court, having jurisdiction to do so, hereby finds that if it's clear on  
17 the record all three times, what the findings are for this, and the Court said, "I don't  
18 have to make findings as to why I have jurisdiction and I'm not un-denying that  
19 request and I'm not going to provide any basis for the details," that's fine. The Court  
20 doubts the parties will find anything like that, but they can deconstruct the record if  
21 they want. There are a couple of separate orders which the Court has identified, so  
22 the parties have an exceptional ability to do exactly what should be done with this  
23 instead of asking a Court three or four times, and stating they don't like the Court's  
24 orders, and saying the Court shouldn't have had jurisdiction in the first place.

25       28.     The Court, having jurisdiction to do so, hereby finds that it's clear from  
26 the pattern of the style of it, that it wouldn't have mattered whether the Court stated  
27 it or not, we'd be here now a fourth time, relentlessly and doggedly on this issue. The  
28

1 parties now have a golden opportunity and if they're that convinced that this issue  
2 needs to be pursued, they need to take an appeal or a writ on the issue.

3 29. The Court, having jurisdiction to do so, hereby finds that if one of the  
4 parties are convinced the Court was in error, that may very well be, there are  
5 Appellate Courts. So if the parties don't like this issue, they're going to have to  
6 appeal it because the Court doesn't have the ability to just say it's going to change its  
7 mind because the Court "feels like it;" that would be highly prejudicial to the rights  
8 of the others. At no point did the Court say, "I'll reconsider at a scope hearing or in  
9 the future."

10 30. The Court, having jurisdiction to do so, hereby finds that the  
11 overwhelming majority of orders made by a Court are not preceded with the  
12 language, "the Court has jurisdiction." Yes, it's preceded with that in the granting of  
13 divorces or something custodial jurisdictional matters and disputes. But that is not  
14 prerequisite language; it's assumed the Court has jurisdiction. But by the Court  
15 issuing that ruling, it's saying it has the jurisdiction. So if you think that's faulty, you  
16 have the right to appeal it.

17 31. The Court, having jurisdiction to do so, hereby finds that without getting  
18 into the details of the jurisdiction today, because the Court doesn't think that's what  
19 we are here for, if Victor's counsel wants the Court to say on the record that it had  
20 jurisdiction to issue that order, the Court will say that. If it would help the parties on  
21 appeal, because it is a very direct statement by the Court and something that the  
22 parties can directly attack. Yes, each time the Court ordered that the annulments  
23 stands and is not to be set aside, the Court at that point believed and felt that it was  
24 a proper exercise of jurisdiction.

25 32. The Court, having jurisdiction to do so, hereby finds that the Court will  
26 go on the record and say that in every single order the Court has issued in any case,  
27 the Court believed it had proper jurisdiction. Unless the Court was specifically  
28

1 issuing an order that it didn't have jurisdiction, that would be an order that Courts  
2 also have jurisdiction to say, "they lack jurisdiction." So there's a circular type of  
3 thing there. But the Court is assuming, unless there's something it doesn't know  
4 about this process, that when Judges issue orders, that they believe it's a proper  
5 exercise of jurisdiction.

6 33. The Court, having jurisdiction to do so, hereby finds that if the Court's  
7 wrong, appeal it, and if the record is void of sufficient findings for the Court's  
8 exercise of jurisdiction, that probably serves your appellate position very well. But  
9 the Appellate Court's going to want to know: A, since it's assumed that Courts have  
10 jurisdiction when they issue orders, the mere failure to preface and order with "I have  
11 jurisdiction to order the following," we fall down to B, did you directly ask the Court  
12 to make findings at that time as to your concerns about why it had jurisdiction?  
13 We've identified no fewer than two and perhaps three hearings where that dialogue  
14 can and should have occurred at that time. If the Court has said everything it can, and  
15 it's said it four or five times, and the parties are still unclear, then that's their fault and  
16 their problem. But the Court cannot make itself any clearer on it at this point.

17 34. The Court, having jurisdiction to do so, hereby finds that if Victor can  
18 show at the 12/3 hearing, the first time this was addressed, when ruled the annulment  
19 was granted and not set aside, on the record at that hearing and not some subsequent  
20 hearing, where the Court said, "however that's just a temporary impression and it will  
21 not make a final order unless there's an evidentiary hearing," if Victor can identify  
22 that, then his position is absolutely correct. But it would have to be something that  
23 occurred at that hearing.

24 35. The Court, having jurisdiction to do so, hereby finds that if the Court said  
25 at the 12/3/18 hearing that this is a conditional ruling pending an evidentiary hearing  
26 and it got erroneously transported into the minutes as a final order, with no reference  
27 to evidentiary hearing. If you can find in the video record where the Court said, "it's  
28

1 a qualifying or conditional or impression the Court has but the Court is not going to  
2 make a final order on that pending an evidentiary hearing,” then you’ll need to first  
3 bring it to Mr. Willick’s attention and ask for a stipulation to have a separate  
4 evidentiary card written out on that, or deal with it at the scope hearing in January and  
5 we’ll see where we need to go.

6 36. The Court, having jurisdiction to do so, hereby finds that if the Court made  
7 those type of commentaries which offers you additional details behind the Court’s  
8 rationale for these type of rulings, and those are highly erroneously idiotic on the part  
9 of the Court, then the Court did Victor a great favor by providing those details  
10 because they can be directly attacked appellate wise and presumably pretty clearly  
11 rectified if they’re of the degree of glaring error that he indicates. But the Court is not  
12 going to conduct a case where it rules on something three or four times and then we  
13 start fanatically deconstructing every sentence, where we say, “Yeah, but did you  
14 really rule on it or when you reiterated the ruling, was that really ruling on the second  
15 or third time.”

16 37. The Court, having jurisdiction to do so, hereby finds that a reiteration  
17 probably is ruling on it a second or third time, because a reiteration at subsequent  
18 hearings, logically, are the result of some pretty aggressive re-argument or  
19 reintroduction of that issue on the part of Counsel. Otherwise, logically speaking, the  
20 Court would’ve never gone down a road that was a dead-end road and that no one had  
21 any interest in reviving. But if the Court is largely erroneous about all this, go back  
22 past through the record, and take it through the appellate route and/or bring it to the  
23 attention of the Court at the scope hearing in January.

24 38. The Court, having jurisdiction to do so, hereby finds that in the written  
25 order from today, the Court wants every line to say that every time the Court opened  
26 its mouth, it stated that it had jurisdiction to open its mouth to consider and discuss  
27 an issue that we have considered today. The Court knows that’s going to sound  
28

1 ludicrous, but in the order from today, every time those hearings were set, the Court  
2 had determined it had jurisdiction to set the January hearing and for every order from  
3 today, it's either to state that the parties stipulated that the Court has jurisdiction, or  
4 that the parties attacked or challenged the jurisdiction. Every order of today, no  
5 matter how inane it makes the order sound, that is required. Either that the Court  
6 stated and made findings it had jurisdiction or that the parties stipulate that the Court  
7 has jurisdiction.

8 39. The Court, having jurisdiction to do so, hereby finds that it can be framed  
9 however you want, but as long as it states that every time this Court opened its mouth,  
10 entertained argument, issued orders, accepted stipulations, that it had jurisdiction to  
11 do so. The Court doesn't care how asinine that makes the order sound, but that's the  
12 absolute insistence of counsel because otherwise we're going to be going in the same  
13 circular, almost ludicrous fashion. And the Court is not going to allow these parties  
14 who are already under great stress and financial strain to spend their funds on this  
15 type of exercise. So make sure that the order is phrased in that way.

## 16 17 **THE COURT ORDERS**

18 1. The Court, having jurisdiction to do so, hereby orders, that a hearing to  
19 discuss the scope of the March trial is set for January 21<sup>st</sup> at 1:30 p.m.

20 2. The Court, having jurisdiction to do so, hereby orders, that the initial briefing  
21 for the January 21<sup>st</sup> hearing should be filed by January 8, and if anyone has any  
22 replies, they should be filed by January 15. Replies are limited to under 10 pages,  
23 because they should only be hitting on a few clarification points.

24 3. The Court, having jurisdiction to do so, hereby orders, that the contempt  
25 issues are combined with the trial issues set for March.

26 4. The Court, having jurisdiction to do so, hereby orders that the Court already  
27 definitively ruled on the issue of setting aside the annulment and/or whether the  
28

annulment stands, and if the parties felt the Court was wrong and/or that it lack sufficient findings, they could and should have, and did to some large extent, petition the Ninth Judicial District and/or the Appellate Courts for ruling on this matter.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**DISTRICT COURT JUDGE**

Respectfully Submitted By:  
WILLICK LAW GROUP

Approved as to Form and Content:  
LEVENTHAL AND ASSOCIATES, PLLC

**MARSHAL S. WILLICK, ESQ.**  
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**LORIEN K. COLE, ESQ.**  
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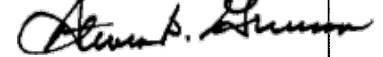
**TODD M. LEVENTHAL, ESQ.**  
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Attorneys for Plaintiff

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# EXHIBIT G



**ORDR**

WILICK LAW GROUP  
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**DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA**

HAMID SHEIKHAI,  
Plaintiff,

vs.

VICTOR BOTNARI,  
Defendant.

CASE NO: D-18-575686-L  
DEPT. NO: R

DATE OF HEARING: N/A  
TIME OF HEARING: N/A

**ORDER FROM DECEMBER 3 HEARING**

This matter came on for hearing before the Honorable Bill Henderson, District Court Judge, Family Division, Hamid Sheikhai was present and represented by his counsel, Marshal S. Willick, Esq., and Lorien K. Cole, Esq.; Victor Botnari was present and represented by his counsel, Todd M. Leventhal, Esq. The Court, having reviewed the papers and pleadings on file herein, and after entertaining oral argument from counsel, made the following findings and orders.

**THE COURT HEREBY FINDS:**

1. The Court made a number of findings on the record, and instructed counsel to attach a court-certified copy of the transcript to the *Order* as Exhibit "1," which is so attached.

1  
2 **THE COURT ORDERS**

3 1. The marriage between Hamid and Victor shall remain annulled.

4 2. The court minutes from the October 16, 2018 hearing shall be amended.

5 3. Classification of the \$10,000 per month payment is deferred.

6 4. All electronic communications between the parties shall be provided at the  
7 next hearing.

8 5. Without prejudice, Hamid shall release the lease agreement on the “marital  
9 residence” upon the condition that Victor pays the \$3,000 per month on the leasehold  
10 (increasing to \$3,500 in January, 2019). Once Victor provides proof he paid the  
11 \$3,000 on the leasehold, Hamid shall cooperate to give the current lessees 30 days’  
12 notice to vacate the residence to allow Victor to re-enter the premises.<sup>1</sup>

13 6. Hamid shall file a *Financial Disclosure Form (FDF)* prior to the next hearing  
14 scheduled for January 14.

15 7. Victor’s *Motion for Order to Show Cause* that is currently scheduled for  
16 January 15, 2019 at 9:00 a.m. is moved to January 14, 2019 at 1:30 p.m.

17 8. The evidentiary hearing re: Set Aside scheduled for January 22, 2019 and  
18 January 23, 2019 at 1:30 p.m. are vacated.

19 9. The hearing re: Trial Viability scheduled for March 4, 2019 at 11:00 a.m. is  
20 vacated.

21 10. The evidentiary hearing re: Financial Issues scheduled for April 22, 2019  
22 and April 23, 2019 at 1:30 p.m. are vacated.

23 11. Attorney's Fees requests are deferred to the next hearing.  
24  
25  
26  
27

28  

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<sup>1</sup> Transcript of the December 3 hearing, page 99, lines 6-9; page 107, lines 1-20.

12. Attorney Willick/Cole shall prepare the Order from today's hearing and may attach the Transcript, Atty Leventhal shall sign as to form and content.

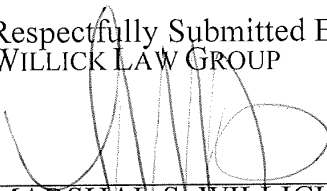
DATED this 2 day of APRIL, 2019.

  
DISTRICT COURT JUDGE

Respectfully Submitted By:  
WILICK LAW GROUP

Approved as to Form and Content:  
LEVENTHAL AND ASSOCIATES, PLLC

SIGNATURE  
REFUSED

  
MARSHALL S. WILICK, ESQ.  
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LORIEN K. COLE, ESQ.  
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# EXHIBIT H

*Steven D. Grierson*

**ORDR**

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Attorneys for Plaintiff

**DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA**

HAMID SHEIKHAI,  
Plaintiff,

vs.

VICTOR BOTNARI,  
Defendant.

CASE NO: D-18-575686-L  
DEPT. NO: R

DATE OF HEARING: N/A  
TIME OF HEARING: N/A

**ORDER FROM JANUARY 14 HEARING**

This matter came on for hearing before the Honorable Bill Henderson, District Court Judge, Family Division, Hamid Sheikhai was present and represented by his counsel, Marshal S. Willick, Esq., and Lorien K. Cole, Esq.; Victor Botnari was present and represented by his counsel, Todd M. Leventhal, Esq. The Court, having reviewed the papers and pleadings on file herein, and after entertaining oral argument from counsel, made the following findings and orders.

**THE COURT HEREBY FINDS:**

1. The parties are here on three issues: 1) whether there is a basis to proceed on Defendant's *Order to Show Cause*; 2) The Sun Lake sublease; and 3) revisiting the issue of attorney's fees.

*5/19/19*

2. The parties agreed that Victor could re-enter the home located at 2964 Sun Lake Drive, Las Vegas, Nevada 89128, on or about February 11, 2019, and shall be responsible for paying all expenses related to the home, including the mortgage, the utilities, and the HOA fees on the subject property.

3. There is insufficient basis to issue an *Order to Show Cause*.

## THE COURT ORDERS

1. The annulment stands.

2. Victor shall take occupancy of the home located at 2964 Sun Lake Drive, Las Vegas, Nevada 89128, on or about February 11, 2019, and shall maintain the \$3,500 expenses related to the home, including the mortgage, the utilities, and the HOA fees from that date forward. Victor shall reserve his right to argue in his favor, including attorney's fees, if he believes that Hamid renting the residence to a third party caused clearly documented financial damage to him. Victor shall pay the mortgage directly to the bank, and the parties shall cooperate to ensure that Victor gets all bills and statements transferred into his name so he can pay the utilities and HOA fees directly.

3. Any requested *Orders to Show Cause* are deferred to trial. No contempt shall issue at this time.

4. Each side shall incur their own attorney's fees.

5. The classification of the \$10,000 per month Hamid is paying to Victor is deferred to trial.

6. A status check is set for March 26, 2019 at 1:30 p.m.

\* \* \* \* \*

\*\*\*\*\*


1 7. Willick Law Group shall prepare the order, Mr. Leventhal to sign.


2 DATED this 17<sup>th</sup> day of JULY, 2019.

3  
4  
5  
6   
DISTRICT COURT JUDGE

8 Respectfully Submitted By:  
9 WILICK LAW GROUP

Approved as to Form and Content:  
LEVENTHAL AND ASSOCIATES, PLLC

10  
11   
MARSHAL S. WILICK, ESQ.  
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Attorney for Defendant

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# EXHIBIT I

1 Case No. 2018-DI-00087

2 Dept. No. II

RECEIVED

MAY - 1 2020

Douglas County  
District Court Clerk

FILED

2020 MAY -1 AM 11:38

BOBBIE R. WILLIAMS

CLERK

A. NEWTON

BY DEPUTY

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

7 IN AND FOR THE COUNTY OF DOUGLAS

9 IN THE MATTER OF THE MARRIAGE  
10 OF:

11 HAMID SHEIKHAI AND VICTOR  
12 BOTNARI,

ORDER DENYING MOTION TO SET  
ASIDE DECREE

13 Petitioners.  
14 \_\_\_\_\_/

15 THIS MATTER comes before the Court pursuant to a *Motion to*  
16 *Set Aside the Decree of Annulment* filed by Petitioner, Victor  
17 Botnari ("Victor"), on December 30, 2019. An *Opposition to the*  
18 *Motion to Set Aside the Decree of Annulment* was filed by  
19 Petitioner, Hamid Sheikhai ("Hamid") on January 21, 2020. Victor  
20 filed a *Reply to the Opposition* on January 31, 2020. Good cause  
21 appearing, the Court finds and orders as follows:

22 The parties were married on May 4, 2014. On March 28, 2018,  
23 the parties filed a *Joint Petition for Annulment*. On March 30,  
24 2018, the Court entered a Decree of Annulment. At the time of the  
25 Decree, Both parties resided in Clark County, Nevada.

26 On June 4, 2018, Victor filed a *Motion to Change Venue*. On  
27 June 14, 2018, Hamid filed an *Opposition to the Motion to Change*  
28 *Venue*. On June 25, 2018, Victor filed a *Reply to the Opposition*.

THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

1 On July 13, 2018, this Court entered an *Order Granting Motion to*  
2 *Change Venue* and transferred the case to Clark County, Nevada.

3 While the change of venue to Clark County was warranted on  
4 the basis of convenience of the parties, it was also mandated by  
5 NRS 13.050(1)(b). Venue has not been transferred back to this  
6 Court and there would be no basis for re-transfer as the parties  
7 continue to reside in Clark County and have been in active  
8 litigation there since 2018. This Court no longer has  
9 jurisdiction.

10 IT IS HEREBY ORDERED that Victor's *Motion to Set Aside the*  
11 *Decree of Annulment* is DENIED.


12 DATED this 1<sup>st</sup> day of May, 2020.

13

14

15

16

  
THOMAS W. GREGORY  
DISTRICT JUDGE

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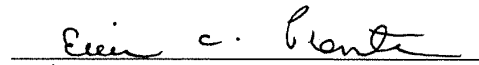
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Erin C. Plante

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THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
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# EXHIBIT J