

IN THE SUPREME COURT OF THE STATE OF NEVADA

TKNR, INC., a California Corporation,

Appellant,

v.

WLAB INVESTMENT, LLC, a Nevada Limited
Liability Company,

Respondent.

Supreme Court Case No. 85620

District Court Case No. A-18-785917-C

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Dec 06 2022 02:27 PM
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department VII County Clark

Judge Honorable Linda Marie Bell District Ct. Docket No. A-18-785917-C

2. **Attorney filing this docket statement:**

3.

Attorney Michael B. Lee, Esq. Telephone 702-477-7030

Firm Michael B. Lee, P.C.

Address 1820 E. Sahara Avenue, Suite 110, Las Vegas, NV. 89104

Client(s) TKNR, Inc.

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

4. **Attorney(s) representing respondent(s):**

Attorneys N/A Telephone N/A
Firm N/A
Address N/A
Client(s) WLAB IINVESTMENT, LLC

5. **Nature of disposition below (check all that apply):**

- | | | | |
|-------------------------------------|------------------------------------|--------------------------|---|
| <input type="checkbox"/> | Judgment after bench trial | <input type="checkbox"/> | Dismissal: |
| <input type="checkbox"/> | Judgment after jury verdict | <input type="checkbox"/> | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> | Summary judgment | <input type="checkbox"/> | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> | Default Judgment | <input type="checkbox"/> | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> | Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> | <input type="checkbox"/> Other (Res Judicata): |
| <input type="checkbox"/> | Grant/Denial of injunction | <input type="checkbox"/> | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> | Grant/Denial of declaratory relief | <input type="checkbox"/> | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> | Review of agency determination | | |
| <input checked="" type="checkbox"/> | Other Disposition (specify): | | Denial of Attorneys' Fees following Summary Judgment |

6. **Does this appeal raise issues concerning any of the following:** No.

- ☐ Child custody
☐ Venue
☐ Termination of parental rights

7. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

WLAB INVESTMENT, LLC. v. TKNR, Inc., et al.
Supreme Court Docket Nos. 82835; 83051

8. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A.

9. **Nature of action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

On December 11, 2018, Plaintiff initiated this action by filing the complaint against Defendants TKNR, Wong, Lin, Investpro, and Nickrandt for: (1) Recovery under NRS Chapter 113 [Defendants TKNR and WONG]; (2) Constructive Fraud [Defendants Investpro and Nickrandt]; (3) Common Law Fraud [Defendants Investpro, Nickrandt, and Lin]; and (4) Fraudulent Inducement [All Defendants].

On March 4, 2019, Plaintiff filed the Amended Complaint to include all Defendants identified in the caption of this pleading, also adding causes of action for: (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and

Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR, Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro].

On November 19, 2020, Defendants served an Offer of Judgment on Plaintiff that offered to allow judgment to be taken against Defendants in the amount of \$5,000. Notably, the Offer of Judgment included a detailed recitation of the relevant facts and circumstances illustrating the reasonableness of the offer.

On November 23, 2020, Plaintiff filed its second amended complaint (“SAC”) to include an additional cause of action for: (15) Abuse of Process [All Defendants]. Notably, the amendment seemed not to be based in law or fact, but as retaliation following Defendants inclusion of the counterclaim for abuse of process against Plaintiff. In large part, the SAC completely failed to acknowledge the waivers by Ms. Zhu related to the inspection of the Property and/or the open and obvious nature of the alleged defects in the then 63-year-old Property at the time of purchase.

On December 15, 2020, Defendants filed their Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (“MSJ”), which was originally set for hearing on January 28, 2021, but was eventually continued to March 11, 2021. Plaintiff filed its Opposition to Defendant's Motion for Summary Judgment Countermotion for Continuance Based on NRCp 56(f) and Countermotion for Imposition of Monetary Sanctions (“Opposition”). On January 21, 2021, Defendants filed a Reply to the Opposition (“Reply”) and, on January 29, 2021, provided a Supplement to the MSJ (“Supplement”) on January 29, 2021.

On March 11, 2021, a hearing was held on Defendant’s MSJ and the Opposition. This Honorable Court determined that summary judgment was appropriate and granted the MSJ “as to all claims and attorney’s fees[.]” Notably, the original order that was proposed filed on March 30, 2021, as proposed by Defendants, included a provision related to the filing of an Order to Show Cause pursuant to NRCp §11(c)(3). However, that language was removed unilaterally by Honorable Judge Escobar, who then filed the Amended Order.

On April 6, 2021, Defendants filed an Affidavit in Support of Attorneys’ Fees requested in the MSJ and granted by the March 30, 2021, Order. On April 7, 2021, Honorable Judge Escobar filed the Amended Order, which removed the order to show cause language that was included in the March 30, 2021, Order pursuant to NRCp 11(c)(3).

On March 16, 2021, Plaintiff filed a Motion to Reconsider the Amended Order. Defendants filed an Opposition to the Motion for Reconsideration on April 30, 2021. Plaintiff filed its reply to that opposition on May 11, 2021, and the hearing was held on May 17, 2021, in chambers. Notice of Entry of the Judgment was entered on May 25, 2022. Notably, Plaintiff never opposed the specific amounts requested in the Affidavit in Support of Attorneys’ Fees filed by Defendants on April 6, 2021.

On April 26, 2021, Plaintiff filed its first Notice of Appeal, appealing the Amended Order granting summary judgment in favor of Defendants and the awarding attorneys’ fees.

On June 8, 2021, Plaintiff filed its second Notice of Appeal, appealing the Judgment related to the Amended Order and Plaintiff's Affidavit in Support of Attorneys' Fees.

On December 21, 2021, following the Court's approval of the Petition for Writ of Mandamus, this Honorable Court entered an Order indicating that the Judgment is amended to vacate the portion of the Judgment that imposed sanctions against Plaintiff's former counsel, Benjamin Childs, Esq. Notably, there were some other procedural hurdles leading to the Order Amending the Judgment, but the facts and circumstances related thereto are not relevant to this appeal.

On May 12, 2022, the Court entered its decision affirming this Honorable Court's decision to grant summary judgment in favor of Defendants on all of Plaintiff's claims and Defendants' counterclaims, but reversing the Judgment based on procedural concerns. The Court concluded that, "the district court correctly found that no genuine issue of material fact existed to justify denying summary judgment." However, the Court did note that the district court-imposed sanctions without first giving the offending party "notice and reasonable opportunity to respond." As such, the Court reversed the award of Defendants' attorney's fees.

On June 14, 2022, Plaintiff petitioned the Court for rehearing of the Appeal, which was subsequently denied by the Court on June 29, 2022.

On July 26, 2022, the Nevada Supreme Court Clerk's Certificate/Remittitur Judgment was filed with this Honorable Court.

On August 10, 2022, Defendants re-filed their Motion for Attorneys' Fees and Costs, which was supplemented on August 25, 2022. Plaintiff opposed the Motion, and a hearing was set on the matter. Following the hearing, the district court denied the Motion's requested relief in its entirety.

10. Issues on appeal. State concisely the principal issue(s) in this appeal:

1. Did the district court err in failing to award fees and costs under Rule 11?
2. Did the district court err in determining that TKNR's request for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 was untimely?
3. Did the district court err in determining the request for attorney fees based on the Residential Purchase Agreement was untimely?

11. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: None.

12. Constitutional issues. If this appeal challenges the constitutionality of any statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A X Yes No

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13. **Other issues.** Does this appeal involve any of the following issues? No
 Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
 An issue arising under the United States and/or Nevada Constitutions
 A substantial issue of first-impression
 An issue of public policy
 An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
 A ballot question
14. **Assignment to the court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case and include an explanation of their importance or significance:
- This matter is presumptively retained by the Court of Appeals under NRAP 17(b)(7).
15. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A
- Was it a bench or jury trial? N/A
16. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? No

TIMELINESS OF NOTICE OF APPEAL

17. **Date of entry of written judgment or order appealed from** October 18, 2022. **See Exhibit 1.** Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.
- (a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:
N/A
18. **Date written notice of entry of judgment or order served** October 25, 2022. Attach a copy, including proof of service, for each order or judgment appealed from.
- (a) Was service by delivery _____ or by mail X Electronic Service
19. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**
- (a) Specify the type of motion, and the date and method of service of the motion, and the date of filing. N/A.
- | | |
|-------------------------------------|---------------------------|
| <input type="checkbox"/> NRCP 50(b) | Date of filing <u>N/A</u> |
| <input type="checkbox"/> NRCP 52(b) | Date of filing <u>N/A</u> |
| <input type="checkbox"/> NRCP 59 | Date of filing <u>N/A</u> |

NOTE: Motions made pursuant to NRCP 60 or motion for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

- (b) Date of entry written order resolving tolling motion N/A
(c) Date of written notice of entry of order resolving tolling motion was serve N/A

Was service by:

- ☐ Delivery
☐ Mail

20. **Date notice of appeal was filed** October 31, 2022.

- (a) If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

21. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other**
NRAP 4(a).

22. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1) X NRS 155.190 _____ (specify subsection) _____
NRAP 3A(b)(2) _____ NRS 38.205 _____ (specify subsection) _____
NRAP 3A(b)(3) _____ NRS 703.376 _____
Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from the District Court Order after a final judgment was entered in an action or proceeding commenced in the court in which the judgment was rendered.

23. **List all parties involved in the action in the district court:**

- (a) Parties:

Plaintiffs: WLAB INVESTMENT, INC.

Defendants: TKNR INC.

CHI ON WONG aka CHI KUEN WONG

KENNY ZHONG LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka

WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN

LIWE HELEN CHEN aka HELEN CHEN

YAN QIU ZHANG

INVESTPRO LLC dba INVESTPRO REALTY

MAN CHAU CHENG

JOYCE A. NICKRANDT

INVESTPRO INVESTMENTS LLC

INVESTPRO MANAGER LLC

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Other – Inclusion of all Defendants would be superfluous and unnecessary given the nature of the appeal, i.e., recovery of attorneys' fees and costs paid, all of which were paid by TKNR on behalf of all Defendants.

24. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim.

1. WLAB's Claim for Recovery under NRS Chapter 113
2. WLAB's Claim for Constructive Fraud
3. WLAB's Claim for Common Law Fraud
4. WLAB's Claim for Fraudulent Inducement
5. WLAB's Claim for Fraudulent Concealment
6. WLAB's Claim for Breach of Fiduciary Duty
7. WLAB's Claim for RICO
8. WLAB's Claim for Damages under NRS 645.257(1)
9. WLAB's Claim for Failure to Supervise, Inadequate Training and Education
10. WLAB's Claim for Fraudulent Conveyance
11. WLAB's Claim for Civil Conspiracy
12. WLAB's Claim for Breach of Contract
13. WLAB's Claim for Breach of Implied Covenant of Good Faith and Fair Dealing
14. WLAB's Claim for Abuse of Process

Summary Judgment was granted in favor of Defendants on all of the aforementioned claims on April 7, 2022; WLAB's Motion for Reconsideration was denied on May 25, 2021.

25. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the right and liability of ALL the parties to the action below:

Yes X No

26. If you answered "No" to the immediately previous question, complete the following:

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes No x

- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is not just reason for delay and an express direction for the entry of judgment:

Yes No x

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27. **If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The Decision and Order is independently appealable under NRAP 3A(b)(1). The underlying Decision and Order deny attorneys’ fees and costs for TKNR, Inc.

28. **Attach file-stamped copies of the following documents:**

- The last-filed complaint, counterclaims, cross-claims and third party claims Attached as **Exhibit 2**
 - Any tolling motion(s) and order(s) resolving tolling motion(s)
 - Order of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
 - Any other order challenged on appeal attached as **Ex. 2**
 - Notices of entry for each attached order attached as **Exhibit 3**
-

Dated this 6th day of December, 2022.

/s/ Michael Matthis
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
Fax: (702) 477.0096
mike@mblnv.com

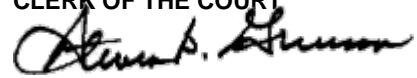
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of December, 2022, I placed a copy of the **DOCKETING STATEMENT** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court's electronic filing system to the e-mail address listed below:

Frank Miao
9101 Quiet Cove Way
Las Vegas, NV 89117
frankmiao@yahoo.com
Plaintiff

/s/Mindy Pallares
An employee of MICHAEL B. LEE, P.C.

EXHIBIT 1



BENJAMIN B. CHILDS, ESQ.
Nevada Bar # 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com
Attorney for Plaintiff/Counterdefendant

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC

Plaintiff/Counterdefendant

vs.

Case # A-18-785917-C
Dept # 14

TKNR, INC, a California Corporation, and
CHI ON WONG aka CHI KUEN WONG, an individual, and
ZHONG KENNY LIN aka KENNY ZHONG LIN aka KEN
ZHONG LIN aka KENNETH ZHONG LIN aka WHONG
K.LIN aka CHONG KENNY LIN aka ZHONG LIN, an
individual, and LIWE HELEN CHEN aka HELEN CHEN,
an individual and YAN QIU ZHANG, an individual, and
INVESTPRO LLC dba INVESTPRO REALTY,
a Nevada Limited Liability Company, and
MAN CHAU CHENG, an individual, and
JOYCE A. NICKRANDT, an individual and
INVESTPRO INVESTMENTS I LLC, a Nevada Limited
Liability Company, and INVESTPRO MANAGER LLC,
a Nevada Limited Liability Company, and
Does 1 through 15 and Roe Corporations I - XXX

Defendants/Counterclaimants

SECOND
AMENDED
COMPLAINT

AND RELATED ACTIONS

Comes now Plaintiff W L A B Investment, LLC [hereinafter WLAB or
Plaintiff] and files this SECOND AMENDED COMPLAINT and for its causes of
action states as follows:

///

1 PLAINTIFF'S ALLEGATIONS OF FACT

2 A. IDENTITY OF DEFENDANTS

- 3
- 4 1. Defendant TKNR, INC, [hereinafter TKNR] was at all relevant times a
- 5 California Corporation doing business in Clark County, Nevada.
- 6 2. INVESTPRO LLC was at all relevant times a Nevada Limited Liability
- 7 Company dba INVESTPRO REALTY [hereinafter Investpro]. Investpro is a
- 8 real estate brokerage holding Nevada license # B.0144660.llc and a
- 9 property management company holding Nevada license # PM.0166824.bkr,
- 10 which licenses are registered to JOYCE A. NICKRANDT [herinafter
- 11 Nickrandt].
- 12 3. Nickrandt is a Nevada resident who, during all time relevant hereto, made
- 13 direct factual representations as TKNR's agent, WLAB's agent and
- 14 Investpro's agent. At all times relevant to this case, Nickrandt was a
- 15 manager of Investpro.
- 16
- 17 4. CHI ON WONG aka CHI KUEN WONG [hereinafter Wong] is a California
- 18 resident who owns and controls TKNR, INC and is the alter ego of TKNR.
- 19 TKNR was and is influenced and governed by Wong. There must is such a
- 20 unity of interest and ownership between Wong and TKNR that one is
- 21 inseparable from the other. Adherence to the fiction of separate entity
- 22 between Wong and TKNR would sanction a fraud or promote injustice.
- 23 5. ZHONG KENNY LIN aka KENNY ZHONG LIN aka KEN ZHONG LIN aka
- 24 KENNETH ZHONG LIN aka WHONG K.LIN aka CHONG KENNY LIN aka
- 25 ZHONG
- 26 LIN [hereinafter Lin] is a Nevada resident who, during all time relevant
- 27 hereto, made direct factual representations set forth below as both TKNR's
- 28 agent and Investpro's Chief Executive Officer and agent. At all times

relevant, Lin was also Chief Executive Officer of INVESTPRO INVESTMENT LLC and INVESTPRO MANAGER LLC. Lin is also founding chairman of INVESTPRO MANAGER LLC. Lin is also the Chairman and founder of Investpro.

6. YAN QIU ZHANG is a Nevada resident who, during all time relevant hereto, was a manager and registered agent of Investpro.

7. LIWEI HELEN CHEN aka HELEN CHEN [Chen] is a Nevada resident who, during all time relevant hereto, was a real estate agent employed, associated and/or the agent of Investpro who represented Plaintiff as the buyer of the Subject Property. Chen was the buyer's agent, representing Plaintiff.

8. INVESTPRO INVESTMENTS I LLC was at all relevant times a Nevada Limited Liability Company. INVESTPRO INVESTMENTS I LLC is the Flipping Fund described in below.

9. INVESTPRO MANAGER LLC was at all relevant times a Nevada Limited Liability Company. INVESTPRO MANAGER LLC presented and solicited investors for the Flipping Fund described below. INVESTPRO MANAGER LLC managed Investpro INVESTMENTS I LLC, the Flipping Fund, and also managed the renovation project of the Subject Property prior to the sale of the Subject Property to Plaintiff. INVESTPRO MANAGER LLC used TKNR as a sham owner of the Subject Property while in reality INVESTPRO MANAGER LLC retained control of all decisions regarding the Subject Property.

10. MAN CHAU CHENG is a Nevada resident who, during all time relevant hereto, was a manager of INVESTPRO MANAGER LLC and was a founder of INVESTPRO MANAGER LLC.

11. The true names of Defendants DOES 1 through 5 and ROE CORPORATIONS I - X, inclusive, are unknown to Plaintiff at this time.

1 Plaintiff sues those Defendants by such fictitious names pursuant to NRCP
2 10 (a). Plaintiffs are informed and believe, and based on that information
3 and belief allege, that each of the Defendants designated as a DOE or ROE
4 is legally responsible for the events and happenings referred to in this
5 complaint, and/or unlawfully caused the injuries and damages to Plaintiff
6 alleged in this complaint, or who have an interest in the subject property as
7 set forth below. When their true names and capacities of Doe or Roe
8 Defendants are ascertained Plaintiff, if appropriate, will amend his
9 Complaint accordingly to insert the correct name and capacity herein.

10 12. The true names of Defendants DOES 6 through 10 and ROE
11 CORPORATIONS XI -XX, inclusive, are unknown to Plaintiff at this time.
12 Plaintiff sues those Defendants by such fictitious names pursuant to NRCP
13 10 (a). Plaintiffs are informed and believe, and based on that information
14 and belief allege, that each of the Defendants designated as a DOE or ROE
15 were the recipients of the assets immediately before, at or following the
16 dissolution of Investpro INVESTMENTS I LLC in violation of NRS
17 CHAPTER 112 - Uniform Fraudulent Transfer Act. When their true names
18 and capacities of Doe or Roe Defendants are ascertained Plaintiff, if
19 appropriate, will amend his Complaint accordingly to insert the correct name
20 and capacity herein.

21 13. The true names of Defendants DOES 11 through 15 and ROE
22 CORPORATIONS XXI - XXX, inclusive, are unknown to Plaintiff at this
23 time. Plaintiff sues those Defendants by such fictitious names pursuant to
24 NRCP 10 (a). Plaintiffs are informed and believe, and based on that
25 information and belief allege, that each of the Defendants designated as a
26 DOE or ROE were the recipients of the assets immediately before, at or
27 following the dissolution of TKNR in violation of NRS CHAPTER 112 -
28 Uniform Fraudulent Transfer Act. When their true names and capacities of

1 Doe or Roe Defendants are ascertained Plaintiff, if appropriate, will amend
2 his Complaint accordingly to insert the correct name and capacity herein

3 14. This Court has jurisdiction and authority to issue judgment in this matter per
4 NRS 13.010.

5
6 B. TRANSACTIONS RESULTING IN THIS LAWSUIT
7

8 15. That on or about December 15, 2017 TKNR sold Plaintiff a parcel of real
9 property with a residential rental Unit A, Unit B and Unit C on it, specifically
10 the real property located at 2132 Houston Dr Las Vegas, NV, referred to
11 herein as the Subject Property. The Subject Property is a residential rental
12 income multifamily apartment.

13 16. Investpro was at all relevant times the property manager on behalf of
14 INVESTPRO MANAGER LLC and/or TKNR from September 30, 2015 to
15 December 15, 2017, on behalf of Plaintiff from December 15, 2017 to July
16 30, 2018 for the Subject Property.

17 17. Lin is the manager of a Flipping Fund and also represents himself as the
18 "CEO of Investpro Investment LLC & Investpro Manager LLC". The
19 Flipping Fund is represented in promotional material as follows :
20

21
22 FLIPPING FUND
23 INVESTPRO INVESTMENTS I LLC
24 PRESENT BY INVESTPRO MANAGER LLC
25 KENNY LIN
26 Phone : +1 (702) 726-0000
27 Email : zhong.kenny@gmail.com

- 28
1. TERM : 1-3 YEARS
 2. MINIMUM UNITS: \$50,000 MINIMUM, \$1000 PER UNIT.

3. USE OF FUND: FLIPPING RESIDENTIAL PROPERTIES IN LAS VEGAS.
4. RETURNS: 8 % PREFERRED PER ANNUL PAYS EVERY QUARTER, HEN AFTER ALL MONEY RETURNED TO INVESTORS, THE NET PROCEED SPLIT 75% TO INVESTORS AND 25 % TO MANAGER LLC.
5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015

WHAT'S FLIPPING FUND?

Flipping Fund is established by Investro Investments Foundation. The fund will be investing on purchasing value increasing real estates in Las Vegas. Once reached the term, the property will be sold out. Profits will be put back into the fund for investing another property.

18. INVESTPRO INVESTMENTS I LLC is the business entity used by Lin for the Flipping Fund. Lin is the Chief Executive Officer of INVESTPRO INVESTMENTS I LLC.
19. INVESTPRO MANAGER LLC is the business entity used by Lin to present and solicit investors and funds to the Flipping Fund. INVESTPRO MANAGER LLC was also the project manager for renovation of the Subject Property as described below. Lin is the Chief Executive Officer of INVESTPRO MANAGER LLC.
20. Prior to the sale of the Subject Property, INVESTPRO MANAGER LLC performed as a general contractor without being licensed as a general contractor in that INVESTPRO MANAGER LLC identified scope of renovation, demolition, and construction work, managed the renovation, demolition, and construction work on the Subject Property from soliciting

- 1 subcontractors bids, evaluating bids from subcontractor, awarding contracts
2 to subcontractors, monitoring subcontractor work and paying
3 subcontractors, handypersons and unlicensed workers. INVESTPRO
4 MANAGER LLC contracted for extensive renovation, demolition, and
5 construction work on the Subject Property.
- 6 21. INVESTPRO MANAGER LLC was the project manager for the renovation
7 of the Subject Property.
- 8 22. Investpro was also the real estate broker in the sale, representing both the
9 buyer [WLAB] and the seller [TKNR].
- 10 23. TKNR and it's agent Investpro marketed and listed for sale.
- 11 24. Seller's Real Property Disclosure Form was prepared, presented and
12 initialed by Lin on or about August 7, 2017.
- 13 25. TKNR failed to disclose one or more known condition(s) that materially
14 affect(s) the value or use of the Subject Property in an adverse manner, as
15 required by NRS Chapter 113, in a particular NRS 113.130.
- 16 26. TKNR and it's agent Investpro marketed and listed the Subject Property
17 for sale.
- 18 27. Factual statements from the August 7, 2017 Seller Real Property Disclosure
19 Form (SRPDF) are set forth in Paragraph 31 and the subsections thereof
20 state whe the disclosures were either inadequate or false. The SRPDF
21 states that it was prepared, presented and initialed by Kenny Lin.
- 22 28. All work on the Subject Property which is complained of herein was
23 performed at the direction of INVESTPRO MANAGER LLC and Investpro,
24 as TKNR's agent. Further, all work on the Subject Property which is
25 complained of herein occurred within two years prior to the sale to Plaintiff
26 and while the Subject Property was under TKNR's ownership and
27 INVESTPRO MANAGER, LLC's control.
- 28 29. Since the Subject Property is a residential rental apartment, to protect

1 tenants and consumers, the applicable local building code requires all
2 renovation, demolition, and construction work must be done by licensed
3 contractors with permits and inspections to ensure compliance with the
4 Uniform Building Code [UBC].

5 30. INVESTPRO MANAGER LLC is not a Nevada licensed general
6 contractor.

7 31. Defendants Lin, Investpro, as TKNR's agent, TKNR, Wong and
8 INVESTPRO MANAGER LLC, as the true owner of the Subject Property,
9 did not disclose any and all known conditions and aspects of the property
10 which materially affect the value or use of residential property in an adverse
11 manner, as itemized below.

- 12
- 13 a. SRPDF stated that Electrical System had no problems or defects.
14 The fact is that many new electric lines were added and many old
15 electric lines were removed by Investpro Manager LLC . The swamp
16 coolers that were removed were supplied by 110 volt power supply
17 lines. Investpro Manager LLC first added one 220v power supply line
18 for one new 5 ton heat pump package unit on one roof top area for
19 the whole building for Unit A. Unit B and Unit C.
20 Investro Manager, LLC then removed the one year old 5 ton heat
21 pump packaged unit from the roof top with power supply lines and
22 added two new 220v power supply lines for two new 2 ton heart pump
23 package units, one each for Unit B and Unit C.
24 Inestpro Manager, LLC then added one new 110 volt power supply
25 line for two window cooling units for Unit A. The electrical system
26 load for Unit A was increased due to the installation of two new
27 cooling units and required 100 amp service, but the electrical service
28 was not upgraded to 100 amp service from the existing 50 amp

1 service. Failure to upgrade the electrical service caused the fuses to
2 be blown out multiple times during the cooling seasons of 2018. The
3 tenants in Unit A could not use air conditioning units in cooling
4 seasons of 2018, causing Unit A to be uninhabitable until the Unit A
5 electrical supply panel was upgraded to 100 amp service.

6 All the electrical supply line addition and removal work were
7 performed without code required electrical load calculation, permits
8 and inspections. To save money, minimize flipping cost, minimize
9 flipping time, maximize flipping fund profits, Investpro Manager LLC
10 used unlicensed and unskilled workers to do the electrical work and
11 used low quality materials used inadequate electrical supply lines.
12 Further, to save money, minimize flipping cost, minimize flipping time,
13 maximize flipping fund profits, Investpro Manager LLC used
14 unskilled workers who did not know the UBC requirements to do the
15 electrical work. This substandard work may lead electrical lines to
16 overheat and cause fires in the attic when tenant electrical load is
17 high.

18 Further, to save money, minimize flipping cost, minimize flipping time,
19 maximize flipping fund profits, Investpro Manager LLC used
20 unskilled workers who did not know the UBC requirements to do the
21 electrical work. The outlets near the water faucets in kitchens,
22 bathrooms and laundry areas were not GFCI outlets as required by
23 the UBC.

- 24
- 25 b. SRPDF stated that Plumbing System had no problems or defects.
26 The fact is that that within two years prior to the sale to Plaintiff,
27 Investpro Manager LLC removed and plugged swamp cooler water
28 supply lines without UBC required permits and inspections. To save

1 money, minimize flipping cost, minimize flipping time, and maximize
2 flipping fund profits, Investpro Manager LLC used unlicensed and
3 unskilled workers who just plugged high pressure water supply lines
4 at rooftop instead of at ground level and who did not remove the water
5 supply lines on top of the roof, inside the attic and behind the drywall.
6 In cold winter, the high pressure water line which was left inside the
7 building may freeze and break the copper line and lead flooding in the
8 whole building.

9 Further, to save money, minimize flipping cost, minimize flipping time,
10 and maximize flipping fund profits, Investpro Manager LLC used
11 unlicensed and unskilled workers to remove and plug natural gas
12 lines for the natural gas wall furnaces without UBC required permits
13 and inspections.

14 Further, to save money, minimize flipping cost, minimize flipping time,
15 and maximize flipping fund profits, Investpro Manager LLC used
16 unlicensed and unskilled workers with little knowledge of natural gas
17 pipe connection requirements. The unlicensed and unskilled workers
18 used the wrong sealing materials and these sealing materials may
19 degrade and lead to natural gas leaks and accumulation inside the
20 drywall and the attic which may cause an explosion or fire.

21 Further, to save money, minimize flipping cost, minimize flipping time,
22 and maximize flipping fund profits, Investpro Manager LLC used
23 unlicensed and unskilled workers to completely renovate all three
24 bathrooms in the Subject Property without UBC required permits and
25 inspections. Some faucets and connections behind tile walls and
26 drywall leak and are causing moisture conditions behind tile walls and
27 drywalls.
28

1 c. SRPDF stated that Sewer System and line had no problems or
2 defects.

3 The subject property was built in 1954. Clay pipes were used at that
4 time for sewer lines. Before the sale, within few days after tenants
5 moved into apartment Unit B, they experienced clogged sewer line
6 which caused the bathrooms to be flooded. The tenants called
7 Investpro to ask them to fix the clogged pipes and address the
8 flooding issues. After this report, Investpro asked tenants to pay to
9 hire plumber to snake the sewer line. After tenants threatened to call
10 the Las Vegas code enforcement office, to save money, minimize
11 flipping cost, minimize flipping time, and maximize flipping fund
12 profits, Investpro used unlicensed and unskilled workers to snake the
13 clay sewer pipes. Licensed contractors must be hired to snake sewer
14 pipes as code required. This approach to clearing the clog may
15 break the clay sewer pipes and cause future tree root grown into
16 sewer lines and clogs in sewer lines.

17
18 d. SRPDF stated that Heating System had problems or defects.

19 No full explanation was provided, as required. Investro Manager, LLC
20 disabled natural gas heating system without UBC required permits
21 and inspections. To save money, minimize flipping cost, minimize
22 flipping time, and maximize flipping fund profits, Investpro Manager
23 LLC used unlicensed and unskilled workers with little knowledge
24 about natural gas pipe connection requirements. They used the
25 wrong sealing materials and these sealing materials may degrade and
26 lead to a natural gas leak inside the drywall and the attic and may
27 cause an explosion or fire.

28 Further, Investpro Manager LLC installed two electrical heat pump

1 heating systems without UBC required permits and inspections for
2 Unit B and Unit C. The Unit A does not have an electrical heat pump
3 heating system nor a natural gas wall furnace heating system now.
4 Unit A has to use portable electrical heaters.

- 5
- 6 e. SRPDF stated that the Cooling System had problems or defects
7 No full explanation was provided, as required. Investro Manager, LLC
8 removed old swamp cooler systems without UBC required permits and
9 inspections. To save money, minimize flipping cost, minimize flipping
10 time, and maximize flipping fund profits, Investpro used unlicensed
11 and unskilled workers to disconnect water supply lines, cover swamp
12 cooler ducting holes, and disconnect 110V electrical supply lines.
13 Further, as early as March of 2016, Investro Manager, LLC hired Air
14 Supply Cooling to install one five ton new heat pump package unit
15 with new rooftop ducting systems on one roof area to supply cooling
16 and heating air to the whole building consisting of Unit A, Unit B and
17 Unit C without UBC required weight load and wind load calculations,
18 permits and inspections. The five ton heat pumps package unit was
19 too big, too heavy and had control problems. To save money,
20 minimize flipping cost, minimize flipping time, and maximize flipping
21 fund profits, Investpro Manager LLC also used unlicensed and
22 unskilled workers to remove the one year old five ton heat pump
23 package unit with ducting system without UBC required permits and
24 inspections. All of this work was done without UBC required
25 structural calculation, permits and inspections.
26 Further, in early June, 2017, Investro Manager, LLC hired The AIR
27 TEAM to install two new two ton heat pump package units, one each
28 for Unit B and Unit C. Invespro Manager, LLC also used unlicensed

1 and unskilled workers to install two window cooling units in Unit A's
2 exterior walls. All of the above work was done without UBC required
3 permits and inspections.

4 Further, to save money, minimize flipping cost, minimize flipping time,
5 and maximize flipping fund profits, Investro Manager, LLC did not
6 replace the old, uninsulated swamp cooler ducts with new insulated
7 HVAC ducts as the UBC required. This resulted in the heat pump
8 package units being overloaded and damaged during cooling season
9 because cool air was heated by uninsulated attic hot air before
10 delivering the cooled air to the rooms. The old, uninsulated swamp
11 cooler ducts were also rusted and leaked due to high moisture air
12 from the bathroom vent fans and the clothes washer/dryer
13 combination unit exhaust vents. The heat pumps would run all the
14 time but still could not cool the rooms.

15
16 f. SRPDF stated that Smoker detector had no problems or defects
17 During Plaintiff's inspection at August 10, 2017 afternoon, some
18 smoke detectors were missing.

19
20 g. SRPDF stated that no Previous or current moisture conditions and or
21 water damage.

22 To save money, minimize flipping cost, minimize flipping time, and
23 maximize flipping fund profits, Investro Manager, LLC used
24 unlicensed and unskilled workers to vent high moisture bathroom fan
25 exhaust and washer/dryer combination unit exhaust into the ceiling
26 attic area instead of venting outside the building roof without UBC
27 required permits and inspections. The improper ventings caused high
28 moisture conditions in ceiling attic and water damages in ceiling and

1 attic. The high moisture conditions in the ceiling attic destroyed ceiling
2 attic insulations, damaged the roof decking, damaged roof trusses
3 and damaged roof structure supports.

4 To saving money, minimize flipping cost, minimize flipping time, and
5 maximize flipping fund profits, Investpro Manager LLC used
6 unlicensed and unskilled workers to complete renovation to all three
7 bathrooms without UBC required permits and inspections. Some
8 faucets and connections behind tile walls and drywall leaks and
9 caused moisture conditions behind tile walls and drywalls.

10
11 h. SRPDF stated that there was no structure defect.

12 Investpro Manager LLC added one new five ton heat pump package
13 unit with ducting systems on the one roof top area for the whole
14 building in early March, 2016 without UBC required weight load and
15 wind load calculation, permits and inspections. Due to the five ton
16 heat pump package unit being too big, too heavy and having control
17 problems to save money, minimize flipping cost, minimize flipping
18 time, and maximize flipping fund profits, Investro Manager, LLC used
19 unlicensed and unskilled workers to remove the one year old five ton
20 heat pump package unit with part of the ducting system again without
21 UBC required permits and inspections. Investpro Manager LLC
22 added two new two ton heat pump package units on the two roof top
23 areas for Unit B and Unit C with new ducting systems without UBC
24 required weight load and wind loan calculation, permits and
25 inspections.

26 Further, to save money, minimize flipping cost, minimize flipping time,
27 and maximize flipping fund profits, Investpro Manager LLC used
28 unlicensed and unskilled workers to open two new window holes on

1 exterior walls for two window cooling units in Unit A without UBC
2 required structure calculation, permits and inspections. This work
3 damaged the building structure.

4 Further, the moisture condition behind tile walls and drywall due to
5 faucets leaking damaged the building structure.

6 Further, Investpro Manager LLC's unlicensed and unskilled workers
7 used the space between two building support columns as a duct to
8 vent high moisture exhaust from the washer/dryer combination unit
9 exhaust vent from Unit A without UBC required permits and
10 inspections and this damaged the building structure.

11 The recent inspection of the exterior wall found multiple cracks which
12 indicates structural problems caused by the heavy load on the roof.

- 13
14 i. SRPDF marked Yes and NO for construction, modification,
15 alterations or repairs made without required state, city or county
16 building permits.

17 Defendants Lin, Investpro, as TKNR's agent, TKNR, and Wong did
18 not provide detailed explanations. All renovation, demolition, and
19 construction work was done by Investpro Manager LLC using
20 unlicensed, and unskilled workers without UBC required weight load
21 and wind load calculations, permits and inspections.

- 22
23 j. SRPDF stated that there were not any problems with the roof.

24 The roof of the Subject Property was damaged by changing roof top
25 HVAC units and ducting systems multiple times from October, 2015
26 to June, 2017. Investpro Manager LLC removed the existing swamp
27 coolers from roof top and covered the swamp coolers ducting holes.
28 Investpro Manager LLC added a five ton heat pump package unit with

1 a new ducting system on one roof top area in March, 2016.

2 Investpro the removed the one year old five ton heat pump package
3 unit with part of the ducting system from the one roof top area in June,
4 2017. Then Investpro Manager LLC added two two ton heat pump
5 package units on the two roof top areas in June, 2017. The work
6 damaged the roof of the Subject Property to such an extent that when
7 it rains the roof leaks. All of this renovation, demolition, and
8 construction work was done without UBC required weight load and
9 wind load calculations, permits and inspections and this damaged the
10 building roof structure.

11
12 k. SRPDF stated that no there were not any fungus or mold problems.
13 To save money, minimize flipping cost, minimize flipping time, and
14 maximize flipping fund profits, Investpro Manager LLC vented the
15 bathroom high moisture fans and the washer/dryer combination unit
16 exhaust vents into the ceiling and attic without venting outside of the
17 roof. All of this renovation, demolition, and construction work was
18 done without UBC required permits and inspections and this damaged
19 the building structure. After the purchase of the Subject Property,
20 Plaintiff discovered black color fungus mold was found inside ceiling
21 and attic.

22
23 l. SRPDF stated that there were not any other conditions or aspects of
24 the property which materially affect its value or use in an adverse
25 manner.

26 i. Problems with flooring.

27 To save money, minimize flipping cost, minimize flipping time,
28 and maximize flipping fund profits, Investpro Manager LLC

1 used unlicensed and unskilled workers to lay low quality cheap
2 ceramic tiles on the loose sandy ground rather than on a
3 strong, smooth, concrete floor base. Within few months after
4 tenants moving into the Subject Property, mass quantities of
5 floor ceramic tiles cracked and the floor buckled. These
6 cracked ceramic tiles may cut tenants' toes and create a trip
7 and fall hazard. These are code violations had to be repaired
8 before the units could be rented to tenants. The plaintiff has to
9 spend lot money to replace all ceramic tile floor in Unit C with
10 vinyl tile floor.

11 ii. Problems with the land/foundation.

12 Within few months after tenants moved into the Subject
13 Property in 2017, large quantities of floor tiles cracked and the
14 floor buckled. This indicated that there may have foundation
15 problems likely due to heavy loads by the new HVAC systems
16 and the venting of moisture into the ceiling and attic. Too much
17 weight loads on the walls caused exterior wall cracking.

18 iii. Problems with closet doors.

19 To save money, minimize flipping cost, minimize flipping time,
20 and maximize flipping fund profits, Investpro Manager LLC
21 used unlicensed and unskilled workers to install closet doors
22 with poor quality for Unit C, all closet doors fell down in three
23 months after tenant move into Unit C.

- 24
25 32. Plaintiff discovered the multiple defects and false or inaccurate statements,
26 as set forth above, after purchasing the property on December 15, 2017,.
27 33. After selling the property to Plaintiff, TKNR filed a dissolution with the State
28 of California in September, 2018 and it is unknown at this time to whom

TKNR disbursed its assets in the dissolution.

34. The assets distributed by TKNR as part of it's dissolution were all of TKNR's assets and were disbursed with the intent to default Plaintiff..

35. Investpro Investments I LLC filed a dissolution with the State of Nevada on January 28, 2019, after the initial Complaint was served. It is unknown at this time to whom Investpro Investments I LLC disbursed its assets in the dissolution.

36. The assets distributed by Investpro Investments I LLC as part of it's dissolution were all of Investpro Investments I LLC's assets and were disbursed with the intent to defraud Plaintiff.

FIRST CAUSE OF ACTION - RECOVERY UNDER NRS CHAPTER 113

[Defendants TKNR, Wong, and INVESTPRO MANAGER LLC]

37. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.

38. Due to the false or inaccurate statements of TKNR, Wong, and INVESTPRO MANAGER LLC as the true owner of the Subject Property, and/or the failure to disclose the defects set forth above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be set forth and proven at the time of trial.

39. Pursuant to NRS Chapter 113, Plaintiff is entitled to recover from TKNR, Wong and INVESTPRO MANAGER LLC treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees.

40. It has been necessary for Plaintiff to retain the services of an attorney and to

1 incur other court costs to prosecute this action. Defendants should be
2 required to pay attorneys' fees and costs incurred by Plaintiff in this action.

3 41. Due to the violation of the requirements of NRS Chapter 113 by TKNR,
4 Wong and INVESTPRO MANAGER LLC, as set forth above prior to the sale
5 to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen
6 Thousand Dollars (\$15,000.00), which amount will be set forth and proven
7 at the time of trial.

8
9 SECOND CAUSE OF ACTION - CONSTRUCTIVE FRAUD

10 [Defendants Investpro, Nickrandt and Chen]
11

12 42. Plaintiff realleges and incorporates herein all of the allegations previously
13 made in all previous paragraphs as though fully set forth herein.

14 43. Plaintiff was in a fiduciary or confidential relationship with Investpro,
15 Nickrandt and Chen for the purchase of the Subject Property.

16 44. Investpro, Nickrandt and Chen's representations set forth above were
17 deceptive or violated the confidence placed in them by Plaintiff.

18 45. Plaintiff reasonably relied on Investpro, Nickrandt and Chen's deceptive
19 representations set forth above or the expected disclosures from Investpro,
20 Nickrandt and Chen, which they did not provide.

21 46. Due to the constructive fraud of Investpro, Nickrandt and Chen set forth
22 above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount
23 in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be
24 set forth and proven at the time of trial.

25 47. It has been necessary for Plaintiff to retain the services of an attorney and to
26 incur other court costs to prosecute this action. Defendants Investpro,
27 Nickrandt and Chen should be required to pay attorneys' fees and costs
28

1 incurred by Plaintiff in this action.

2
3 THIRD CAUSE OF ACTION - COMMON LAW FRAUD

4 [Defendants Investpro, INVESTPRO MANAGER LLC , TKNR, Wong and Lin]

5
6 48. Plaintiff realleges and incorporates herein all of the allegations previously
7 made in all previous paragraphs as though fully set forth herein.

8 49. Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong and Lin
9 made misrepresentations of material fact regarding the Subject Property to
10 Plaintiff, as set forth above.

11 50. Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong and Lin
12 had knowledge of the misrepresentations of material fact regarding the
13 Subject Property to Plaintiff, as set forth above.

14 51. Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong and Lin
15 intended to defraud Plaintiff.

16 52. Plaintiff reasonably relied on the misrepresentations of material fact
17 regarding the Subject Property made by Defendants Investpro, INVESTPRO
18 MANAGER LLC, TKNR, Wong and Lin.

19 53. Due to the the misrepresentations of material fact regarding the subject
20 property made by Defendants Investpro, INVESTPRO MANAGER LLC,
21 TKNR, Wong and Lin set forth above prior to the sale to Plaintiff, Plaintiff
22 has been damaged in an amount in excess of Fifteen Thousand Dollars
23 (\$15,000.00), which amount will be set forth and proven at the time of trial.

24 54. It has been necessary for Plaintiff to retain the services of an attorney and to
25 incur other court costs to prosecute this action. Defendants Investpro,
26 INVESTPRO MANAGER LLC, TKNR, Wong and Lin should be required to
27 pay attorneys' fees and costs incurred by Plaintiff in this action.
28

1 FOURTH CAUSE OF ACTION - FRAUDULENT INDUCEMENT

2 [Defendants TKNR, INVESTPRO MANAGER LLC , Wong, Investpro and Lin]

3
4 55. Plaintiff realleges and incorporates herein all of the allegations previously
5 made in all previous paragraphs as though fully set forth herein.

6 57. Defendant TKNR, through it's agents, Wong, Investpro, INVESTPRO
7 MANAGER LLC, and Lin made misrepresentations of material fact
8 regarding the Subject Property, as set forth above.

9 58. Defendant Wong is the alter ego of TKNR.

10 59. Defendants' actions constitute Fraudulent Inducement because :

11 (1) A false representation(s) was/were made to Plaintiff as set forth above;

12 (2) Defendants TKNR, through it's agents, Wong, Investpro, INVESTPRO
13 MANAGER LLC, and Lin had knowledge or belief that, as set forth above,
14 the representations were false or they had knowledge that they had
15 insufficient basis for making the representation;

16 (3) Defendants TKNR, through it's agents, Wong, Investpro, INVESTPRO
17 MANAGER LLC, and Lin intended to induce Plaintiff to complete the
18 purchase of the Subject Property;

19 (4) Plaintiff justifiably relied upon the misrepresentation of TKNR, through
20 it's agents, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin; and

21 (5) Plaintiff suffered damages resulting from such reliance.
22

23 60. Plaintiff has been damaged as a result of the fraudulent inducement of
24 TKNR, through it's agents, Wong, Investpro, INVESTPRO MANAGER LLC,
25 and Lin .

26 62. Due to the fraudulent concealment of material fact regarding the Subject
27 Property by

28 Defendants TKNR, through it's agents, Wong, Investpro, INVESTPRO

MANAGER LLC, and Lin as set forth above prior to the sale to Plaintiff, Plaintiff has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be set forth and proven at the time of trial.

63. It has been necessary for Plaintiff to retain the services of an attorney and to incur other court costs to prosecute this action. Defendants TKNR, Investpro, Investpro Manager LLC, and Lin should be required to pay attorneys' fees and costs incurred by Plaintiff in this action.

FIFTH CAUSE OF ACTION : FRAUDULENT CONCEALMENT

[Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin]

64. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.

65. Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin concealed or suppressed material facts as set forth above.

66. Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin were under a duty to disclose the concealed facts.

67. Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin intentionally concealed or suppressed the concealed facts with the intention of defrauding Plaintiff.

68. Plaintiff did not know about the concealed facts and would have acted differently had they known.

69. Due to the concealment of material facts regarding the Subject Property made by

Defendants TKNR, Wong, Investpro, INVESTPRO MANAGER LLC, and Lin as set forth above prior to the sale to Plaintiff, Plaintiff has been

1 damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),
2 which amount will be set forth and proven at the time of trial.

3 70. It has been necessary for Plaintiff to retain the services of an attorney and to
4 incur other court costs to prosecute this action. Defendants TKNR, Wong,
5 Investpro, INVESTPRO MANAGER LLC, and Lin should be required to pay
6 attorneys' fees and costs incurred by Plaintiff in this action.

7
8 SIXTH CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

9 [Defendants Investpro and Nickrandt and Chen]
10

11 71. Plaintiff realleges and incorporates herein all of the allegations previously
12 made in all previous paragraphs as though fully set forth herein.

13 72. Defendants Investpro and Nickrandt and Chen owed a fiduciary duty to the
14 Plaintiff in acting as the real estate agent and/or broker for the Plaintiff.

15 73. Defendants Investpro and Nickrandt and Chen breached duties owed as a
16 fiduciary because Defendants Investpro and Nickrandt and Chen failed to
17 meet their duties owed to the Plaintiff, including without limitation, a duty to
18 conduct their obligations in a reasonable and customary manner consistent
19 with local standards, a duty to honestly inform the Plaintiff of the status and
20 facts of the purchases and sales, and a duty to meet their obligations as
21 agreed to in acting as a real estate agent and/or broker.

22 74. As a direct and proximate result of Plaintiff's reliance upon Defendants
23 Investpro and Nickrandt and Chen in acting as their fiduciary, Plaintiff has
24 suffered and will suffer general and consequential damages in excess of ten
25 thousand dollars (\$15,000), exclusive of costs and interest, in an amount to
26 be determined according to proof adduced at trial.

27
28 75. Plaintiff has further been required to retain the services of an attorney to

1 prosecute this action on its behalf, and as such are entitled to attorney's
2 fees and costs incurred in prosecuting this matter.

3
4 ///

5 SEVENTH CAUSE OF ACTION - RICO

6 [Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO
7 INVESTMENTS I LLC]
8

9 76. Plaintiff realleges and incorporates herein all of the allegations previously
10 made in all previous paragraphs as though fully set forth herein.

11 77. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO
12 INVESTMENTS I LLC engaged in criminal enterprise under the guise of a
13 real estate investment fund, the Flipping Fund, to commit fraud on Plaintiff
14 and at least one other individual by engaging in criminal activity by
15 contracting and managing renovation projects for the Subject Property, and
16 other properties, without a license.

17 78. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO
18 INVESTMENTS I LLC engaged in criminal enterprise under the guise of a
19 real estate investment fund, the Flipping Fund, to commit fraud on Plaintiff
20 and at least one other individual by engaging in criminal activity by soliciting
21 money and running the Flipping Fund without a federal license from the
22 Security and Exchange Commission or a state license from the state of
23 Nevada.

24 79. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO
25 INVESTMENTS I LLC used the proceeds of the above described activity to
26 purchase assets including, but not limited to, membership interest in TKNR.

27 80. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO
28

1 INVESTMENTS I LLC used the proceeds of the above described activity to
2 pay Flipping Fund investors a promised 23.69% compound rate.

3 81. Defendants Lin, Cheng, INVESTPRO MANAGER LLC and INVESTPRO
4 INVESTMENTS I LLC used the proceeds of the above described activity to
5 generate sales commissions for Investpro.

6 82. As a direct and proximate result of the actions of Defendants Lin, Cheng,
7 INVESTPRO MANAGER LLC and INVESTPRO INVESTMENTS I LLC,
8 Plaintiff has suffered and will suffer general and consequential damages in
9 excess of ten thousand dollars (\$15,000), exclusive of costs and interest, in
10 an amount to be determined according to proof adduced at trial.

11 83. Plaintiff has further been required to retain the services of an attorney to
12 prosecute this action on its behalf, and as such are entitled to attorney's
13 fees and costs incurred in prosecuting this matter.
14

15 EIGHTH CAUSE OF ACTION - DAMAGES UNDER NRS 645.257(1)

16 [Defendant Chen, Lin, Investpro and Nickrandt]
17

18 84. Plaintiff realleges and incorporates herein all of the allegations previously
19 made in all previous paragraphs as though fully set forth herein.

20 85. At all relevant times Investpro was the real estate broker for the purchase
21 and sale of the Subject Property.
22

23 86. Investpro represented both the buyer and the seller in the transaction.

24 87. At all relevant times Chen was the employee or agent of Investpro.

25 88. At all relevant times Lin was the employee or agent of Investpro.

26 89. At all relevant times Nickrandt was the licensee of Investpro.

27 90. NRS 645.252(1)(a) imposes a duty on a "licensee acting as agent in real
28 estate transaction" to disclose to Plaintiff "Any material and relevant facts,

1 data or information which the licensee knows, or which by the exercise of
2 reasonable care and diligence should have known, relating to the property
3 which is the subject of the transaction.”

4 91. The facts of the renovation project on the Subject Property set forth in
5 Paragraph 31 were material and relevant facts, data or information which
6 Chen knew, or which by the exercise of reasonable care and diligence
7 should have known.

8 92. Chen had an obligation under NRS 645.252(1)(a) to disclose the material
9 facts of the renovation project on the Subject Property as set forth in
10 Paragraph 31.

11 93. The facts of the renovation project on the Subject Property set forth in
12 Paragraph 31 were material and relevant facts, data or information which
13 Lin knew, or which by the exercise of reasonable care and diligence should
14 have known.

15 94. Lin had an obligation under NRS 645.252(1)(a) to disclose the material facts
16 of the renovation project on the Subject Property as set forth in Paragraph
17 31.

18 95. The facts of the renovation project on the Subject Property set forth in
19 Paragraph 31 were material and relevant facts, data or information which
20 Nickrandt knew, or which by the exercise of reasonable care and diligence
21 should have known.

22 96. Nickrandt had an obligation under NRS 645.252(1)(a) to disclose the
23 material facts of the renovation project on the Subject Property as set forth
24 in Paragraph 31.

25 97. Chen did not disclose the material facts of the renovation project on the
26 Subject Property as set forth in Paragraph 31 to Plaintiff.

27 98. Lin did not disclose the material facts of the renovation project on the
28 Subject Property as set forth in Paragraph 31 to Plaintiff.

1 99. Nickrandt did not disclose the material facts of the renovation project on the
2 Subject Property as set forth in Paragraph 31 to Plaintiff.

3 100. Plaintiff seeks judgment for actual damages against Chen pursuant to NRS
4 645.257(1).

5 101. Plaintiff seeks judgment for actual damages against Lin pursuant to NRS
6 645.257(1).

7 102. Plaintiff seeks judgment for actual damages against Nickrandt pursuant to
8 NRS 645.257(1).

9
10 NINTH CAUSE OF ACTION - FAILURE TO SUPERVISE, INADEQUATE
11 TRAINING AND EDUCATION

12 [Defendant Investpro, Zhang, and Nickrandt]
13

14 103. Plaintiff realleges and incorporates herein all of the allegations previously
15 made in all previous paragraphs as though fully set forth herein.

16
17 104. At all relevant times Lin and Chen were the employees or agents of
18 Investpro.

19 Nickrandt is the licensee of Investpro and Zhang is a manager of Investpro.

20 105. Investpro, Zhang, and Nickrandt failed to supervise their employees or
21 agents, Lin and Chen.

22 106. Investpro, Zhang, and Nickrandt failed to adequately train their employees
23 or agents, Lin and Chen to ensure that they complied with the law.

24 107. Investpro, Zhang, and Nickrandt failed to adequately educate their
25 employees or agents, Lin and Chen to ensure that they complied with the
26 law.

27 108. As a direct and proximate result of the actions of Defendants Investpro,
28 Zhang, and Nickrandt failure to supervise, adequately train or adequately

1 educate their employees or agents, Lin and Chen Plaintiff has suffered and
2 will suffer general and consequential damages in excess of ten thousand
3 dollars (\$15,000), exclusive of costs and interest, in an amount to be
4 determined according to proof adduced at trial.

5 109. Plaintiff has further been required to retain the services of an attorney to
6 prosecute this action on its behalf, and as such are entitled to attorney's
7 fees and costs incurred in prosecuting this matter.

8
9 TENTH CAUSE OF ACTION : FRAUDULENT CONVEYANCE

10 [As to TKNR, Doe Defendants 6 - 10 and Roe Defendants XI - XX]

11
12 110. Plaintiff realleges and incorporates herein all of the allegations previously
13 made in all previous paragraphs as though fully set forth herein.

14 111. TKNR dissolved and transferred all of its assets to Doe Defendants 6 - 10
15 and/or Roe Defendants XI - XX

16 113. TKNR transferred all of it's assets to Doe Defendants 6 - 10 and Roe
17 Defendants XI - XX

18 (a) With actual intent to hinder, delay or defraud Plaintiff; or

19 (b) Without receiving a reasonably equivalent value in exchange for the
20 transfer or obligation, and TKNR:

21
22 (1) Was engaged or was about to engage in a business or a
23 transaction for which the remaining assets of the debtor were
24 unreasonably small in relation to the business or transaction; or

25 (2) Intended to incur, or believed or reasonably should have believed
26 that the TKNR would incur, debts beyond its ability to pay as they
27 became due.

28 114. Due to the actions of TKNR described above, Plaintiff seeks a declaratory

1 order attaching any judgment against TKNR to Doe Defendants 6 - 10
2 and/or Roe Defendants XI - XX.

3
4 ELEVENTH CAUSE OF ACTION : FRAUDULENT CONVEYANCE

5 [As to INVESTPRO INVESTMENTS I LLC, Doe Defendants 10 - 15 and Roe
6 Defendants XXI - XXX]

7
8 115. Plaintiff realleges and incorporates herein all of the allegations previously
9 made in all previous paragraphs as though fully set forth herein.

10 116. Investpro Investments I LLC dissolved and transferred all of its assets to
11 Doe Defendants 11 - 15 and/or Roe Defendants XXI - XXX

12 117. Investpro Investments I LLC transferred all of it's assets to Doe Defendants
13 11-15 and Roe Defendants XXI -XXX

14 (a) With actual intent to hinder, delay or defraud Plaintiff; or

15 (b) Without receiving a reasonably equivalent value in exchange for the
16 transfer or obligation, to INVESTPRO INVESTMENTS I LLC :

17 (1) Was engaged or was about to engage in a business or a
18 transaction for which the remaining assets of the debtor were
19 unreasonably small in relation to the business or transaction; or

20 (2) Intended to incur, or believed or reasonably should have believed
21 that INVESTPRO INVESTMENTS I LLC would incur, debts beyond
22 its ability to pay as they became due.

23
24 118. Due to the actions of INVESTPRO INVESTMENTS I LLC described above,
25 Plaintiff seeks a declaratory order attaching any judgment against
26 INVESTPRO INVESTMENTS I LLC to Doe Defendants 11-15 and/or Roe
27 Defendants XXI - XXX.
28

1 TWELVETH CAUSE OF ACTION : CIVIL CONSPIRACY

2 [As to Defendant MAN CHAU CHENG, Lin, Investpro, Wong, TKNR,
3 INVESTPRO INVESTMENTS I LLC and INVESTPRO MANAGER LLC]
4

5 119. Plaintiff realleges and incorporates herein all of the allegations previously
6 made in all previous paragraphs as though fully set forth herein.

7 120. All, or some combination of, Defendants MAN CHAU CHENG, Lin,
8 Investpro, Wong, TKNR, INVESTPRO INVESTMENTS I LLC and
9 INVESTPRO MANAGER LLC engaged in concerted action.

10 121. The concerted action engaged in by all, or some combination of, Defendants
11 MAN CHAU CHENG, Lin, Investpro, Wong, TKNR, INVESTPRO
12 INVESTMENTS I LLC and INVESTPRO MANAGER LLC was intended to
13 accomplish an unlawful objective for the purpose of harming another.

14 122. Plaintiff was damaged by the act or acts of Defendants MAN CHAU
15 CHENG, Lin, Investpro, Wong, TKNR, INVESTPRO INVESTMENTS I LLC
16 and INVESTPRO MANAGER LLC and Plaintiff has suffered and will suffer
17 general and consequential damages in excess of ten thousand dollars
18 (\$15,000), exclusive of costs and interest, in an amount to be determined
19 according to proof adduced at trial.

20 123. Plaintiff has further been required to retain the services of an attorney to
21 prosecute this action on its behalf, and as such are entitled to attorney's
22 fees and costs incurred in prosecuting this matter.
23

24
25 THIRTEENTH CAUSE OF ACTION - BREACH OF CONTRACT

26 [As to Defendant Investpro]
27

28 124. Plaintiff realleges and incorporates herein all of the allegations previously

- 1 made in all previous paragraphs as though fully set forth herein.
- 2 125. At all relevant times Investpro was the real estate broker for the purchase
3 and sale of the Subject Property.
- 4 126. By written contract, Investpro represented both the buyer and the seller in
5 the transaction.
- 6 127. Pursuant to NRS 645.252(1)(a) Investpro was required to disclose to
7 Plaintiff "Any material and relevant facts, data or information which the
8 licensee knows, or which by the exercise of reasonable care and diligence
9 should have known, relating to the property which is the subject of the
10 transaction."
- 11 128. Investpro breached it's contractual duties as it failed to disclose material
12 and relevant facts, data or information which Investpro knew, or which by
13 the exercise of reasonable care and diligence should have known, relating
14 to the Subject Property.
- 15 129. Plaintiff was damaged by the act or acts of Investpro and Plaintiff has
16 suffered and will suffer general and consequential damages in excess of ten
17 thousand dollars (\$15,000), exclusive of costs and interest, in an amount to
18 be determined according to proof adduced at trial.
- 19 130. Plaintiff has further been required to retain the services of an attorney to
20 prosecute this action on its behalf, and as such are entitled to attorney's
21 fees and costs incurred in prosecuting this matter.
- 22

23 FOURTEENTH CAUSE OF ACTION - BREACH OF IMPLIED COVENANT OF
24 GOOD FAITH AND FAIR DEALING

25 [As to Defendant Investpro]

26

27

- 28 131. Plaintiff incorporates all previous paragraphs as though fully set forth

1 herein.

2 132. Every contract in Nevada has an implied covenant of good faith and fair
3 dealing which essentially forbids arbitrary, unfair acts by one party that
4 disadvantage the other.

5 133. As set forth Investpro breached the implied covenant of good faith and fair
6 dealing.

7 134. Plaintiff was damaged by the act or acts of Investpro and Plaintiff has
8 suffered and will suffer general and consequential damages in excess of ten
9 thousand dollars (\$15,000), exclusive of costs and interest, in an amount to
10 be determined according to proof adduced at trial.

11 135. Plaintiff has further been required to retain the services of an attorney to
12 prosecute this action on its behalf, and as such are entitled to attorney's
13 fees and costs incurred in prosecuting this matter.

14
15 FIFTEENTH CAUSE OF ACTION : ABUSE OF PROCESS

16 [As to all Defendants]

17
18
19 136. Plaintiff incorporates all previous paragraphs as though fully set forth
20 herein.

21 137. Following service of the initial Complaint, Defendants willfully embarked on
22 a pattern and strategy of deception and delay with an ulterior purpose other
23 than resolving this legal dispute and used the legal process to implement
24 this strategy, all of which is not proper in the regular conduct of this legal
25 proceeding, with specific examples being set forth below.

- 26 a. Stating in their Answer filed March 19, 2019 that they "are without
27 knowledge or information sufficient to form a belief as to the truth of
28 the allegation" that the assets distributed by Investpro Investments I

1 LLC as part of it's dissolution in January, 2019 [after the Complaint
2 was served] were all of Investpro Investments I LLC's assets.
3 Defendants, including state in their Amended Answer filed _____,
4 2020 the same baseless statement about lack of knowledge or
5 information about Investpro Investments I LLC. In fact, their
6 Amended Answer filed _____ doesn't even have an answer filed by
7 Investpro Investments I LLC.

- 8 b. Failing to provide ANY disclosure or discovery for Investpro
9 Investments I LLC
- 10 c. Failing to provide ANY disclosure or discovery for INVESTPRO
11 MANAGER LLC.
- 12 d. Filing a frivolous Motion for Summary Judgment on January 7, 2019
13 before discovery had even commenced.
- 14 e. Filing a Counterclaim for Abuse of Process over twenty months after
15 the Amended Complaint.
- 16 f. Filing a Third-Party Complaint against a mechanical The Air Team,
17 LLC d/b/a the Air Team Heating and Cooling, a Nevada Limited
18 Liability Company over 23 months after attaching the invoice to their
19 frivolous Motion for Summary Judgment filed on January 7, 2019.
- 20 g. Filing a Motion to Enlarge Discovery Deadlines on October 15, 2020,
21 fifteen days before the close of discovery, when discovery deadlines
22 had already been extended on May 28, 2020 due to the corona virus
23 situation. Defendants' Motion to Enlarge Discovery Deadlines on
24 October 15, 2020 was filed without a meet and confer conference in
25 violation of EDCR 2.34(d), was filed later than 21 days before the
26 discovery cut-off date in violation of EDCR 2.35(a), and was filed
27 directly to the District Court Judge instead of "to the Discovery
28 Commissioner in strict accordance with EDCR 2.35" as required by

the trial order filed June 26, 2020

- h. Failing to disclose a rebuttal expert within the deadline.
- i. Repeatedly falsely stating, while knowing of the falsity, that Plaintiff did not inspect the Subject Property, knowing that Plaintiff had inspected the Subject Property and had made demands for repairs.
- j. Asserting that the opinion of Plaintiff's expert witness, Amin Sani, create a basis for Abuse of Process when Mr. Sani was (1) timely disclosed as Plaintiff's expert witness in compliance with all legal rules and procedures and (2) is solely expressing an honest opinion with his scope of expertise.
- k. Defendants have failed to disclose insurance coverage, as required by NRCP 16.1(a)(1)(D).
- l Defendants abuse of the legal system is ongoing and because of the ongoing nature of Defendants' action, Plaintiff have will seek leave to amend the complaint to add any additional actions taken by Defendants after they occur.

138. Defendants engaged in the above identified actions within this wsuit for (1) an ulterior purpose other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding. Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 42 (1993).

139. The delay tactics, repeated knowing false statements, and questionable discovery tactics by Defendants is abuse of process.

140. The use of false, misleading statements about Plaintiff's "expert" is abuse of process.

141. Stating that "suing the Property Manager / Broker agents despite the clear language in the RPA related to both liability and limitation of damages is abuse of process" when (1) the allegations against Defendants have

1 ALREADY been the subject of Defendants' Motion for Summary Judgment,
2 which was denied and (2) the allegations against the Property Manager /
3 Broker have been clearly set forth is abuse of process.

4 142. Additional areas of abuse of process have not been yet obtained byway of
5 discovery and, additionally, are ongoing. When additional information of
6 evidence of Defendants' abuse of process is obtained, Defendants will
7 disclose such information accordingly.

8 143. In order to prosecute this action, Plaintiff had to retain attorneys to represent
9 it, and it is entitled to fair and reasonable attorneys' fees associated with
10 protecting its rights.costs incurred as foreseeable damages arising from
11 tortious conduct of abuse of process; as such, these fees are considered
12 special damages and must be pleaded as special damages pursuant to
13 Nevada Rule of Civil Procedure 9(g). International Indus. v. United Mtg. Co.,
14 96 Nev. 150, 606 P.2d 163 (1980) (failure to plead damages precluded
15 recovery); City of Las Vegas v. Cragin Industries, 86 Nev. 933, 478 P.2d
16 585 (1970) (fees not properly pleaded in the complaint); Brown v. Jones, 5
17 Nev. 374 (1870) (complaint must allege with distinctness fees resulting only
18 from dissolution of injunction). Plaintiff specially pleads for attorneys' fees to
19 meet the requirements set forth by the Nevada Supreme Court. Young v.
20 Nevada Title Co., 103 Nev. 436, 438, 744 P.2d 902, 903 (1987). The
21 attorneys' fees are the natural and proximate consequence of the injurious
22 conduct specified herein. Peterson v. Wiesner, 62 Nev. 184, 146 P.2d 789
23 (1944) (failure to distinguish fees incurred in wrongful attachment action
24 from fees incurred in collateral criminal case resulted in denial of fees as
25 damages). It has been necessary for Plaintiff to retain the services of an
26 attorney to prosecute this action, and Plaintiff should therefore be entitled to
27 an award of reasonable attorney's fees and costs.
28

1 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 2
3 1. As to Defendant TKNR, Wong and INVESTPRO MANAGER LLC, pursuant
4 to NRS 113.150, judgment jointly and severally for treble the amount
5 necessary to repair or replace the defective part of the Subject Property,
6 which amount is in excess of Fifteen Thousand Dollars (\$15,000), plus court
7 costs and reasonable attorney's fees;
- 8 2. As to Defendants Investpro, Nickrandt and Chen, judgment jointly and
9 severally for compensatory damages in an amount in excess of Fifteen
10 Thousand Dollars (\$ 15,000.00) plus for exemplary and/or punitive damages
11 in the amount of three times the compensatory damages awarded; and
- 12 3. As to Defendants Investpro, INVESTPRO MANAGER LLC, TKNR, Wong
13 and Lin, judgment jointly and severally for compensatory damages in an
14 amount in excess of Fifteen Thousand Dollars (\$ 15,000.00) plus for
15 exemplary and/or punitive damages in the amount of three times the
16 compensatory damages awarded; and
- 17 4. As to Defendants Lin, Cheng, INVESTPRO MANAGER LLC and
18 INVESTPRO INVESTMENTS I LLC, pursuant to NRS 204.470, judgment
19 jointly and severally for treble Plaintiff's actual damages, which amount is in
20 excess of Fifteen Thousand Dollars (\$15,000), plus attorney's fees in the
21 trial and appellate courts and costs of investigation and litigation reasonably
22 incurred; and
- 23 5. As to Defendant Chen, pursuant to NRS 645.257(1) judgment for Plaintiff's
24 actual damages, which amount is in excess of Fifteen Thousand Dollars
25 (\$15,000); and
- 26 6. As to Defendant Lin, pursuant to NRS 645.257(1) judgment for Plaintiff's
27 actual damages, which amount is in excess of Fifteen Thousand Dollars
28 (\$15,000); and

- 1 7. As to Defendant Investpro, pursuant to NRS 645.257(1) judgment for
2 Plaintiff's actual damages, which amount is in excess of Fifteen Thousand
3 Dollars (\$15,000); and
- 4 8. As to Defendant Nickrandt, pursuant to NRS 645.257(1) judgment for
5 Plaintiff's actual damages, which amount is in excess of Fifteen Thousand
6 Dollars (\$15,000); and
- 7 9. As to Defendants Investpro, Zhang, and Nickrandt, judgment jointly and
8 severally Plaintiff's actual damages, which amount is in excess of Fifteen
9 Thousand Dollars (\$15,000); and
- 10 10. For a declaratory order attaching any judgment against TKNR to Doe
11 Defendants 6 - 10 and/or Roe Defendants XI - XX; and
- 12 11. For a declaratory order attaching any judgment against INVESTPRO
13 INVESTMENTS I LLC to Doe Defendants 11-15 and/or Roe Defendants XXI
14 - XXX; and
- 15 12. As to Defendant MAN CHAU CHENG, Lin, Investpro, Wong, TKNR,
16 INVESTPRO INVESTMENTS I LLC and INVESTPRO MANAGER LLC,
17 judgment jointly and severally for Plaintiff's actual damages, which amount
18 is in excess of Fifteen Thousand Dollars (\$15,000) plus for exemplary
19 and/or punitive damages in the amount of three times the compensatory
20 damages awarded; and
- 21 13. As to Defendant Investpro, judgment for Plaintiff's actual damages, which
22 amount is in excess of Fifteen Thousand Dollars (\$15,000); and
- 23 14. As to all Defendants, judgment jointly and severally, for it's attorney fees
24 and court costs due to Defendants' abuse of process, which amount is in
25 excess of Fifteen Thousand Dollars (\$15,000) plus for exemplary and/or
26 punitive damages in the amount of three times the compensatory damages
27 awarded; and
28

1 15. For such other and further relief as the Court may deem just and proper

2
3 /s/ Benjamin B. Childs

4 _____
BENJAMIN B. CHILDS, ESQ.
Nevada Bar No. 3946
5 Attorney for Plaintiff

6 CERTIFICATE OF SERVICE

7
8 This SECOND AMENDED COMPLAINT, with Exhibits, was served through
9 the Odyssey File and Serve system to opposing counsel at filing. Electronic
10 service is in lieu of mailing.

11
12
13 /s/ Benjamin B. Childs, Sr.

14 _____
BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946

EXHIBIT 2

1 DAO

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 WLAB INVESTMENT, LLC,

6 Plaintiff,

7 vs.

8 TKNR INC., a California Corporation, and CHI ON
9 WONG aka CHI KUEN WONG, an individual, and
10 KENNY ZHONG LIN, aka KEN ZHONG LIN aka
11 KENNETH ZHONG LIN aka ZHONG LIN, an
12 individual, and LIWE HELEN CHEN aka HELEN
13 CHEN, an individual and YAN QIU ZHANG, an
14 individual, and INVESTPRO LLC dba INVESTPRO
15 REALTY, a Nevada Limited Liability Company, and
16 MAN CHAU CHENG, an individual, and JOYCE A.
17 NICKRANDT, an individual, and INVESTPRO
18 INVESTMENTS LLC, a Nevada Limited Liability
19 Company, and INVESTPRO MANAGER LLC, a
20 Nevada Limited Liability Company and JOYCE A.
21 NICKRANDT, an individual and Does 1 through 15
22 and Roe Corporation I – XXX,

23 Defendants.

Case No. A-18-785917-C
Dept No. VII

24 **DECISION AND ORDER**

25 This case arises from WLAB Investment alleging that the TKNR Defendants had fraudulently
26 induced WLAB into purchasing an apartment building that contained numerous defects. Now before
27 the Court is the TKNR Defendants' Motion for Attorneys' Fees. WLAB filed an Opposition to the
28 TKNR Defendants' Motion on August 24, 2022. The parties came before this Court for oral argument
on September 14, 2022. After review of the papers filed and consideration of oral arguments, the
TKNR Defendants' Motion for Attorneys' Fees is denied.

29 **I. Factual and Procedural Background**

30 WLAB filed their initial complaint on December 11, 2018 against the TKNR Defendants for:
31 (1) Recovery under NRS Chapter 113; (2) Construct Fraud; (3) Common Law Fraud; and (4)
32 Fraudulent Inducement. After two years of litigation, the TKNR Defendants filed their Motion for

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 Summary Judgment, or in the alternative, Partial Summary Judgment. In the TKNR Defendants'
2 original Motion for Attorney's Fees which was incorporated in their December 15, 2020, Motion for
3 Summary Judgment, the TKNR Defendants petitioned the District Court for attorney's fees pursuant
4 to Rule 11 and NRS 18.010(2)(b). WLAB filed a timely Opposition as well as a Countermotion for
5 continuance based on NRCPP 56(f), and a Countermotion for Imposition of Monetary Sanctions.

6 On March 11, 2021, a hearing was held regarding the TKNR Defendants' Motion for
7 Summary Judgment. The Court granted Summary Judgment as to all claims and awarded the TKNR
8 Defendants attorney's fees as well as Rule 11 Sanctions. On March 31, 2021, the original order
9 granting summary judgment in favor of the TKNR Defendants was filed along with a hearing to show
10 cause related to the violation of Rule 11 by WLAB. However, the then-presiding Judge unilaterally
11 amended the original order, removing the order to show cause language, instead requesting the TKNR
12 Defendants to file an affidavit in support of the requested attorney's fees and costs. The TKNR
13 Defendants filed the Affidavit in support of Attorneys' Fees and Costs indicating that the requested
14 fees and costs were appropriate under either Rule 11 or for abuse of process.

15 On March 16, 2021, WLAB filed a Motion to Reconsider the Amended Order. The Court
16 granted in part and denied in part WLAB's Motion. On May 25, 2021, Judgment was entered awarding
17 the TKNR Defendants the sum of \$128,166.78 in attorneys' fees and costs from WLAB.

18 WLAB later filed a Notice of Appeal arguing that factual issues existed which precluded the
19 District Court from granting summary judgment. WLAB further argued that this matter did not warrant
20 Rule 11 sanctions. On May 12, 2022, the Nevada Supreme Court affirmed in part and reversed in part
21 the TKNR Defendants' Motion for Summary Judgment. The Nevada Supreme Court found that issues
22 of fact did not exist in the record and affirmed the District Court's granting of summary judgment. In
23 regards to the Rule 11 sanctions, the Nevada Supreme Court found that the TKNR Defendants' had
24 not complied with Rule 11 procedural rules. The Court concluded that the District Court imposed
25 sanctions without first giving the offending party notice and reasonable opportunity to respond. As
26 such, the Court reversed the award of the TKNR Defendants' attorney's fees. On August 16, 2022,
27 the Remittitur was filed with the Court.

28 On August 10, 2022, the TKNR Defendants filed the instant motion arguing that recovery of

attorneys' fees and costs is appropriate under NRS § 18.010(2)(a), NRS § 17.117, Nev. R. Civ. P. 68. The TKNR Defendants later filed a Supplement arguing they were entitled to attorney fees under the Residential Purchase Agreement entered into between the parties. WLAB later filed an Opposition to the TKNR Defendants' Motion for Attorney Fees and Costs arguing that the TKNR Defendants' Motion should be denied for failing to follow procedural requirements and as untimely pursuant to NRCP 54(d)(B)(i).

II. The TKNR Defendants are not entitled to attorney fees and costs under NRCP 11.

Rule 11 requires any motion for sanctions to be made "separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)." Nev. R. Civ. P. 11(c)(1)(a). The motion must describe the specific conduct that allegedly violates section 11(b). Id.

The requirement of a separate Rule 11 motion is mandatory. Radcliffe v. Rainbow Constr. Co., 254 F.3d 772, 789 (9th Cir. 2001). A request for Rule 11 sanctions cannot be contained within any other motion. Id. The court in Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., rejected defendants' argument to treat their affidavit of service and reply affidavit as a motion for Rule 11 sanctions because a motion must "be made separately from other motions or requests." Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., 174 F.3d 87, 94 (2d Cir. 1999). In Barber v. Miller, the court acknowledged that defendant gave plaintiff multiple warnings but concluded that such warnings were not motions "and the Rule requires service of a motion." Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998)

The Rule 11 motion must be served on opposing counsel but not filed with the court. Id. This is the 21 day "safe harbor" provision which allows the targeted attorney and party the opportunity to correct or withdraw the alleged wrongful claim or assertion. The 21-day safe harbor provision is also considered a mandatory step. Radcliffe at 788. Other federal appellate courts concur. Tompkins v. Cyr, 202 F.3d 770, 788 (5th Cir.2000); Elliott v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995); Penn, LLC v. Prosper Bus. Dev. Corp., 773 F.3d 764 (6th Cir. 2014). In Corley v. Rosewood Care Ctr., Inc., 142 F.3d 1041, 1058 (7th Cir. 1998), the defendants conceded that rule 11 sanctions were improper where they had failed to comply with the separate motion and safe harbor provisions of Rule 11.

Here, the TKNR Defendants' Motion for Rule 11 sanctions is combined with their motion for

1 attorney fees. Defendants' Motion further fails to describe WLAB's specific conduct that allegedly
2 violates section 11(b). WLAB was served on August 10, 2022, with the TKNR Defendants' Motion
3 for Attorney Fees. WLAB had not, prior to filing the motion, been served with TKNR's Motion for
4 Rule 11 sanctions. WLAB was served a second time with TKNR's filed motion for attorney fees on
5 August 22, 2022. This again is a direct violation of the procedural requirements of NRCP 11(c)(2)
6 requiring a 21 day safe harbor before a motion for Rule 11 sanctions. Furthermore, this was
7 specifically the Nevada Supreme Court's finding with the last Rule 11 motion previously filed for the
8 TKNR Defendants. On May 12, 2022, The Nevada Supreme Court found that the TKNR Defendants'
9 motion for Rule 11 sanctions did not meet the rule's "Mandatory procedural requirements" and
10 reversed the district court's order awarding attorney fees:

11 In particular, respondents did not serve notice of their motion at least
12 21 days before they filed the motion with the district court and the motion was
13 not made separately from their summary judgment motion as required by NRCP 11(c)(2).

14 See Supreme Court Order, May 12, 2022, p.7

15 The targeted party of Rule 11 sanctions must be given an opportunity to respond. In this case,
16 no such opportunity was given and the TKNR Defendants' again failed to follow Rule 11 procedures.
17 Therefore, The TKNR Defendants' request for attorney fees under Rule 11 is denied.

18 **III. TKNR's request for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is**
19 **denied as untimely.**

20 NRCP 54(d)(B)(i) states that a motion for attorney fees must be filed within 21 days of notice
21 of entry of order of judgment. Pursuant to NRCP 54(d)(B)(i), The TKNR Defendants' instant motion
22 for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely. Here, the
23 TKNR Defendants in their December 15, 2020, Motion for Summary Judgment, requested attorney
24 fees pursuant to NRS 18.010(2)(b) and Rule 11. The then-presiding Judge chose to award attorney
25 fees pursuant to Rule 11. The TKNR Defendants did not appeal the denial of their request for fees
26 pursuant to NRS 18.010(2)(b). The TKNR Defendants instead decided to request fees pursuant to
27 NRS 18.010(2)(b) over one year post judgment.

28 In the TKNR Defendants' Motion for Summary Judgment, TKNR argued they were entitled

1 to attorney fees based on Rule 11 and NRS 18.010(2)(b). See TKNR Defendants' Motion for Summary
2 Judgment, pp. 30-31. The TKNR Defendants never requested fees pursuant to NRS 17.117 or NRCP
3 68. Id. The TKNR Defendants have argued for the first time, over 400 days after notice of entry of
4 judgment, that they are entitled to fees pursuant to NRS 17.117 and NRCP 68. The 21 day window to
5 file a motion for attorney fees under NRCP 54(d)(B)(i) has passed. Therefore, the TKNR Defendants'
6 request for attorney fees pursuant to NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely.

7
8 **IV. TKNR's request for attorney fees based on the Residential Purchase Agreement is denied as untimely.**

9 On August 25, 2022, The TKNR Defendants filed a supplement to their original Motion
10 arguing that pursuant to the terms of the Residential Purchase Agreement signed by the parties in this
11 matter, the TKNR Defendants are entitled to their attorney fees and costs. The Supplement includes
12 citation to the provision of the Residential Purchase Agreement between the Parties that provide for
13 recovery of attorneys' fees and costs by the prevailing party.

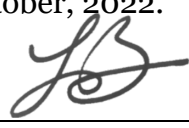
14 Here, the TKNR Defendants had 21 days to file their motion for attorney fees to specify "the
15 judgment and the statute, rule, or other grounds entitling the movant to the award." Nev. R. Civ. P
16 54(d)(2)(B)(i)(ii). The TKNR Defendants filed this supplement to their original Motion for Attorney
17 Fees approximately a year and a half after notice of the entry of judgment. The TKNR Defendants did
18 not mention The Residential Purchase Agreement entered into between both parties as a ground that
19 entitled them to attorney fees when they filed their original motion on December 15, 2020. The TKNR
20 Defendants' request for attorney fees based on the supplement filed on August 25, 2022 is untimely
21 under NRCP 54(d)(2)(B)(i)(ii). Therefore, the Motion for Attorney Fees and Costs pursuant to the
22 Residential Purchase Agreement is denied.

23 **V. Conclusion**

24 In regards to the request for attorney fees under Rule 11, the TKNR Defendants have again
25 failed to follow procedural requirements. Furthermore, Pursuant to NRCP 54(d)(B)(i), The TKNR
26 Defendants' Motion for Attorney Fees and Costs pursuant to NRS 18.010, NRS 17.117, NRCP 68,
27 and the Residential Purchase Agreement is denied as untimely. Based on the foregoing, the TKNR
28

1 Defendants' Motion for Attorneys' Fees and Costs is denied. The October 19, 2022 status check is
2 VACATED.

3 DATED this _____ Dated this 18th day of October, 2022 day of October, 2022.

4 

5 LINDA MARIE BELL
6 DISTRICT COURT JUDGE CD9 616 7970 6BB8
7 Linda Marie Bell
8 District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 W L A B Investment LLC,
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 7

8
9 TKNR Inc, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/18/2022

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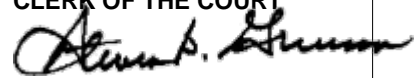
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25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 10/19/2022
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EXHIBIT 3



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Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

CASE NO.: A-18-785917-C
DEPT. NO.: XIV

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION FOR
ATTORNEYS' FEES**

TKNR INC., a California Corporation, and
CHI ON WONG aka CHI KUEN WONG, an
individual, and KENNY ZHONG LIN, aka
KEN ZHONG LIN aka KENNETH ZHONG
LIN aka WHONG K. LIN aka CHONG
KENNY LIN aka ZHONG LIN, an
individual, and LIWE HELEN CHEN aka
HELEN CHEN, an individual and YAN QIU
ZHANG, an individual, and INVESTPRO
LLC dba INVESTPRO REALTY, a Nevada
Limited Liability Company, and MAN
CHAU CHENG, an individual, and JOYCE
A. NICKRANDT, an individual, and
INVESTPRO INVESTMENTS LLC, a
Nevada Limited Liability Company, and
INVESTPRO MANAGER LLC, a Nevada
Limited Liability Company and JOYCE A.
NICKRANDT, an individual and Does 1
through 15 and Roe Corporation I - XXX,

Defendants.

Date of Hearing: September 14, 2022
Time of Hearing: 9:00 a.m.

Please take notice that an Order Denying Defendants' Motion for Attorneys' Fees was
entered in the above-entitled matter on October 18, 2022, a copy of which is attached hereto.

DATED this 25th day of October, 2022.

MICHAEL B. LEE, P.C.

/s/ Michael Matthis
MICHAEL B. LEE, ESQ. (NSB No.: 10122)
MICHAEL MATTHIS, ESQ. (NSB No.: 14582)
Attorney for Defendants

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1820 E. SAHARA AVENUE, SUITE 110
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TEL – (702) 477.7030; FAX – (702) 477.0096

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of October, 2022, I placed a copy of the **NOTICE OF ENTRY OF ORDER DENYING DEFENDATS' MOTION FO ATTORNEYS' FEES** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court's electronic filing system to the e-mail address listed below:

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Plaintiff

/s/Mindy Pallares
An employee of MICHAEL B. LEE, P.C.

1 DAO

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 WLAB INVESTMENT, LLC,

6 Plaintiff,

7 vs.

8 TKNR INC., a California Corporation, and CHI ON
9 WONG aka CHI KUEN WONG, an individual, and
10 KENNY ZHONG LIN, aka KEN ZHONG LIN aka
11 KENNETH ZHONG LIN aka ZHONG LIN, an
12 individual, and LIWE HELEN CHEN aka HELEN
13 CHEN, an individual and YAN QIU ZHANG, an
14 individual, and INVESTPRO LLC dba INVESTPRO
15 REALTY, a Nevada Limited Liability Company, and
16 MAN CHAU CHENG, an individual, and JOYCE A.
17 NICKRANDT, an individual, and INVESTPRO
18 INVESTMENTS LLC, a Nevada Limited Liability
19 Company, and INVESTPRO MANAGER LLC, a
20 Nevada Limited Liability Company and JOYCE A.
21 NICKRANDT, an individual and Does 1 through 15
22 and Roe Corporation I – XXX,

23 Defendants.

Case No. A-18-785917-C
Dept No. VII

24 **DECISION AND ORDER**

25 This case arises from WLAB Investment alleging that the TKNR Defendants had fraudulently
26 induced WLAB into purchasing an apartment building that contained numerous defects. Now before
27 the Court is the TKNR Defendants' Motion for Attorneys' Fees. WLAB filed an Opposition to the
28 TKNR Defendants' Motion on August 24, 2022. The parties came before this Court for oral argument
on September 14, 2022. After review of the papers filed and consideration of oral arguments, the
TKNR Defendants' Motion for Attorneys' Fees is denied.

29 **I. Factual and Procedural Background**

30 WLAB filed their initial complaint on December 11, 2018 against the TKNR Defendants for:
31 (1) Recovery under NRS Chapter 113; (2) Construct Fraud; (3) Common Law Fraud; and (4)
32 Fraudulent Inducement. After two years of litigation, the TKNR Defendants filed their Motion for

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 Summary Judgment, or in the alternative, Partial Summary Judgment. In the TKNR Defendants'
2 original Motion for Attorney's Fees which was incorporated in their December 15, 2020, Motion for
3 Summary Judgment, the TKNR Defendants petitioned the District Court for attorney's fees pursuant
4 to Rule 11 and NRS 18.010(2)(b). WLAB filed a timely Opposition as well as a Countermotion for
5 continuance based on NRCPP 56(f), and a Countermotion for Imposition of Monetary Sanctions.

6 On March 11, 2021, a hearing was held regarding the TKNR Defendants' Motion for
7 Summary Judgment. The Court granted Summary Judgment as to all claims and awarded the TKNR
8 Defendants attorney's fees as well as Rule 11 Sanctions. On March 31, 2021, the original order
9 granting summary judgment in favor of the TKNR Defendants was filed along with a hearing to show
10 cause related to the violation of Rule 11 by WLAB. However, the then-presiding Judge unilaterally
11 amended the original order, removing the order to show cause language, instead requesting the TKNR
12 Defendants to file an affidavit in support of the requested attorney's fees and costs. The TKNR
13 Defendants filed the Affidavit in support of Attorneys' Fees and Costs indicating that the requested
14 fees and costs were appropriate under either Rule 11 or for abuse of process.

15 On March 16, 2021, WLAB filed a Motion to Reconsider the Amended Order. The Court
16 granted in part and denied in part WLAB's Motion. On May 25, 2021, Judgment was entered awarding
17 the TKNR Defendants the sum of \$128,166.78 in attorneys' fees and costs from WLAB.

18 WLAB later filed a Notice of Appeal arguing that factual issues existed which precluded the
19 District Court from granting summary judgment. WLAB further argued that this matter did not warrant
20 Rule 11 sanctions. On May 12, 2022, the Nevada Supreme Court affirmed in part and reversed in part
21 the TKNR Defendants' Motion for Summary Judgment. The Nevada Supreme Court found that issues
22 of fact did not exist in the record and affirmed the District Court's granting of summary judgment. In
23 regards to the Rule 11 sanctions, the Nevada Supreme Court found that the TKNR Defendants' had
24 not complied with Rule 11 procedural rules. The Court concluded that the District Court imposed
25 sanctions without first giving the offending party notice and reasonable opportunity to respond. As
26 such, the Court reversed the award of the TKNR Defendants' attorney's fees. On August 16, 2022,
27 the Remittitur was filed with the Court.

28 On August 10, 2022, the TKNR Defendants filed the instant motion arguing that recovery of

attorneys' fees and costs is appropriate under NRS § 18.010(2)(a), NRS § 17.117, Nev. R. Civ. P. 68. The TKNR Defendants later filed a Supplement arguing they were entitled to attorney fees under the Residential Purchase Agreement entered into between the parties. WLAB later filed an Opposition to the TKNR Defendants' Motion for Attorney Fees and Costs arguing that the TKNR Defendants' Motion should be denied for failing to follow procedural requirements and as untimely pursuant to NRCP 54(d)(B)(i).

II. The TKNR Defendants are not entitled to attorney fees and costs under NRCP 11.

Rule 11 requires any motion for sanctions to be made "separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)." Nev. R. Civ. P. 11(c)(1)(a). The motion must describe the specific conduct that allegedly violates section 11(b). Id.

The requirement of a separate Rule 11 motion is mandatory. Radcliffe v. Rainbow Constr. Co., 254 F.3d 772, 789 (9th Cir. 2001). A request for Rule 11 sanctions cannot be contained within any other motion. Id. The court in Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., rejected defendants' argument to treat their affidavit of service and reply affidavit as a motion for Rule 11 sanctions because a motion must "be made separately from other motions or requests." Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., 174 F.3d 87, 94 (2d Cir. 1999). In Barber v. Miller, the court acknowledged that defendant gave plaintiff multiple warnings but concluded that such warnings were not motions "and the Rule requires service of a motion." Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998)

The Rule 11 motion must be served on opposing counsel but not filed with the court. Id. This is the 21 day "safe harbor" provision which allows the targeted attorney and party the opportunity to correct or withdraw the alleged wrongful claim or assertion. The 21-day safe harbor provision is also considered a mandatory step. Radcliffe at 788. Other federal appellate courts concur. Tompkins v. Cyr, 202 F.3d 770, 788 (5th Cir.2000); Elliott v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995); Penn, LLC v. Prosper Bus. Dev. Corp., 773 F.3d 764 (6th Cir. 2014). In Corley v. Rosewood Care Ctr., Inc., 142 F.3d 1041, 1058 (7th Cir. 1998), the defendants conceded that rule 11 sanctions were improper where they had failed to comply with the separate motion and safe harbor provisions of Rule 11.

Here, the TKNR Defendants' Motion for Rule 11 sanctions is combined with their motion for

1 attorney fees. Defendants' Motion further fails to describe WLAB's specific conduct that allegedly
2 violates section 11(b). WLAB was served on August 10, 2022, with the TKNR Defendants' Motion
3 for Attorney Fees. WLAB had not, prior to filing the motion, been served with TKNR's Motion for
4 Rule 11 sanctions. WLAB was served a second time with TKNR's filed motion for attorney fees on
5 August 22, 2022. This again is a direct violation of the procedural requirements of NRCP 11(c)(2)
6 requiring a 21 day safe harbor before a motion for Rule 11 sanctions. Furthermore, this was
7 specifically the Nevada Supreme Court's finding with the last Rule 11 motion previously filed for the
8 TKNR Defendants. On May 12, 2022, The Nevada Supreme Court found that the TKNR Defendants'
9 motion for Rule 11 sanctions did not meet the rule's "Mandatory procedural requirements" and
10 reversed the district court's order awarding attorney fees:

11 In particular, respondents did not serve notice of their motion at least
12 21 days before they filed the motion with the district court and the motion was
13 not made separately from their summary judgment motion as required by NRCP 11(c)(2).

14 See Supreme Court Order, May 12, 2022, p.7

15 The targeted party of Rule 11 sanctions must be given an opportunity to respond. In this case,
16 no such opportunity was given and the TKNR Defendants' again failed to follow Rule 11 procedures.
17 Therefore, The TKNR Defendants' request for attorney fees under Rule 11 is denied.

18 **III. TKNR's request for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is**
19 **denied as untimely.**

20 NRCP 54(d)(B)(i) states that a motion for attorney fees must be filed within 21 days of notice
21 of entry of order of judgment. Pursuant to NRCP 54(d)(B)(i), The TKNR Defendants' instant motion
22 for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely. Here, the
23 TKNR Defendants in their December 15, 2020, Motion for Summary Judgment, requested attorney
24 fees pursuant to NRS 18.010(2)(b) and Rule 11. The then-presiding Judge chose to award attorney
25 fees pursuant to Rule 11. The TKNR Defendants did not appeal the denial of their request for fees
26 pursuant to NRS 18.010(2)(b). The TKNR Defendants instead decided to request fees pursuant to
27 NRS 18.010(2)(b) over one year post judgment.

28 In the TKNR Defendants' Motion for Summary Judgment, TKNR argued they were entitled

1 to attorney fees based on Rule 11 and NRS 18.010(2)(b). See TKNR Defendants' Motion for Summary
2 Judgment, pp. 30-31. The TKNR Defendants never requested fees pursuant to NRS 17.117 or NRCP
3 68. Id. The TKNR Defendants have argued for the first time, over 400 days after notice of entry of
4 judgment, that they are entitled to fees pursuant to NRS 17.117 and NRCP 68. The 21 day window to
5 file a motion for attorney fees under NRCP 54(d)(B)(i) has passed. Therefore, the TKNR Defendants'
6 request for attorney fees pursuant to NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely.

7
8 **IV. TKNR's request for attorney fees based on the Residential Purchase Agreement is denied as untimely.**

9 On August 25, 2022, The TKNR Defendants filed a supplement to their original Motion
10 arguing that pursuant to the terms of the Residential Purchase Agreement signed by the parties in this
11 matter, the TKNR Defendants are entitled to their attorney fees and costs. The Supplement includes
12 citation to the provision of the Residential Purchase Agreement between the Parties that provide for
13 recovery of attorneys' fees and costs by the prevailing party.

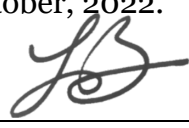
14 Here, the TKNR Defendants had 21 days to file their motion for attorney fees to specify "the
15 judgment and the statute, rule, or other grounds entitling the movant to the award." Nev. R. Civ. P
16 54(d)(2)(B)(i)(ii). The TKNR Defendants filed this supplement to their original Motion for Attorney
17 Fees approximately a year and a half after notice of the entry of judgment. The TKNR Defendants did
18 not mention The Residential Purchase Agreement entered into between both parties as a ground that
19 entitled them to attorney fees when they filed their original motion on December 15, 2020. The TKNR
20 Defendants' request for attorney fees based on the supplement filed on August 25, 2022 is untimely
21 under NRCP 54(d)(2)(B)(i)(ii). Therefore, the Motion for Attorney Fees and Costs pursuant to the
22 Residential Purchase Agreement is denied.

23 **V. Conclusion**

24 In regards to the request for attorney fees under Rule 11, the TKNR Defendants have again
25 failed to follow procedural requirements. Furthermore, Pursuant to NRCP 54(d)(B)(i), The TKNR
26 Defendants' Motion for Attorney Fees and Costs pursuant to NRS 18.010, NRS 17.117, NRCP 68,
27 and the Residential Purchase Agreement is denied as untimely. Based on the foregoing, the TKNR
28

1 Defendants' Motion for Attorneys' Fees and Costs is denied. The October 19, 2022 status check is
2 VACATED.

3 DATED this _____ Dated this 18th day of October, 2022 day of October, 2022.

4 

5 LINDA MARIE BELL
6 DISTRICT COURT JUDGE CD9 616 7970 6BB8
7 Linda Marie Bell
8 District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 W L A B Investment LLC,
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

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